

# **Gig Harbor City Council Meeting**

**August 8, 2005  
7:00 p.m.**



*"THE MARITIME CITY"*

**AGENDA FOR  
GIG HARBOR CITY COUNCIL MEETING  
August 8, 2005 - 7:00 p.m.**

**CALL TO ORDER:**

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

*These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.*

1. Approval of the Minutes of City Council Meeting of July 25, 2005.
2. Wastewater Treatment Plant Upgrades – Design Services - Consultant Services Contract.
3. Olympic Drive/56<sup>th</sup> Street Roadway Improvement Project – Easements.
4. Liquor License Change of Location: Water to Wine.
5. Approval of Payment of Bills for August 8, 2005:  
Checks #47802 through #47912 in the amount of \$306,024.55.
6. Approval of Payroll for the month of July:  
Checks #3837 through #3886 and direct deposits in the amount of \$277,631.99.

**OLD BUSINESS:**

1. Second Reading of Ordinance – Allowing Recovery of Emergency Response Costs.

**NEW BUSINESS:**

1. First Reading of Ordinance – Terminating the Waterfront Millville Moratorium.
2. First Reading of Ordinance – Shoreline Master Program Precedence (Zone 05-796).
3. First Reading of Ordinance – Allowing Reconstruction of Nonconforming Structures (Zone 05-794).
4. Gig Harbor North Traffic Options Committee Assistance – Consultant Contract.
5. Approval of a Memorandum of Understanding to Share Information within an Initiative Known as LInX.

**STAFF REPORT:**

1. Stephen Misiurak, City Engineer: Briarwood Lane Public Meeting.
2. Mike Davis, Police Chief: July Stats.
3. John Vodopich, Community Development Director: Second Quarter 2005 Building Permit Data.

**PUBLIC COMMENT:**

**COUNCIL COMMENTS / MAYOR'S REPORT:** Multicare Limited Certificate of Need.

**ANNOUNCEMENT OF OTHER MEETINGS:**

**EXECUTIVE SESSION:** For the purpose of discussing property acquisition per RCW 42.30.110(1)(b).

**ADJOURN:**

## GIG HARBOR CITY COUNCIL MEETING OF JULY 25, 2005

**PRESENT:** Councilmembers Ekberg, Young, Franich, Conan, Dick, Picinich, Ruffo and Mayor Wilbert.

**CALL TO ORDER:** 7:03 p.m.

### **PLEDGE OF ALLEGIANCE**

**SPECIAL PRESENTATION:** Franciscan Health Care – Saint Anthony's Hospital. Mayor Wilbert introduced Dr. Mike Newcomb, Senior Vice President of Medical Affairs, Franciscan Health System. Dr. Newcomb said he would like to give an update on the status of Saint Anthony's Hospital and the impact of the recent traffic study on that project. During his PowerPoint presentation, Dr. Newcomb gave an overview of the need for a hospital and the site selection considerations. Dr. Newcomb explained that the goal is to serve not only the people of Gig Harbor and the Peninsula, but also the people in the South Kitsap region. He touched on the traffic challenges that must be overcome and gave a brief description of the preliminary site plan. Dr. Newcomb finalized his presentation by sharing information on the Certificate of Need for the hospital, emphasizing that the construction budget and site are fixed at the time application is made for the certificate. He concluded by saying that the two-year time frame to construct the hospital will be initiated at the time the Certificate of Need is issued. This is tied to the Conditional Use Permit issuance. He then introduced Lori Nichols, Senior Vice President of Strategic Development for Franciscan Health Care.

Ms. Nichols continued the presentation with an overview of the events that have taken place since July 1, 2005 and the impacts on the proposed St. Anthony's Hospital project. She said that the city's traffic study has uncovered future traffic problems in the Gig Harbor North area, and the Environmental Impact Study required by the city for the Comp Plan Amendment may cause significant delays in the hospital project. She pointed out that the study identifies nine pipeline projects that will cause the failure of major intersections in this corridor even without the hospital. She discussed the potential traffic solutions identified in the study which could cost more than 40 million dollars and paid for by future development. She stressed that they are willing to pay their fair share for mitigation, and the recommendation by the city that they pay 10-11% of the total cost suggests that the hospital will only be a modest contributor to the future congestion. Ms. Nichols continued to explain that delays will make it harder for the hospital to be financially sound, and while they wait, competitors will come forward with duplicative outpatient services. They also count on St. Anthony's to take the pressure off the Tacoma hospitals and are looking at all options to bring the hospital to Gig Harbor. All sites have traffic challenges, and if they have to go back to the Department of Health for an amendment to the Certificate of Need approval, it may open it up to appeal. To date, they have invested around 5 million dollars in the project which would be difficult to recoup.

Ms. Nichols said that the traffic problems are a community issue, and one solution may be the formation of a transportation benefit district that would require the participation of all current and future property owners that would benefit from the traffic improvements. This will take significant time and commitment from city staff and Franciscan Health Services, adding that they are willing to help front the costs for consultants to find and implement a traffic solution. These costs could then be deducted from their share of the mitigation to fix the corridor. Ms. Nichols thanked the City Council and the citizens who have helped St. Anthony's, and asked for help in finding a solution to the traffic problem in Gig Harbor North to allow the hospital to move forward as quickly as possible. She recommended the appointment of a citizen task force to work with Council to monitor the progress until this can be resolved.

**PUBLIC HEARING: Planning Commission Recommendations for Changes to Building Sizes.**

Mayor Wilbert opened the public hearing at 7:35 p.m. and John Vodopich, Community Development Director gave a brief overview of the changes that have been made to the ordinance since the first reading.

Jim Pasin – 2710 39<sup>th</sup> St. NW. Mr. Pasin, speaking as a citizen rather than a Planning Commission or Design Review Board member, asked for clarification on the direction given to staff to modify the development standards for the WC zone to require 20 foot separation between structures in the Finholm District only. He said that this doesn't seem to fit the current buildings.

Councilmember Dick said that discussion took place in favor of separation of structures in the WC zone. But in areas where the WC zone abuts the DB zone, and in the Finholm Marketplace portion, separation between buildings should not be required. This language did not show up in footnote 3 of the ordinance; an error that would need to be corrected.

Chuck Hunter – 8829 Franklin Street. Mr. Hunter suggested that garages be included in the gross floor area calculations until this issue could be reviewed by the Planning Commission and they could develop a definition of "underground." He then said that Clark Davis and Jill Guernsey have both suggested language for a grandfather clause to address the non-conforming buildings on Harborview. He recommended that Council adopt the ordinance with the exclusion of these buildings, and allow the moratorium to run until verbiage could be developed to address grandfathering. He suggested that Council may wish to hire an outside attorney that could draft the language.

Councilmember Franich asked if the Planning Commission had considered the grandfather issue at their last meeting. John Vodopich responded that an ordinance has been drafted and will be returning to Council for consideration after the 60 day review period by the Department of Ecology.

Jim Orton – Attorney. Mr. Orton represents various property owners in the district being considered. Regarding the grandfathering clause, he said that he has read the proposed amendment to the Shoreline Master Plan and recommended that this same language be used in the draft ordinance. He said that the 50% destruction language would be too difficult to regulate.

Carlos Moravek – 3889 Harborview Drive. Mr. Moravek spoke in favor of allowing the condominium owners to rebuild in case they are destroyed by disaster. He asked if the Edgewater Condos are located in the Waterfront Commercial zone, and how language located in Section in 17.50.040 affects them. Councilmember Young responded that the condos would be non-conforming, but that the upcoming ordinance currently under state review will address his concerns about rebuilding.

Mr. Moravek then said that he has spoken to several lawyers and judges who told him it would be possible for a clause stating that any building constructed after 2005 would have to meet the criteria, and anything built before 2005 could maintain its current size. This would be a simple fix.

Councilmember Dick asked if the draft ordinance is available on the city's website for the public to view. Mr. Vodopich clarified that it is attached to the Planning Commission's last meeting agenda.

Mr. Moravek pointed out that during the private consultant evaluation, multi-family dwellings were not considered; only single-family. He added that condominiums offer affordable housing on the waterfront, which is beneficial for the community.

Richard Wimpy – 3724 Forest Beach Drive. Mr. Wimpy, owner of one of the Edgewater Condominium units, said that it is vital to clarify the language to protect the condo owners. He said that it is absurd to think that a condominium could burn down and not be replaced. He stressed that Council must come to the decision to have a grandfather clause to protect the present owners and perhaps set a time on old and new construction as suggested by Mr. Moravek. He equated the inability to rebuild as a license to "put a gun to their head and steal their property."

Councilmember Ruffo stressed that this Council is in full agreement with grandfathering and made a decision several months ago to address this issue. It is the bureaucratic process that is being dealt with.

John Vodopich said that the non-conforming ordinance will be brought forward at the next Council meeting, and when the draft for the Shoreline Management Program is approved, it will then be referred to the DOE. He said that he saw no reason not to adopt the non-conforming language to the zoning code at its second reading in August.

Lita Dawn Stanton – 111 Raft Island. Ms. Stanton presented a PowerPoint presentation. She explained that the WC, WM and WR zones are in the designated Historic District; most of the structures here are over 50 years old and share common

architectural characteristics. She said that in order for new construction to "fit in," you need to look at the existing neighborhood and stay within the existing patterns of development. She said that this could include many visual features including size. She added that past testimony will show that those who own property on the waterfront are in favor of a conservative limit in the WR and WM zones. Other than the need for a grandfathering clause for multi-family structures, the 3500 s.f. limit proposed by the Planning Commission was "not unpopular," and based on what exists in the Historic District, "not unreasonable." She asked Council to listen to the people who live in the Historic District, adding that her family is in favor of the 3500 s.f. limit in the WM and WR zones. If the limit is raised, there will be pressure to build bigger and more profitable projects along the waterfront which will destroy the view corridor. She then addressed garages, saying that no size limit for underground parking garages contradicts over ten years of Design Review Board findings, as garages were interpreted as part of the total square footage. She said that there is a perception of a huge parking problem downtown that can be solved with underground parking and asked "What if the downtown cannot handle more trips per day?" She said that more cars downtown may increase gridlock and decrease air quality. If the downtown is to be truly enhanced long term, the answer may be to aggressively pursue transportation alternatives. She suggested saying no to oversized parking garages, oversized homes, and to overdevelopment or overuse of any property in the view basin. Ms. Stanton recommended passing a 3500 s.f. limit in the WM and WR zones, and to include garages in the square footage calculations for every zone in the downtown. She continued to recommend keeping the moratorium in place until the desired language for grandfathering could be developed to protect what we have.

Councilmember Franich asked Ms. Stanton if the square footage numbers she used included basements. Ms. Stanton explained that these are the numbers listed on the tax parcel records.

Jack Bujacich – 3607 Ross Avenue. Mr. Bujacich addressed grandfathering, and recommended that anyone whose structure burns, regardless of the amount, if they apply for a permit, should be allowed 18 months to rebuild rather than trying to figure out the percent of damage. Mr. Bujacich then said that he supports the 3500 s.f. maximum building size, including the basement. This will retain what we have in this area, and anything larger will ruin what we have downtown.

Linda Gair – 9301 North Harborview Drive. Ms. Gair said that she agreed with what was said by Ms. Stanton and Mr. Bujacich. She said that the whole point is to protect the character of the downtown and the harbor. No one wants to see the trophy homes that have been appearing across the by in the downtown area. If residential structures are not limited this will happen, especially on property with adjoining lots. She said that limiting the structures to 3500 s.f., including the basements, is the right thing to do. Ms. Gair then addressed the grandfathering; explaining that she lives on the water and her house is non-conforming. If it were to be destroyed, she would have a problem, and so she can sympathize with the others. She said that they should be allowed to rebuild.

Doug Sorenson – 9409 North Harborview Drive. Mr. Sorenson said that he disagrees with the recommendation for smaller limits. He said that he believes in property owner's rights. He stressed that Gig Harbor is becoming more restricted and regulated than any city west of the Cascades. He asked whether the 4000 s.f. limit in Section 6, for the WR zone is for the residence only or if it also includes any accessory structures. Councilmember Young clarified that it reads "per lot" and so that would mean everything on the lot.

Mr. Sorenson then said that inclusion of outbuildings to the total calculation is ridiculous, especially if that number is reduced to 3500 s.f. He then addressed comments made by Ms. Stanton. He said that his house is not 50 years old and that most of the examples she has shown are not representative for his area. He asked Council to consider what it would look like to have a small house on a larger lot. He then asked Council to consider factoring in daylight basements, and to completely eliminate undergrounded basements from the calculations.

Councilmember Ekberg asked the square footage of Mr. Sorenson's home. Mr. Sorenson replied that it is 2000 s.f. with a garage.

Rosanne Sachson – 3502 Harborview Drive. Ms. Sachson recommended that Council look at the harbor from the water side before making a decision on underground garages and daylight basements. She said that her house has the smallest square footage, but is the tallest; adding that it all depends on the topography of the lot.

There were no further public comments and the public hearing closed at 8:17 p.m.

#### **CONSENT AGENDA:**

These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.

1. Approval of the Minutes of City Council Meeting of July 11, 2005.
2. Correspondence / Proclamations: a) AWC Loss Control Report Card.
3. Burnham Drive Sanitary Sewer Main Project – Consultant Services Contract.
4. Transportation Improvement Board Grant Application Preparation and Intersection Warrant Analysis – Consultant Services Contract.
5. Special Services Agreement with Pierce County Sheriff's Department.
6. Liquor License Renewals: Gig Harbor Yacht Club.
7. Gambling License Issuance: Sunset Grill; Tanglewood Grill; Old Harbor Saloon.
8. Approval of Payment of Bills for July 25, 2005:

Checks #4766 through #47081 in the amount of \$430,409.58.

**MOTION:** Move to approve the Consent Agenda as presented.  
Picinich / Ruffo – unanimously approved.

#### **OLD BUSINESS:**

1. Presentation - Gig Harbor North Traffic History and 2005 Preliminary Traffic Findings. John Vodopich, Community Development Director, explained that a representative from David Evans and Associates was present to speak to the

preliminary traffic findings reached in the June 30<sup>th</sup> report. Mr. Vodopich then presented a PowerPoint presentation that outlined the history of traffic improvements that have been made in the Gig Harbor North area.

Councilmember Franich asked for clarification on the existing traffic capacity reservations and how many trips had been projected that the roadway could handle. Mr. Vodopich responded that at the initial design, the ten to twelve thousand trips estimate was utilized, using the design configuration of a two-lane cross section with single-lane roundabouts. Councilmember Franich commented that it appears that someone used the wrong numbers and asked what the total number of capacity reservations equals. He said that he is trying to determine how the situation came about.

Mark Hoppen, City Administrator, said that a better analogy would be why the capacity was reserved in this way. He explained that in 1996, as negotiations took place with the three big properties that formed the Pre-annexation Agreement, they wanted assurance that capacity would still be available for their share of investment. It was agreed that there could be a risk of the capacity being used up by background trips from people traveling to Crescent Valley or 144<sup>th</sup>. It was decided that their participation would guarantee a certain amount of trips associated with their properties. The Tucci property owners decided not to participate as they were located on Canterwood Boulevard rather than Borgen Boulevard. This occurred before the first design to build a one-lane roundabout and two-lane roadway. With each new development; improvements have been made to the design. Each time a new traffic impact analysis is completed, it becomes a snapshot in time with the best available data. Conditions have changed, and background trips have changed.

Councilmember Franich said that he questions whether the Pre-annexation provision for traffic capacity was a good idea. He read from the memo by Rob White, Planning Manager, which discusses the anticipation that the flow of traffic on Borgen Boulevard would degrade at a "somewhat unknown" schedule. This lack of certainty is what generated the Pre-Annexation Agreement provision for the reservation of traffic capacity. Councilmember Franich said that in one of the conclusions, DEA recommends reconstruction of the whole interchange, and he wants to make sure that the same mistakes in calculations are not made.

Mr. Hoppen clarified that at that time, people of good intention did their best to anticipate what might happen. That analysis has changed over time and will continue to change. The broader analysis will occur when the Comprehensive Plan update is done.

Councilmember Ruffo recommended hearing the David Evans & Associates presentation to find out what is the reality today.

Victor Salemann, David Evans & Associates, described the team who worked together to develop the traffic analysis and the scope of work. Mr. Salemann gave a summary of the possible impacts of the hospital project to the infrastructure. He explained that it would be helpful to have additional data that more closely relates to how an 80-bed



hospital / medical center operates. He clarified that the estimated trip generation for the hospital is still less than the maximum potential under the current zoning. Using a PowerPoint presentation, Mr. Salemann illustrated the present traffic impacts on the Borgen Boulevard / Highway 16 Interchange, how the future traffic may appear with the projects currently in the pipeline, and traffic with the addition of a hospital.

Councilmember Franich asked if using low numbers in the ITE prediction or functionality of the intersection is causing the predicted backups. Mr. Salemann explained that it is likely a combination of several things: that the single roundabout has a limited capacity, that retail was more successful than was anticipated, and the level of background traffic estimated in 1997. He stressed that traffic engineering is more art and science mixed together rather than engineering and that it is very difficult to predict. Councilmember Franich said that no one ever seems to err on the side of over-capacity and that during the initial phase of planning the Gig Harbor North area; traffic should have been over-estimated to prevent this critical problem.

Councilmember Ruffo responded that it appears that Mr. Salemann has taken a relatively conservative approach by over-estimating what might occur at these interchanges. Councilmember Franich said that all the factors should have been considered to avoid the problem. Councilmember Ruffo suggested focusing on future options.

Councilmember Dick asked for clarification on concurrency, and which issues would have to be resolved concurrently in order to accommodate the hospital project. Mr. Salemann explained that concurrency according to GMA allows a six-year window to correct problems after a project is constructed. You must either solve the problem or have a financial strategy in place to demonstrate you can solve the problem within six years. He added that you are not responsible to correct all state facility problems under GMA, but you are responsible to report to them the impacts of land use decisions. This is where the SEPA review comes in, and under the Environmental Policy Act, DOT can appeal SEPA decisions that create significant impacts on their facilities.

Councilmember Dick then asked which funded solutions would accommodate the hospital project. Mr. Salemann responded that funding is described as a "financial strategy" which could be a commitment to an impact fee or transportation benefit district that could collect enough to do the project within six years. The other options would be to adjust the level of service standard to level F, or to delay, or to stop development.

Councilmember Dick asked for recommendations on how to get all the agencies together to fund this within the six-year window in order to move forward. Mr. Salemann asked if Council wished to have recommendations for a solution for just this snapshot, or for what has to be done to accommodate the rest of the vacant land. This would allow you to spread the project cost among more participants.

Councilmember Franich said that if you come up with a strategy to be implemented within the six-year window, and the conditions change, you may not be able to meet the strategy.

Councilmember Ekberg thanked those present from Hammes for their presentation and for recognizing that they have chosen a difficult site. He explained that a hospital is an extremely important aspect of our future, but that the city has a responsibility to the citizens to prevent a Level F service. He suggested that the Mayor appoint a committee to include Councilmembers and the County to work on a fast-track basis to focus on finding a solution.

Councilmember Picinich and Ruffo agreed that time is important and the committee should be formed as quickly as possible.

Mark Hoppen suggested inclusion of not only the County, but David Evans & Associates and WSDOT in the committee. He explained that to date, the city has been unsuccessful in gaining responses relative to this issue from the State.

Councilmember Young explained that he had attended the hospital meetings and there has been discussion with County Councilmember Terry Lee regarding county participation. He said that the other Gig Harbor North property owners are very supportive and should also be included. Right now, there are two or three funding options including the transportation benefit district mentioned by Hammes. Any solution will take coordination and effort to make it work.

Councilmember Franich said he had nothing against those Councilmembers who had been working on this in the past, but suggested appointing Councilmembers with new ideas and a fresh approach to be involved.

Councilmember Young asked to suspend the rules and allow public comment at this time. The Mayor asked that the public keep their comments to three minutes.

Pat Lantz, State Representative - 26<sup>th</sup> District – 151 Raft Island. Representative Lantz stressed that there is a whole community of people of good will who want a hospital and are determined to solve this problem. She said that she too wants a hospital, and is a link to support that this project can call upon, the State of Washington. She said that she has been in contact with Mark Hoppen and Lori Nichols to do whatever she can in regards to the Department of Health and the continuation of the Certificate of Need without the necessity for an amendment. Representative Lantz mentioned that the recent initiative efforts have made it on the ballot in November, and may make things more difficult if it is passed. She said that she is optimistic that this is something that can be resolved. She offered to serve on the committee as a Representative of the 26<sup>th</sup> District.

Derek Kilmer, State Representative – 26<sup>th</sup> District. Representative Kilmer explained that he is wearing two hats as State Representative and as Business Retention and

Expansion Manager for the Economic Development Board for Tacoma/Pierce County, both of which are supportive of the proposed hospital project. Representative Kilmer mentioned the public health benefit of having a hospital, but also the jobs that would come with a hospital. He said that there is unanimous support for this project and that he is willing to help in whatever way that he can in either of his capacities. He said that he too has spoken with Mr. Hoppen, members of Franciscan, and members of Council offering his services, adding that there are some options for state resources available. He said that he looks forward to being part of the discussion.

Jill Guernsey – 3224 Shyleen Street. Ms. Guernsey said that she is both sad and happy about what she has heard tonight. She explained that she is sad that staff continues to be intent on finding someone else to blame for this, and they continue to blame the prior property owner and anyone else they can. She said that this is unfortunate, but she is happy that Council has taken the leadership to pull together a group that consists not just of city people, but of other individuals who represent other agencies. The presentations have shown that this is a regional traffic issue. She encouraged Council to stay involved and to stay in charge to keep the leadership shown tonight front and center because that is what it is going to take from the city to get through this.

Jack Bujacich – 3607 Ross Avenue. Mr. Bujacich said that he is a long-supporter of the hospital, but he doesn't understand this situation. He said that the city should have had an overall plan for the entire area, and that everyone should pay an equal amount for the future. He said that if you build the plan presented tonight, before it is completed it will be inadequate because of all the housing on Peacock Hill going in. He suggested taking Burnham Drive and tying it into Borgen Boulevard across the powerline to relieve the congestion on the roundabout. He said another area to consider is to come off Highway 16 at 302 and cut across by the county shops to Canterwood Boulevard. He said that there has to be alternative ingress and egress to the site. What is being planned will not work, as Costco will create too much traffic. He added that he spent many years on the County Administration Board providing dollars for County roads.

Mayor Wilbert asked Mr. Bujacich if he would serve on the committee. He answered yes.

Terry Lee – County Councilmember representing Gig Harbor and the Key Peninsula. Councilmember Lee said he was present to offer Pierce County's support and the resources available to his office to help solve the problem. He explained that they are faced with a \$650 million shortfall in transportation projects over the next 20 years, but he would pledge to bring the County to the table if an UGA expansion is necessary, or if a transportation benefit district is formed. Councilmember Lee offered to serve on the committee and offered to bring in someone from the Pierce County Transportation Department to help strategize potential solutions. Councilmember Lee finalized by saying that after watching the presentations, he is wondering if a roundabout at 36<sup>th</sup> and Pt. Fosdick is an appropriate solution as well as the other one planned at Pt. Fosdick and Stone Drive.

Florice Johnson – PO Box 1333. Ms. Johnson said that she lives near Point Fosdick where the new roundabout is being constructed. She said that the hospital should come first in all considerations. She said that she attended the hearings for Costco and commented that people are naive to believe that this project will not clog the roads. She asked if there is some rule that would allow the hospital to have priority over the other projects, adding that she would rather be stuck in traffic to go to St. Anthony's rather than having to go over the bridge to hospitals in Tacoma. She then explained that being from Europe; she has driven through many roundabouts which handle far more traffic than we have here because they are much larger. She mentioned twelve lane roundabouts in Paris and eight to ten lane roundabouts in Mexico that work very well. She suggested studying these and applying the information here.

Jon Rose – Olympic Property Group – 19245 10<sup>th</sup> Ave NE, Poulsbo. Mr. Rose said that they have a large stake in this project; have paid for a good chunk of the capacity. They have invested in sewer and water lines, and have a lot to lose. They also have a lot on hold. He explained that he is very interested in serving on the committee, and his organization is willing to step up both in terms of finding a solution, being part of the funding solution, and asking only for reasonable fairness. He said this moment in time is special in terms that the solution will require both private and public funds as it is too big for either side. He encouraged a transportation improvement district that includes both sides of the freeway. This would be anyone who is a tributary to that intersection including unincorporated Pierce County, OPG's own property, and the other several hundred acres in Gig Harbor North. He stressed that now is the time due to the sense of urgency which may galvanize some action.

Mayor Wilbert invited Mr. Rose to serve on the committee.

Dale Pinney – 8313 Boundary Way, Edmonds. Mr. Pinney addressed why and how the current roundabouts were constructed. He explained that his development had funded all the improvements to the two lane roadway and the single-lane roundabout, stressing that the improvements to the corridor were chosen for the level of development to go in. As additional development occurs, these new uses need to develop the corridor to the required level for the traffic that they anticipate. He said that he is in favor of the hospital proposal and the Harbor Hill and Costco developments, as long as the corridor can handle it. Mr. Pinney discussed when he was before Council a year and a half ago trying to explain his opinion of what type of development the corridor could handle. Council in turn chose a much larger project. He said that as of today, the corridor is not broken, but the comp plan amendment hasn't been done for the hospital, and the rezone hasn't been done for the other developments, so it is up to Council to decide whether this amount of development can be placed in that corridor. He said that his first reaction to a hospital project was that it would be great, but then he wondered what would happen with all the cars and how an ambulance would get across the roundabout.

Mr. Pinney then responded to the question of "How did we get into this situation?" He stressed that we are not in "this situation" yet. The decisions that were made by the staff, Council and developers back in 1997 were based on the original land uses, and those land uses are still in place. As the city enters into discussions to find ways to fund the apparent need for improvements to the additional infrastructure, he hopes that properties that are developing as they were already zoned shouldn't get drug into an area-wide traffic mitigation. Mr. Pinney described the improvements that they had made which were commensurate for their own development. He asked Council to keep in mind that the other developments should do the level of mitigation that is appropriate for their own projects.

Linda Gair – 9301 Harborview Drive. Ms. Gair also commended Dale Pinney and John Rose for doing their part in developing Gig Harbor North. She said that they stepped forward and put out the money and that she expects the hospital to do the same. She said that when Gig Harbor North was created, the city created a regional center that is accessing 100,000 people, not just the little group that lives here. Ms. Gair said that if all the players are to be brought to the table, we should also include Kitsap County.

Mayor Wilbert asked if Jill Guernsey would be willing to serve on the committee, as the "Town-around Bus Chairperson," and a land use attorney, adding that bussing may be a transportation solution in these areas. It was pointed out that as a Mayoral candidate and member of the Planning Commission, this may not be appropriate.

The Mayor called a recess at 9:37 p.m. Council reconvened at 9:48 p.m.

2. Second Reading of Ordinance – Adopting Finding and Facts Supporting the Continuation of a Moratorium on the Acceptance of Applications for New Development of Non-Residential Structures or Certain Types of Re-Development on Non-Residential Structures in the Waterfront Millville Zone for a Period of Two Months. John Vodopich presented this ordinance supporting the continuance of the moratorium until July 31<sup>st</sup>. He added that the act of terminating the moratorium must be done by ordinance.

**MOTION:** Move to adopt Ordinance No. 1007 as presented.  
Dick / Ruffo – unanimously approved.

3. Second Reading of Ordinance – Limiting the Size of Structures in the Waterfront Zones. John Vodopich gave an overview of the changes made since the first reading of this ordinance that will establish building size limitations in the WR, WM and WC zones.

Councilmember Conan commented that the two biggest issues have consistently been garages and how to work with multi-family / non-conforming building sizes. He thanked the Planning Commission for their work. He said that although he likes the concept of underground garages and basements, he is not comfortable with the ordinance as it reads. He recommended that the Planning Commission take this issue and further define underground garages and/or basements.

**MOTION:** Move to adopt Ordinance No. 1008 amending 17.04.360, Gross Floor Area, to include basement space and to add garage space before the words "elevator shafts." At the bottom of that paragraph, **strike** the final sentence "The gross floor area shall include basement and garage space unless they are constructed completely underground."  
Conan / Dick –

Councilmember Young suggested adding the DB zone to the recommendation for the Planning Commission to review. Councilmember Conan said that his recommendation is for consideration of all zones. Councilmember Dick offered an amendment to the ordinance.

**MOTION:** To amend Section 17.50.040 Footnote 3 regarding separation between structures in the WC District so that it reads "Separation between structures is not required upon lots or parcels in the Finholm Marketplace portion of the WC District which contains multiple structures and/or which abut the DB (downtown business) district. This amendment reflects what was discussed and was intended per the staff report.  
Dick / Ekberg – unanimously approved.

Councilmember Dick then offered an amendment to address the concern with the increase in the maximum gross floor area size.

**MOTION:** To amend Section 6, 17.46.040 – WR Development Standards, to reduce "l" from 4,000 to 3,500 in each column.  
Dick / no second - the motion failed.

Councilmember Franich commented that this is a tough issue for him as he has a hard time supporting residential limitations. He said that he can see the positives, and appreciates Councilmember Conan's amendment, as it makes sense. He said that he hopes there will be enough votes, quite possibly, with his voting no, to carry this through. He continued to say that it is important to make the right decision but it is important to have consistency with your decisions.

**MOTION:** Move to adopt Ordinance No. 1008 amending 17.04.360, Gross Floor Area, to include basement space and to add garage space before the words "elevator shafts." At the bottom of that paragraph, **strike** the final sentence "The gross floor area shall include basement and garage space unless they are constructed completely underground" and including the amendment to language in Section 17.50.040 Footnote 3.  
Conan / Dick – unanimously approved.

**NEW BUSINESS:**

1. First Reading of Ordinance – Allowing Recovery of Emergency Response Costs and Authorizing the Creation of a New Fund for Acceptance. Mike Davis, Chief of Police, presented the background information on an ordinance that will allow the city to recover investigative costs associated with the emergency response to certain types of crimes; specifically, driving while under the influence of alcohol or drugs. He explained that the law has been around since 1993, and most agencies have adopted the law which creates a revenue source allowing the creation of a fund for criminal justice issues. Chief Davis offered to answer Council questions.

Councilmember Dick asked if a similar process would be established for false burglar alarms. Chief Davis explained that this misuse of police services is being addressed in a separate program.

Jim Pasin – 2710 39<sup>th</sup> Street. Mr. Pasin asked why the funds recovered would not be used to offset officers' salaries. He voiced concern that the city is using salary dollars to collect the fund, and then putting the money in another pot for other expenditures. He said that he was alarmed by Councilmember Dick's comment about doing something similar for false alarms.

Councilmember Dick asked Mr. Pasin if he thought it would be more appropriate to put the money back in the General Fund, to which Mr. Pasin responded yes, the funds should go back toward the officers' salaries because of the activity. Councilmember Young responded that the way it is set up, the funds would go back into criminal justice rather than being spent on parks or other uses.

Chief Davis clarified that the statute is set up so you cannot supplant, but focuses the use of the funds strictly to criminal justice. This shifts the burden of police response to the individuals creating the response rather than the members of the community.

Mark Hoppen, City Administrator, addressed the question by Councilmember Dick regarding the budget. He clarified that the statute creates the budget line item.

**STAFF REPORT:**

1. David Rodenbach, Finance Director – Quarterly Finance Report. Mr. Rodenbach presented the quarterly financial report and offered to answer questions.

**PUBLIC COMMENT:** None.

**COUNCIL COMMENTS / MAYOR'S REPORT:** None.

**ANNOUNCEMENT OF OTHER MEETINGS:**

Council Retreat – August 8, 2005. Civic Center Community Rooms A & B at 12:00 noon.

**ADJOURN:**

**MOTION:** Move to adjourn at 10:11 p.m.  
Franich / Ruffo – unanimously approved.

CD recorder utilized:  
Disc #1 Tracks 1 – 20.  
Disc #2 Tracks 1 – 17.  
Disc #3 Tracks 1 – 11.

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Gretchen A. Wilbert, Mayor

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Molly Towslee, City Clerk





COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: STEPHEN MISIURAK, P.E. SM**  
**CITY ENGINEER**  
**SUBJECT: WASTEWATER TREATMENT PLANT UPGRADES**  
**DESIGN SERVICES - CONSULTANT SERVICES CONTRACT**  
**DATE: AUGUST 8, 2005**

**INTRODUCTION/BACKGROUND**

An identified Sewer Objective in the 2005 budget is for the design and construction of several Wastewater Treatment Plant improvements.

This scope of services to be provided under this agreement includes the following:

- Design and preparation of a bid package for digester modifications,
- Design modifications for the design of flow distribution box,
- Design of a weir baffle to be installed in the stabilization basin.

Cosmopolitan Engineering Group was chosen as the most qualified to perform this work based upon their previous completion of the WWTP Engineering Report (2003) and several other successful and cost effective treatment plant improvement projects.

The Consultant Services Contract is the standard city form approved by the City Attorney.

**FISCAL CONSIDERATIONS**

This work was anticipated in the adopted 2005 Budget and is within the Sewer Operating allocation of \$100,000.00, Objective No. 5.

**RECOMMENDATION**

I recommend that the Council authorize the execution of the Consultant Services Contract with Cosmopolitan Engineering Group in the total amount not-to-exceed Forty-four Thousand Six Hundred Dollars (\$44,600.00).

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
COSMOPOLITAN ENGINEERING GROUP**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Cosmopolitan Engineering Group, a corporation organized under the laws of the State of Washington, located and doing business at 117 South 8<sup>th</sup> Street, Tacoma, Washington 98402 (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the preparation of construction plans, specifications, and cost estimates for the upgrades to the City Wastewater Treatment Plant, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated July 29, 2005, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

**TERMS**

**I. Description of Work**

The Consultant shall perform all work as described in **Exhibit A**.

**II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Forty-four thousand six hundred dollars and no cents (\$44,600.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Budget**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

### III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. 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.

### IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2005; provided however, that additional time shall be granted by the City for excusable days or extra work.

### V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the

Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

#### **VI. Discrimination**

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

#### **VII. Indemnification**

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' 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. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

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. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

#### **VIII. Insurance**

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

## **IX. Exchange of Information**

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

#### **X. Ownership and Use of Records and Documents**

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

#### **XI. City's Right of Inspection**

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

#### **XII. Consultant to Maintain Records to Support Independent Contractor Status**

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

#### **XIII. Work Performed at the Consultant's Risk**

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

#### **XIV. Non-Waiver of Breach**

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

#### **XV. Resolution of Disputes and Governing Law**

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer and the City shall determine the term or provision's true intent or meaning. The City Engineer shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

#### **XVI. Written Notice**

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT  
Jim D'Aboy, P.E.  
Cosmopolitan Engineering Group  
117 South 8<sup>th</sup> Street  
Tacoma, Washington 98402  
(253) 272-7220

Stephen Misiurak, P.E.  
City Engineer  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170

#### **XVII. Assignment**

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

**XVIII. Modification**

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

**XIX. Entire Agreement**

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CONSULTANT  
By: William P. Fox  
Its Principal

CITY OF GIG HARBOR  
By: \_\_\_\_\_  
Mayor

Notices to be sent to:  
CONSULTANT  
Jim D'Aboy, P.E.  
Cosmopolitan Engineering Group  
117 South 8<sup>th</sup> Street  
Tacoma, Washington 98402  
(253) 272-7220

Stephen Misiurak, P.E.  
City Engineer  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170

APPROVED AS TO FORM:  
\_\_\_\_\_  
City Attorney

ATTEST:



\_\_\_\_\_  
City Clerk

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that William P. Fox is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Principal of Cosmopolitan Eng. Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 8/2/05



Patricia M. McGallian

Patricia M. McGallian

(print or type name)

NOTARY PUBLIC in and for the  
State of Washington, residing at:

Kitsap County

My Commission expires: 1-22-09

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF PIERCE         )

I certify that I know or have satisfactory evidence that Gretchen A. Wilbert is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing at:

\_\_\_\_\_  
My Commission expires: \_\_\_\_\_

## EXHIBIT A

# CITY OF GIG HARBOR

## 2005 WWTP Projects

### Scope of Work

#### **Objective**

Prepare construction plans, specifications, and cost estimates for the planned and budgeted 2005 upgrades to the City wastewater treatment facility. Planned and budget 2005 upgrades include the following:

#### **Task 1 – Project Management**

Meetings and coordination with City staff and consultant team for efficient execution of the scope of work. Track progress of the project to ensure that schedule and budgets are maintained. Provide monthly progress reports and invoices.

#### **Task 2 – Clarifier Flow Distribution Box**

This previously designed improvement will be reviewed and revised if necessary. Design will be included in the overall project bid package.

#### **Task 3 – Removal of Bio-Selector Walls**

At the City's request, design of this improvement is not included in this scope and budget.

#### **Task 4 – Blower, Header, Air Piping**

At the City's request, design of this improvement is not included in this scope and budget.

#### **Task 5 – Digester #1 Modifications**

Design of these modifications will be included in the overall project bid package.

#### ***Deliverable Products:***

- Electronic and hard copy plans, specifications, and cost estimates in Microsoft Word and AutoCAD format, suitable for bidding of the planned improvements.

- Bid documents, to be set up with deductive bid alternates to be selected at the City's discretion.
- Copies of design calculations and cost estimate spreadsheets, as requested.

***Assumptions:***

- The City will prepare Divisions 0 and 1 of the bid documents and will provide these divisions to the consultant in electronic format (Microsoft Word)
- Consultant will prepare and distribute bid sets to all prospective Contractors. Consultant will be reimbursed a fee of \$100.00 per bid set by each prospective Contractor, to cover reproduction and delivery costs, including labor, for the production of each bid set.
- City will provide the consultant with existing WWTP base mapping as requested by the consultant and required for design of the improvements. Consultant will not be required to produce any base mapping in support of this design effort.

***Exclusions:***

- The City will handle the Weir in North Aeration Basin project in-house, and the consultant will provide only process and structural design for this portion of the overall project.
- No Construction Administration is included in this scope and budget. If requested, fees for this portion of the overall project will be negotiated separately.

***Schedule***

The Cosmopolitan team (Consultants) will begin work on the above tasks immediately upon authorization to proceed. Final bid documents will be ready for distribution to potential bidders four (4) months following Notice to Proceed and receipt of a signed contract.

**EXHIBIT B**

<p><b>CITY OF GIG HARBOR</b></p> <p><b>2005 WWTP Projects</b></p> <p><b>Budget</b></p>
--

A. Based upon the list of items for initial implementation from Darrell Winans (5-20-05 email); meetings between City staff and Rick Esvelt on May 25, 2005, and July 19, 2005; and development of details in subsequent conversations and site visit (Rick and Darrell), the following is the opinion of probable cost for the developed project:

Task	Opinion of Const. Cost	Sales Tax	Contingency	Total	Comment
1. Weir in North Aeration Basin (stabilization basin)	\$ 39,000	\$ 3,400	\$ 8,500	\$ 51,000	Process and structural design only
2. Clarifier flow distribution box (previously designed)	\$ 92,000	\$ 8,000	\$ 5,000	\$ 105,000	Primary Bid Item
3. Removal of bio-selector walls	N.I.C.	N.I.C.	N.I.C.	N.I.C.	Not-In-Contract (N.I.C.)
4. Blower, header, air piping	N.I.C.	N.I.C.	N.I.C.	N.I.C.	N.I.C.
5. Digester #1 modifications	\$ 229,000	\$ 20,600	\$ 40,000	\$ 289,600	Primary Bid Item
<b>Total of estimates</b>	<b>\$ 360,000</b>	<b>\$ 32,000</b>	<b>\$ 53,500</b>	<b>\$ 445,600</b>	

B. Estimate of Engineering Services:

Consultant	Design	Construction Administration	Total
H.R. Esvelt Engineering (HRE)	\$ 26,000	N.I.C.	\$ 26,000
Structural Research Co. (SRC)	\$ 9,600	N.I.C.	\$ 9,600
Richard Sample Engineering (RSE)	N.I.C.	N.I.C.	N.I.C.
Cosmopolitan Engineering Group (CEG)	\$ 9,000	N.I.C.	\$ 9,000
<b>Total of Engineering Services</b>	<b>\$ 44,600</b>	<b>N.I.C.</b>	<b>\$ 44,600</b>
	<b>10.0% of \$445,600 total</b>		

**2005 Billing Rates**  
**Cosmopolitan Engineering Group, Inc.**

D'Aboy, James	Principal	\$142.77
Fox, William	Principal	\$142.77
Hines, Ronald	Engineer 4	\$142.77
Hoffman, Charles	Engineer 3	\$96.39
Van Gilder, Jason	Engineer 2	\$93.45
Edwards, Duane	Landscape Architect	\$81.00
Yanasak, Karen	Accounting/Office Admin.	\$82.80
Coburn, Janice	Word Processing/Marketing	\$82.80
Mencke, Andy	Engineer 1	\$66.00
Lilly, David	CAD	\$66.00
Fontana, Jeff	CAD	\$63.00
Mitrovich, Tisha	Project Administrator	\$48.00
Edwards, Krystle	Administrative Assistant	\$33.00

Annual increase effective date January 1



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: STEPHEN MISIURAK, P.E.** *Stm*  
**CITY ENGINEER**  
**SUBJECT: OLYMPIC DRIVE AND 56<sup>TH</sup> STREET ROADWAY IMPROVEMENT**  
**PROJECT (CSP-0133)**  
**- TEMPORARY CONSTRUCTION, SLOPE, AND RIGHT-OF-WAY**  
**EASEMENT AGREEMENTS FOR PARCEL NOS. 0221172117,**  
**0221177019, 4001390030, 4001390060**  
**DATE: AUGUST 8, 2005**

**INTRODUCTION/BACKGROUND**

As part of an ongoing process for the City to gain access and the ability to construct the Olympic Drive and 56<sup>th</sup> Street Roadway Improvement Project (CSP-0133), the following easements are necessary and have been granted by the property owners for this project.

- 1) Agreement for Dedication of Temporary Slope and Construction Easement for parcel number 0221172117 owned by Julian D. and Donna M. Jowers and Michael C. Brown,
- 2) Agreement for Dedication of Permanent Right-Of-Way Easement for parcel number 0221177019 owned by Reality Management LLC,
- 3) Agreement for Dedication of Permanent Right-of-Way Easement and an Agreement for Dedication of Temporary Construction Easement for parcel number 4001390030 owned by James A. and Christine S. Thomas,
- 4) Agreement for Dedication of Temporary Construction Easement for parcel number 4001390060 owned by MP2 Inc.

The easements shall commence on the date of execution of the agreements, and shall terminate on the date the roadway improvements are accepted by the City Council (see attached exhibits).

The City's standard agreements for the dedication of a Temporary Construction, Slope, and Right-of-Way Easements have been drafted and approved by City Attorney Carol Morris.

City Council approval of the easement agreements is requested.

**FISCAL CONSIDERATIONS**

No funds will be expended for the acquisition of the described easements.

**RECOMMENDATION**

I recommend that City Council authorize the execution of the subject Temporary Construction, Slope, and Right-of-Way easement agreements.

**AGREEMENT FOR DEDICATION OF TEMPORARY  
SLOPE AND CONSTRUCTION EASEMENTS  
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this \_\_\_ day of \_\_\_, 2005, by and between the CITY OF GIG HARBOR, a Washington municipal corporation, (hereinafter the "City"), and JULIAN D. JOWERS and DONNA M. JOWERS, husband and wife, and MICHAEL C. BROWN and KELLIE G. BROWN, husband and wife, in undivided interests (hereinafter the "Owners"), whose mailing address is 2028 - 38TH STREET CT. NW, GIG HARBOR WA 98335-7983.

**RECITALS**

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as the PRUDENTIAL NW REAL ESTATE, 3413 56TH ST NW, GIG HARBOR, WA (Tax Parcel Number 0221172117) which is legally described in **Exhibit "A"**, (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owners have agreed to dedicate Temporary Slope and Construction Easements, which easements are legally described in **Exhibit B** (the "Temporary Slope Easement" and "Temporary Construction Easement") which is attached hereto and by this reference incorporated herein, to the City for construction purposes associated with the OLYMPIC DRIVE AND 56<sup>TH</sup> STREET Roadway Improvement Project (CSP-0133); and

WHEREAS, the City requires a Temporary Slope Easement to tie into the roadway any improvements requiring a permanent slope, and the City requires the Temporary Construction Easement over the Property in order to tie the private driveway on the Property into the City's permanent Roadway (the Olympic Drive and 56<sup>th</sup> Street Roadway Project) so that the Property Owners will have access to the Roadway. In exchange for the Owners' dedication of the Temporary Slope and Construction Easements, the Owners will obtain the benefits associated with construction of the OLYMPIC DRIVE AND 56<sup>TH</sup> STREET Roadway Improvement Project (CSP - 0133); and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owners agree as follows:

**TERMS**

Section 1. Grant of Temporary Slope and Construction Easements to the City.

**A. Grant.**

1. TEMPORARY SLOPE AND CONSTRUCTION EASEMENTS. The Owners hereby grant nonexclusive Temporary Slope and Construction Easements for the City to tie



into the permanent Roadway any improvements requiring a permanent slope, and where the City requires the Temporary Construction Easement over the Property in order to tie the private driveway on the Property into the City's permanent Roadway for the construction of the OLYMPIC DRIVE AND 56<sup>TH</sup> STREET Roadway Improvement Project (CSP-0133) across, along, in, upon, under and over the Owners' property as the easement is described in **Exhibit B** and as depicted in a map attached hereto and incorporated herein as **Exhibit C**.

The City shall, upon completion of any work within the Property covered by these Easements, restore the surface of the Easements and any private improvements disturbed or destroyed by the City during execution of the work, as nearly as practicable, to the conditions described in the roadway improvement project's plans and specifications. These Temporary Slope and Construction Easements shall commence on the date of the City Council award of the Construction Project, and shall terminate on the date the roadway improvements are accepted by the City Council.

**B. Conditions.** The Temporary Slope and Construction Easements described above are subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully perform:

1. The City shall bear all costs and expenses associated with the permanent slope improvements and to the tie in from the permanent Roadway improvements.

2. The Owners shall not use any portion of the areas within the temporary easements for any purpose inconsistent with the City's construction of the Roadway during the term of this Agreement. The Owners shall not construct any structures or plant any landscaping on or over the temporary easement during the term of this Agreement.

3. The City shall have all necessary access to the Temporary Slope and Construction Easements without prior notification to the Owners.

Section 2. The rights granted herein to the City shall continue in force until such time as the City Council accepts the roadway improvements for public ownership and maintenance.

Section 3. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 4. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Agreement, which contains the entire understanding of the parties on the subject.

Section 5. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.

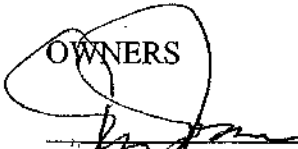
Section 6. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

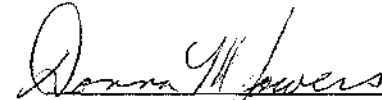
**ACCEPTANCE:**

CITY OF GIG HARBOR

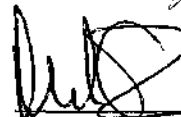
OWNERS

  
Julian D. Jowers

By: \_\_\_\_\_  
Its Mayor

  
Donna M. Jowers

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

  
Michael C. Brown

Approved as to form:

  
Kellie G. Brown

By: \_\_\_\_\_  
City Attorney

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF PIERCE         )

I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_

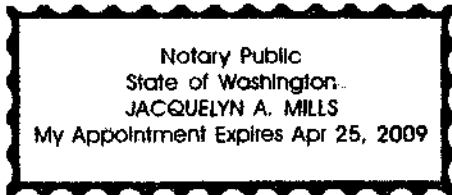
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
NOTARY PUBLIC, State of Washington,  
residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that JULIAN D. JOWERS and DONNA M. JOWERS are the persons who appeared before me, and said persons acknowledged that they are authorized to execute the instrument and acknowledged it to be their free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED: July 5, 2005

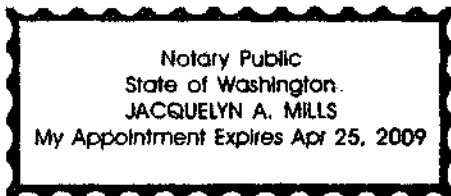


Jacquelyn A. Mills  
(Signature)  
Jacquelyn A. Mills  
NOTARY PUBLIC, State of Washington,  
Residing at: Thurston County  
My appointment expires: April 25, 2009

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that MICHAEL C. BROWN and KELLIE G. BROWN are the persons who appeared before me, and said persons acknowledged that they are authorized to execute the instrument and acknowledged it to be their free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED: July 5, 2005



Jacquelyn A. Mills  
(Signature)  
Jacquelyn A. Mills  
NOTARY PUBLIC, State of Washington,  
Residing at: Thurston County  
My appointment expires: April 25, 2009

## **EXHIBIT A**

### **PROPERTY LEGAL DESCRIPTION**

THE EAST 240 FEET OF THE SOUTH 180 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 21 NORTH, RANGE 2 EAST, OF THE W.M., PIERCE COUNTY, WASHINGTON.

EXCEPT THE EAST 30 FEET THEREOF.

ALSO EXCEPT FROM SAID SOUTH 180 FEET, THE SOUTH 30 FEET FOR 56<sup>TH</sup> STREET NORTHWEST, (PUGET WAY).

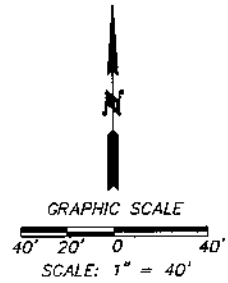
## **EXHIBIT B**

### **TEMPORARY SLOPE EASEMENT DESCRIPTION**

A PORTION OF PARCEL NO. 0221172117 WHOSE SOUTHWEST PROPERTY CORNER ALONG 56TH STREET NW BEING THE "TEMPORARY SLOPE EASEMENT POINT OF BEGINNING", THENCE S88°20'26"E A DISTANCE OF 30.02' TO A POINT BEING THE "TEMPORARY SLOPE EASEMENT TRUE POINT OF BEGINNING, THENCE S88°20'26"E A DISTANCE OF 47.86', THENCE N01°39'34"E A DISTANCE OF 5.00', THENCE N88°20'26"W A DISTANCE OF 47.86', THENCE S01°39'34"W A DISTANCE OF 5.00' AND RETURNING TO THE "TEMPORARY SLOPE EASEMENT TRUE POINT OF BEGINNING".

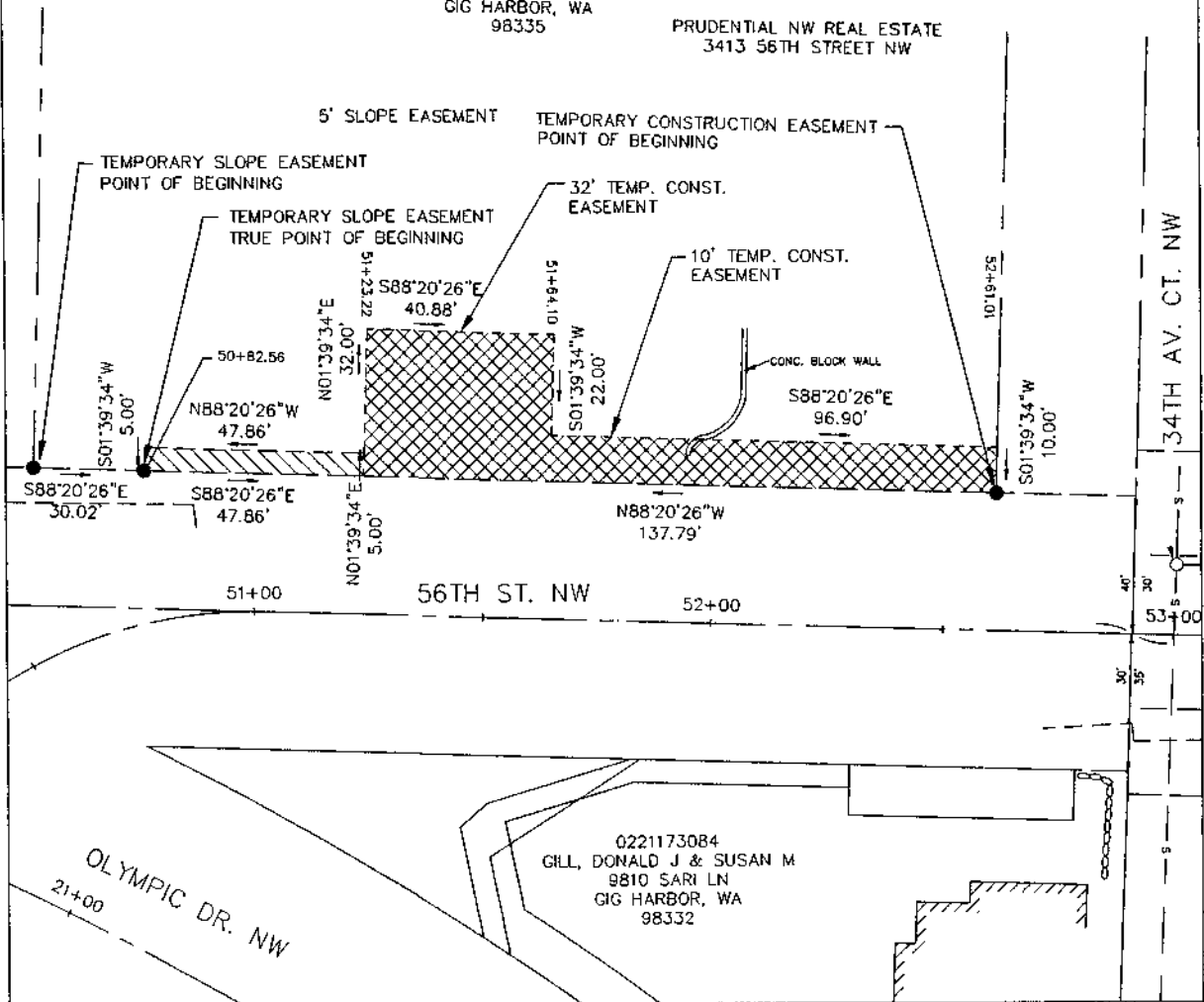
### **TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION**

A PORTION OF PARCEL NO. 0221172117 WHOSE SOUTHEAST PROPERTY CORNER ALONG 56TH STREET NW BEING THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING", THENCE N88°20'26"W A DISTANCE OF 137.79', THENCE N01°39'34"E A DISTANCE OF 32.00', THENCE S88°20'26"E A DISTANCE OF 40.88', THENCE S01°39'34"W A DISTANCE OF 22.00', THENCE S88°20'26"E A DISTANCE OF 96.90', THENCE S01°39'34"W A DISTANCE OF 10.00' AND RETURNING TO THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING".



0221172117  
 JOWERS JULIAN D/M C BROWN  
 2028 38TH STREET CT NW  
 GIG HARBOR, WA  
 98335

PRUDENTIAL NW REAL ESTATE  
 3413 56TH STREET NW



56TH ST. NW AND OLYMPIC DR. NW STREET IMPROVEMENT PROJECT  
 TEMPORARY CONSTRUCTION AND SLOPE EASEMENTS

AFTER RECORDING RETURN TO:

The City of Gig Harbor  
Attn: Community Development Department  
3510 Grandview St.  
Gig Harbor, WA 98335

**WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM**

**Document Title (or transactions contained therein):**

Agreement for Dedication of Permanent Right-of-Way Easement

**Grantor (Last name first, then first name and initials)**

Reality Management, LLC, a Washington Limited Liability Company

**Grantee (Last name first, then first name and initials)**

City of Gig Harbor

**Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)**

Lot 3, Short Plat No. 80-183

**Assessor's Property Tax Parcel or Account Number:** 0221177019

**Reference Number(s) of Documents assigned or released:** \_\_\_\_\_

**AGREEMENT FOR DEDICATION OF  
PERMANENT RIGHT OF WAY EASEMENT  
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_, 2005, by and between the CITY OF GIG HARBOR (hereinafter the "City"), and REALITY MANAGEMENT, LLC., A WASHINGTON LIMITED LIABILITY COMPANY, (hereinafter the "Owners"), whose mailing address is 3208 – 50<sup>TH</sup> Street Court NW, #100, GIG HARBOR, WA 98335-0250.

**RECITALS**

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as THE WESTSIDE BUSINESS CENTER, 3208-- 50<sup>TH</sup> Street Court NW, #100, Gig Harbor, WA, (Tax Parcel Number 0221177019) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owners have agreed to dedicate certain right-of-way on, over, under and across the Property, which right-of-way is legally described in Exhibit "B" (the "PERMANENT RIGHT OF WAY EASEMENT") which is attached hereto and by this reference incorporated herein, to the City for a roadway and related improvements; and

WHEREAS, a map showing the location of the Permanent Right-of-Way Easement is attached hereto as Exhibit "C" and by this reference incorporated herein; and

WHEREAS, the City requires a Permanent Right of Way Easement for a sidewalk and traffic signal light standard and in exchange for the Owners' dedication of the Right-of-Way, the Owners will obtain the benefits of the operation of the OLYMPIC DRIVE AND 56<sup>TH</sup> STREET Roadway Improvement Project (CSP -0133); and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owners agree as follows:

**TERMS**

Section 1. Grant of Right-of-Way to the City.

A. Grant of Permanent Right of Way Easement. The Owners hereby convey and grant to the City, its successors and assigns, a permanent, nonexclusive right-of-way easement over, in, along, across, under and upon the Owners' property as the easement is legally described in Exhibit "B" and as depicted in a map attached hereto and incorporated herein as Exhibit "C".



The Grant of the Permanent Right-of-Way Easement shall also dedicate to the City, the nonexclusive right of ingress to and egress from the Right-of-Way Easement over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This Permanent Right-of-Way Easement shall commence on the date of execution of this Agreement.

B. Conditions. This Permanent Right-of-Way Easement is subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully perform:

1. The City shall bear all costs and expenses associated with the construction, improvement, maintenance, repair and operation of the roadway improvements.

2. The Owners shall retain the right to use the surface of the new 6 foot permanent right-of-way easement area located on the driveway entrance abutting the property for the purposes of ingress and egress associated with the existing driveway. The Owners shall not use any portion of the right-of-way for any purpose inconsistent with use of the property as a public roadway. The Owners shall not construct any structures or plant any landscaping on or over the permanent right-of-way easement.

3. The City shall have all necessary access to the easement without prior notification to the Owners.

4. The City's contractor shall repair and/or replace any damages to the landscaping and/or rock wall to the satisfaction of the owner or the owner shall repair and/or replace any damages to the landscaping and/or rock wall and will be reimbursed by the City's contractor provided the City's contractor has approved any reimbursement prior to repair or replacement of said damages.

Section 2. The perpetual rights granted herein to the City shall continue in force until such time as the City, its successors or assigns, shall permanently abandon the same, and upon such removal or abandonment, all rights hereby granted shall terminate.

Section 3. This Agreement shall be recorded in the office of the Pierce County Auditor and shall run with the Property i.e. Lot 3. The burdens and benefits of the easements granted under this Agreement shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, legal representatives, successors assigns and beneficiaries.

Section 4. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 5. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Easement Agreement, which contains the entire understanding of the parties on the subject.

Section 6. Any invalidity, in whole or in part, of any provision of this agreement shall not affect the validity of any other provision.

Section 7. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

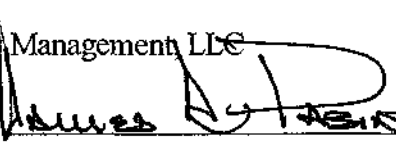
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

**ACCEPTANCE**

Reality Management LLC

CITY OF GIG HARBOR

By:



By: \_\_\_\_\_

James A. Pasin  
Managing Partner

Its Mayor

Attest:

By: \_\_\_\_\_

City Clerk

Approved as to form:

By: \_\_\_\_\_

City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_

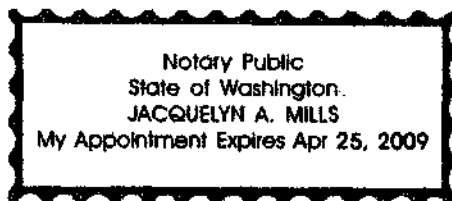
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
NOTARY PUBLIC, State of Washington,  
residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that James A. Pasin is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it as the Managing Partner of the Reality Management Limited Liability Corporation, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: July 25, 2005



Jacquelyn A. Mills  
(Signature)  
\_\_\_\_\_  
Jacquelyn A. Mills

\_\_\_\_\_  
NOTARY PUBLIC, State of Washington,  
residing at: Thurston County  
My appointment expires: April 25, 2009

## **EXHIBIT A**

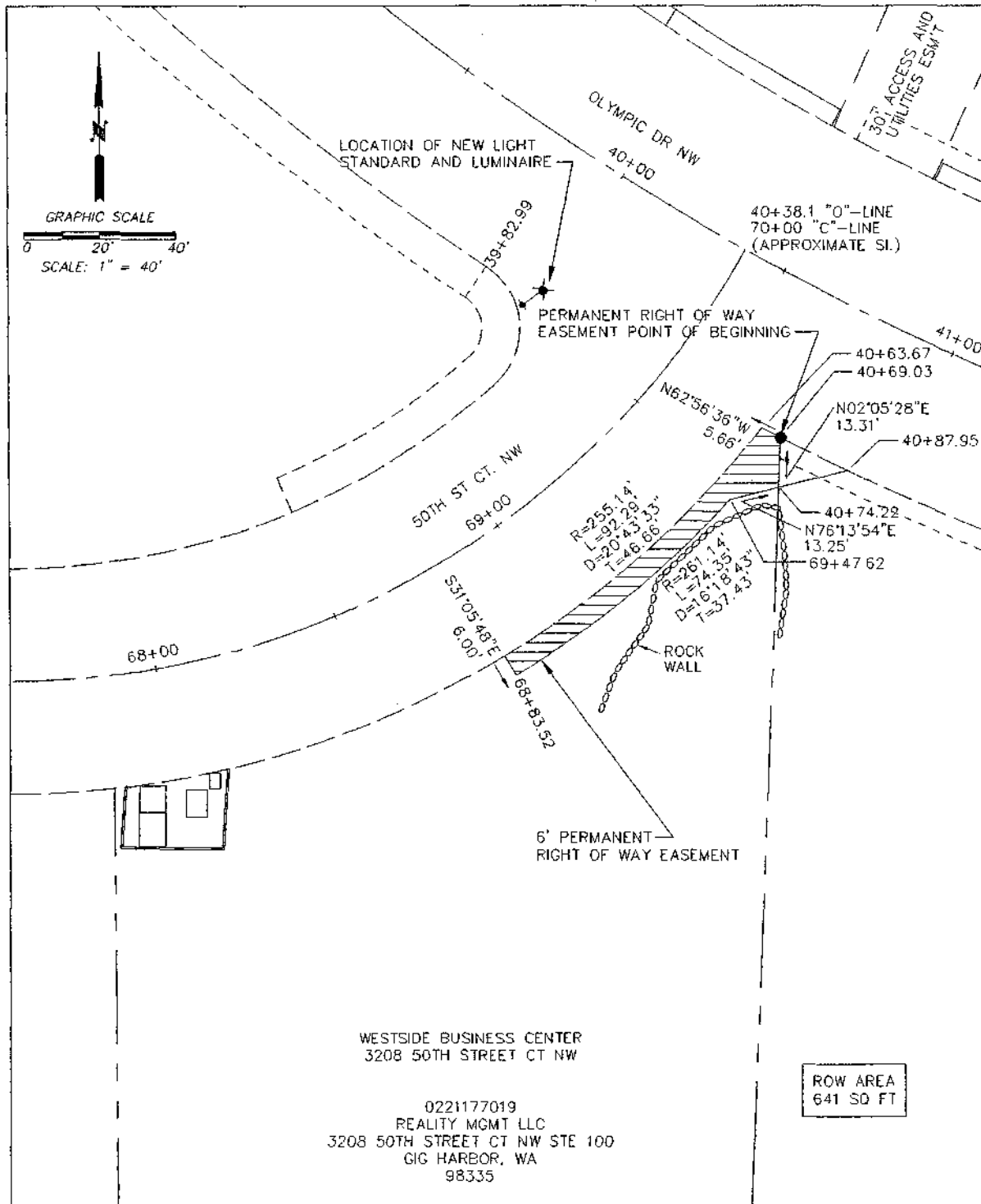
### **PROPERTY LEGAL DESCRIPTION**

LOT(S) 3, AS SHOWN ON SHORT PLAT NO. 80-183, FILED WITH PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.

## EXHIBIT B

### PERMANENT RIGHT OF WAY EASEMENT DESCRIPTION

A PORTION OF PARCEL NO. 0221177019 THAT ABUTTS THE RIGHT OF WAY OF OLYMPIC DRIVE NW AND 50<sup>th</sup> STREET COURT NW AND DESIGNATED AS A "6' PERMANENT RIGHT-OF-WAY EASEMENT" AND WHOSE NORTHEAST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE "PERMANENT RIGHT OF WAY EASEMENT POINT OF BEGINNING" AT STATION 40+69.03, THENCE N62°56'36"W A DISTANCE OF 5.66', THENCE ALONG A CURVE WHOSE RADIUS IS 255.14' AND WHOSE LENGTH IS 92.29' AND WHOSE ANGLE IS 20°43'33" AND WHOSE TANGENT IS 46.66', THENCE S31°05'48"E A DISTANCE OF 6.00', THENCE ALONG A CURVE WHOSE RADIUS IS 261.14' AND WHOSE LENGTH IS 74.35' AND WHOSE ANGLE IS 16°18'43" AND WHOSE TANGENT IS 37.43', THENCE N76°13'54"E A DISTANCE OF 13.25', THENCE N02°05'28"E A DISTANCE OF 13.31' AND RETURNING TO THE "PERMANENT RIGHT OF WAY EASEMENT POINT OF BEGINNING" AT STATION 40+69.03.



56TH ST. NW AND OLYMPIC DR. NW ROADWAY IMPROVEMENT PROJECT  
PERMANENT RIGHT OF WAY EASEMENT

AFTER RECORDING RETURN TO:

The City of Gig Harbor  
Attn: Community Development Department  
3510 Grandview St.  
Gig Harbor, WA 98335

**WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM**

**Document Title(s) (or transactions contained therein):**

Agreement for Dedication of Permanent Right-of-Way Easement

**Grantors (Last name first, then first name and initials)**

James A. Thomas and Christine S. Thomas

**Grantee(s) (Last name first, then first name and initials)**

City of Gig Harbor

**Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)**

Lot 3, Westside Professional Park

**Assessor's Property Tax Parcel or Account Number:** 4001390030

**Reference Number(s) of Documents assigned or released:** \_\_\_\_\_

**AGREEMENT FOR DEDICATION OF  
PERMANENT RIGHT OF WAY EASEMENT  
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_, 2005, by and between the City of Gig Harbor (hereinafter the "City"), and JAMES A. THOMAS AND CHRISTINE S. THOMAS, HUSBAND AND WIFE, who acquired title as James H. Thomas and Christine S. Gullett, as their respective separate estate, in undivided interests, (hereinafter the "Owners"), whose mailing address is P.O. BOX 250, GIG HARBOR, WA 98335-0250.

**RECITALS**

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as the WESTSIDE PROFESSIONAL PARK, 5262 OLYMPIC DRIVE NW, (Tax Parcel Number 4001390030) which is legally described in **Exhibit "A"**, (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owners have agreed to dedicate certain right-of-way on, over, under and across the Property, which right-of-way is legally described in **Exhibit "B"** (the "PERMANENT RIGHT OF WAY EASEMENT") which is attached hereto and by this reference incorporated herein, to the City for a roadway and related improvements; and

WHEREAS, a map showing the location of the Permanent Right-of-Way Easement is attached hereto as **Exhibit "C"** and by this reference incorporated herein; and

WHEREAS, the City requires a Permanent Right of Way Easement for a sidewalk and in exchange for the Owners' dedication of the Right-of-Way, the Owners will obtain the benefits of the operation of the OLYMPIC DRIVE AND 56<sup>TH</sup> STREET Roadway Improvement Project (CSP - 0133); and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owners agree as follows:

**TERMS**

Section 1. Grant of Right-of-Way to the City.

A. Grant of Permanent Right of Way Easement. The Owners hereby convey and grant to the City, its successors and assigns, a permanent, nonexclusive right-of-way easement over, in, along, across, under and upon the Owners' property for a bumpout for street light base as the easement is legally described in **Exhibit "B"** and as depicted in a map attached hereto and incorporated herein as **Exhibit "C"**.



The Grant of the Permanent Right-of-Way Easement shall also dedicate to the City, the nonexclusive right of ingress to and egress from the Right-of-Way Easement over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This Permanent Right-of-Way Easement shall commence on the date of the City Council award of the Construction Project, and shall terminate on the date the roadway improvements are accepted by the City Council.

B. Conditions. This Permanent Right-of-Way Easement is subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully perform:

1. The City shall bear all costs and expenses associated with the construction, improvement, maintenance, repair and operation of the roadway improvements.

2. The Owners shall not retain the right to use the surface or the area beneath the easement, and shall not use any portion of the right-of-way for any purpose inconsistent with use of the property as a public roadway. The Owners shall not construct any structures or plant any landscaping on or over the easement.

3. The City shall have all necessary access to the easement without prior notification to the Owners.

Section 2. The perpetual rights granted herein to the City shall continue in force until such time as the City, its successors or assigns, shall permanently abandon the same, and upon such removal or abandonment, all rights hereby granted shall terminate.

Section 3. This Agreement shall be recorded in the office of the Pierce County Auditor and shall run with the Properties. The burdens and benefits of the easements granted under this Agreement shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, legal representatives, successors assigns and beneficiaries.

Section 4. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 5. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Easement Agreement, which contains the entire understanding of the parties on the subject.

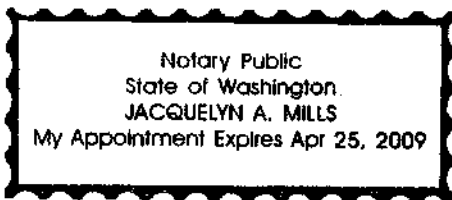
Section 6. Any invalidity, in whole or in part, of any provision of this agreement shall not affect the validity of any other provision.



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that James A. Thomas is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED: July 25, 2005

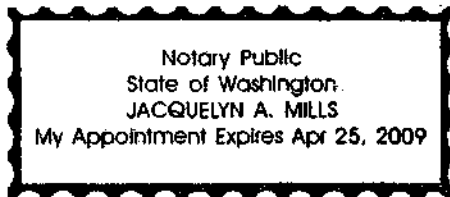


Jacquelyn A. Mills  
(Signature)  
Jacquelyn A. Mills  
NOTARY PUBLIC, State of Washington,  
residing at: Thurston County  
My appointment expires: April 25, 2009

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Christine S. Thomas is the person who appeared before me, and said person acknowledged that she was authorized to execute the instrument and acknowledged it to be her free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED: July 25, 2005



Jacquelyn A. Mills  
(Signature)  
Jacquelyn A. Mills  
NOTARY PUBLIC, State of Washington,  
residing at: Thurston County  
My appointment expires: April 25, 2009

**EXHIBIT A**

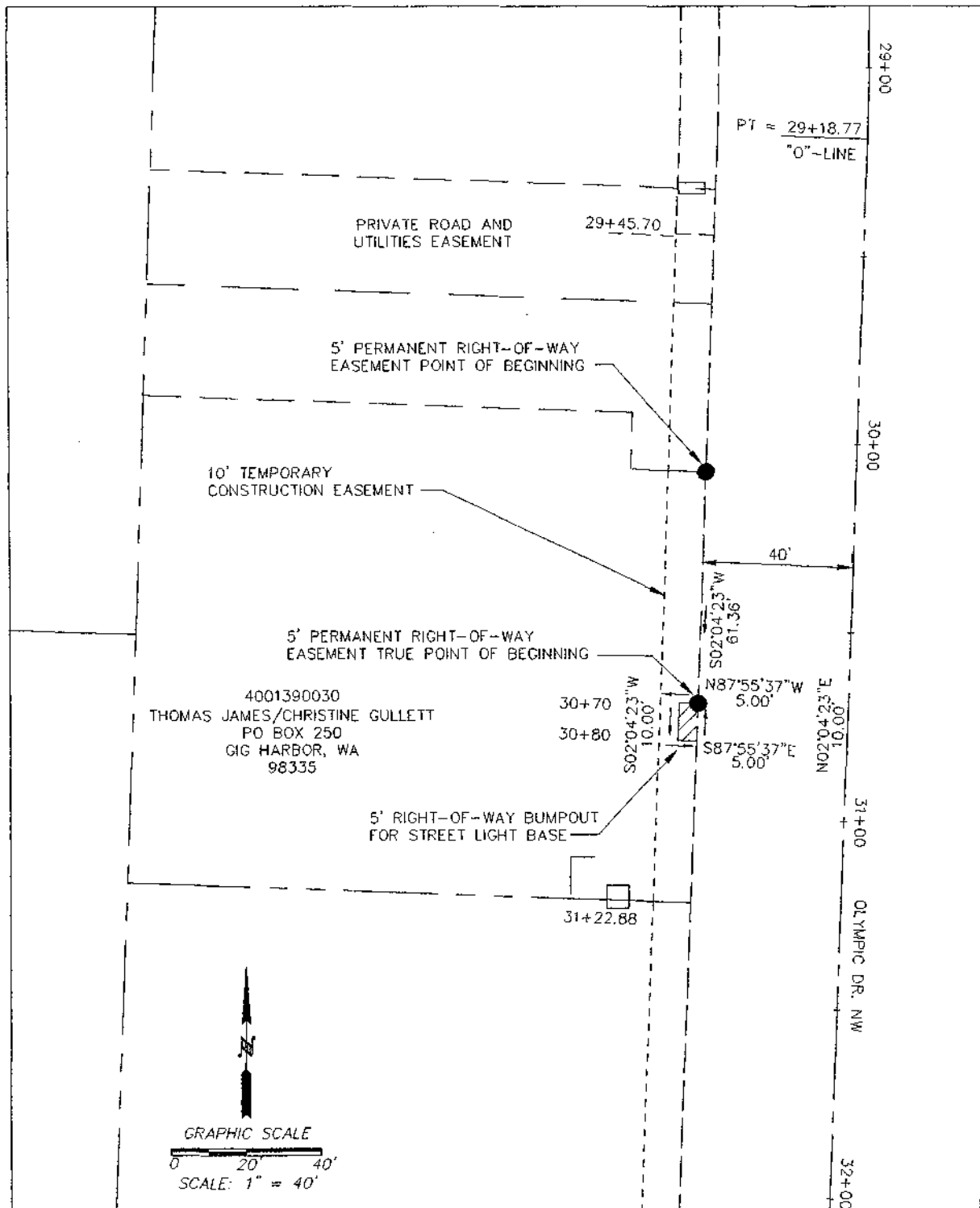
**PROPERTY LEGAL DESCRIPTION**

LOT(S) 3, WESTSIDE PROFESSIONAL PARK, ACCORDING TO THE PLAT RECORDED UNDER AUDITOR'S NO. 9701160313, IN PIERCE COUNTY, WASHINGTON.

## EXHIBIT B

### PERMANENT RIGHT OF WAY EASEMENT DESCRIPTION

A PORTION OF PARCEL NO. 4001390030 THAT ABUTTS THE RIGHT OF WAY OF OLYMPIC DRIVE NW AND DESIGNATED AS "5' RIGHT-OF-WAY BUMPOUT FOR STREET LIGHT BASE" AND WHOSE NORTHEAST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE "5' PERMANENT RIGHT-OF-WAY EASEMENT TRUE POINT OF BEGINNING", THENCE S02°04'23"W A DISTANCE OF 61.36' TO A POINT DESCRIBED AS THE "5' PERMANENT RIGHT-OF-WAY EASEMENT TRUE POINT OF BEGINNING", THENCE N87°55'37"W A DISTANCE OF 5.00', THENCE S02°04'23"W A DISTANCE OF 10.00', THENCE S87°55'37"E A DISTANCE OF 5.00', THENCE N02°04'23"E A DISTANCE OF 10.00' AND RETURNING TO THE "5' PERMANENT RIGHT-OF-WAY EASEMENT TRUE POINT OF BEGINNING".



56TH ST. NW AND OLYMPIC DR. NW ROADWAY IMPROVEMENT PROJECT  
 PERMANENT RIGHT-OF-WAY EASEMENT

**AGREEMENT FOR DEDICATION OF  
TEMPORARY CONSTRUCTION EASEMENT  
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between CITY OF GIG HARBOR, a Washington municipal corporation, (hereinafter the "City"), and JAMES A. THOMAS AND CHRISTINE S. THOMAS, HUSBAND AND WIFE, who acquired title as James H. Thomas and Christine S. Gullett, as their respective separate estate, in undivided interests, (hereinafter the "Owners"), whose mailing address is P.O. BOX 250, GIG HARBOR, WA 98335-0250.

**RECITALS**

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as the WESTSIDE PROFESSIONAL PARK, 5262 OLYMPIC DRIVE NW, (Tax Parcel Number 4001390030) which is legally described in **Exhibit "A"**, (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owners have agreed to dedicate a Temporary Construction Easement, which easement is legally described in **Exhibit B** (the "Temporary Construction Easement") which is attached hereto and by this reference incorporated herein, to the City for construction purposes associated with the OLYMPIC DRIVE AND 56<sup>TH</sup> STREET Roadway Improvement Project (CSP-0133); and

WHEREAS, the City requires a Temporary Construction Easement over this Property to clear an area in order for a rock wall and silt fence to be constructed on current right of way. On the abutting property, the City will tie the driveway on and accessing the Property into the City's permanent Roadway (the Olympic Drive and 56<sup>th</sup> Street Roadway Project) so that the Property Owners will have access to the Roadway. In exchange for the Owners' dedication of the Temporary Construction Easements, the Owners will obtain the benefits associated with construction of the OLYMPIC DRIVE AND 56<sup>TH</sup> STREET Roadway Improvement Project (CSP -0133); and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owners agree as follows:

**TERMS**

Section 1. Grant of Temporary Construction Easement to the City.

**A. Grant.**

1. TEMPORARY CONSTRUCTION EASEMENT. The Owners hereby grant a nonexclusive Temporary Construction Easement where the City requires the Temporary Construction Easement over the Property to clear an area in order for a rock wall and silt fence to be constructed on current right of way and in order to tie the private driveway adjoining the Property into the City's permanent Roadway for the construction of the OLYMPIC DRIVE AND 56<sup>TH</sup>

STREET Roadway Improvement Project (CSP-0133) across, along, in, upon, under and over the Owners' property as the easement is described in **Exhibit B** and as depicted in a map attached hereto and incorporated herein as **Exhibit C**.

The City shall, upon completion of any work within the Property covered by this Easement, restore the surface of the Easement and any private improvements disturbed or destroyed by the City during execution of the work, as nearly as practicable, to the conditions described in the roadway improvement project's plans and specifications. This Temporary Construction Easement shall commence on the date of the City Council award of the Construction Project, and shall terminate on the date the roadway improvements are accepted by the City Council.

**B. Conditions.** The Temporary Construction Easement described above is subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully perform:

1. The City shall bear all costs and expenses associated with the Temporary Construction Easement for the clearing of an area in order for a rock wall and silt fence to be constructed on current right of way and to the tie in from the permanent Roadway improvements.

2. The City shall bear the cost of modifying the area of the "Peninsula Insurance" sign that will allow an unobstructed view of the sign by passing motorists from both directions. The City will also be removing the fir tree located within the construction limits of this agreement that is located approximately 20 feet from the sign.

3. The Owners shall not use any portion of the areas within the temporary easement for any purpose inconsistent with the City's construction of the Roadway during the term of this Agreement. The Owners shall not construct any structures or plant any landscaping on or over the temporary easement during the term of this Agreement.

4. The City shall have all necessary access to the Temporary Construction Easement without prior notification to the Owners.

Section 2. The rights granted herein to the City shall continue in force until such time as the City Council accepts the roadway improvements for public ownership and maintenance.

Section 3. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 4. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Agreement, which contains the entire understanding of the parties on the subject.

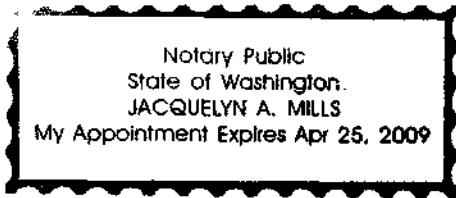




STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that James A. Thomas is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED: July 25, 2005

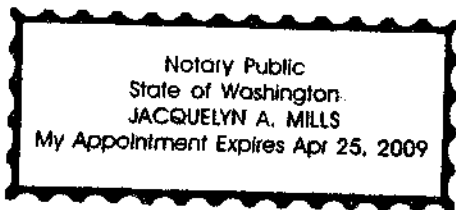


Jacquelyn A. Mills  
(Signature)  
Jacquelyn A. Mills  
NOTARY PUBLIC, State of Washington,  
residing at: Thurston County  
My appointment expires: April 25, 2009

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Christine S. Thomas is the person who appeared before me, and said person acknowledged that she was authorized to execute the instrument and acknowledged it to be her free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED: July 25, 2005



Jacquelyn A. Mills  
(Signature)  
Jacquelyn A. Mills  
NOTARY PUBLIC, State of Washington,  
residing at: Thurston County  
My appointment expires: April 25, 2009

**EXHIBIT A**

**PROPERTY LEGAL DESCRIPTION**

LOT(S) 3, WESTSIDE PROFESSIONAL PARK, ACCORDING TO THE PLAT RECORDED UNDER AUDITOR'S NO. 9701160313, IN PIERCE COUNTY, WASHINGTON.

## **EXHIBIT B**

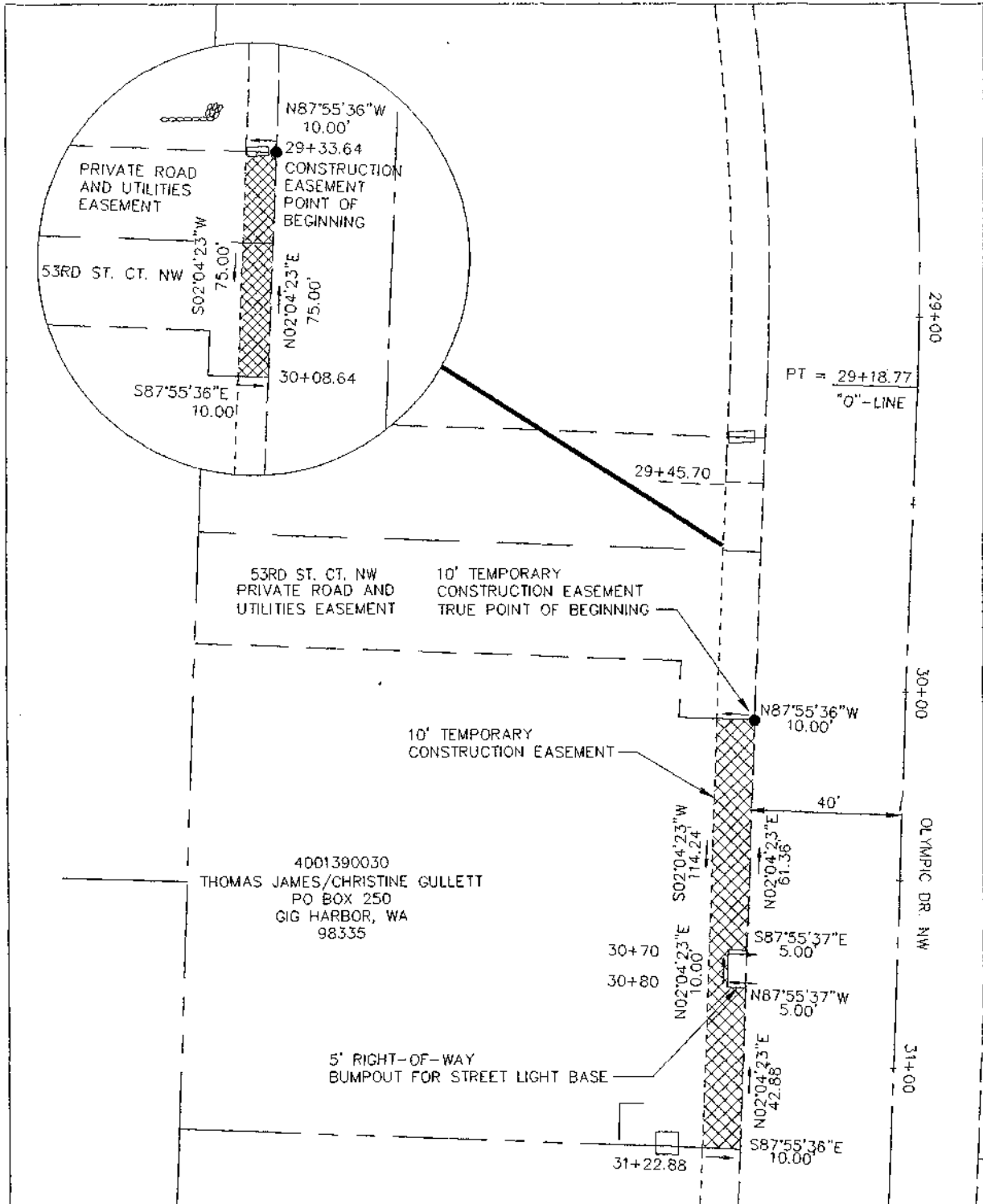
### **TEMPORARY CONSTRUCTION EASEMENT**

A PORTION OF PARCEL NO. 4001390030 AND DESIGNATED AS A 10' TEMPORARY CONSTRUCTION EASEMENT AND WHOSE NORTHEAST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE "10' TEMPORARY CONSTRUCTION EASEMENT TRUE POINT OF BEGINNING", THENCE N87°55'36"W A DISTANCE OF 10.00', THENCE S02°04'23"W A DISTANCE OF 114.24', THENCE S87°55'36"E A DISTANCE OF 10.00', THENCE N02°04'23"E A DISTANCE OF 42.88', THENCE N87°55'37"W A DISTANCE OF 5.00', THENCE N02°04'23"E A DISTANCE OF 10.00', THENCE S87°55'37"E A DISTANCE OF 5.00', THENCE N02°04'23"E A DISTANCE OF 61.36' AND RETURNING TO THE "10' TEMPORARY CONSTRUCTION EASEMENT TRUE POINT OF BEGINNING".

**AND**

### **TEMPORARY CONSTRUCTION EASEMENT FOR PRIVATE ROAD ACCESS**

A PORTION OF A PRIVATE ROAD AND UTILITIES EASEMENT CONNECTING TO OLYMPIC DRIVE NW AND KNOWN AS 53<sup>RD</sup> STREET COURT NW AND LOCATED BETWEEN PARCELS 4001390020 AND 4001390030 WHOSE POINT OF BEGINNING IS "29+33.64 CONSTRUCTION EASEMENT POINT OF BEGINNING", THENCE N87°55'36"W A DISTANCE OF 10.00', THENCE S02°04'23"W A DISTANCE OF 75.00', THENCE S87°55'36"E A DISTANCE OF 10.00', THENCE N02°04'23"E A DISTANCE OF 75.00' AND RETURNING TO THE POINT OF BEGINNING "29+33.64 CONSTRUCTION EASEMENT POINT OF BEGINNING".



56TH ST. NW AND OLYMPIC DR. NW ROADWAY IMPROVEMENT PROJECT  
 TEMPORARY CONSTRUCTION EASEMENT

**AGREEMENT FOR DEDICATION OF  
TEMPORARY CONSTRUCTION EASEMENT  
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_, 2005, by and between CITY OF GIG HARBOR, a Washington municipal corporation, (hereinafter the "City"), and MP2 INC., A WASHINGTON CORPORATION (hereinafter the "Owners"), whose mailing address is 363 - 7<sup>TH</sup> LANE, FOX ISLAND, WA 98333-9718.

**RECITALS**

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as the WESTSIDE PROFESSIONAL PARK, 5202 OLYMPIC DRIVE NW, (Tax Parcel Number 4001390060) which is legally described in **Exhibit "A"**, (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owners have agreed to dedicate a Temporary Construction Easement, which easement is legally described in **Exhibit B** (the "Temporary Construction Easement") which is attached hereto and by this reference incorporated herein, to the City for construction purposes associated with the OLYMPIC DRIVE AND 56<sup>TH</sup> STREET Roadway Improvement Project (CSP-0133); and

WHEREAS, the City requires a Temporary Construction Easement over the Property in order to tie the driveway accessing the Property into the City's permanent Roadway (the Olympic Drive and 56<sup>th</sup> Street Roadway Project) so that the Property Owners will have access to the Roadway. In exchange for the Owners' dedication of the Temporary Construction Easement, the Owners will obtain the benefits associated with construction of the OLYMPIC DRIVE AND 56<sup>TH</sup> STREET Roadway Improvement Project (CSP -0133); and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owners agree as follows:

**TERMS**

Section 1. Grant of Temporary Construction Easement to the City.

**A. Grant.**

1. **TEMPORARY CONSTRUCTION EASEMENT.** The Owners hereby grant a nonexclusive Temporary Construction Easement over the Property in order to tie the private driveway on the Property into the City's permanent Roadway for the construction of the OLYMPIC

DRIVE AND 56<sup>TH</sup> STREET Roadway Improvement Project (CSP-0133) across, along, in, upon, under and over the Owners' property as the easement is described in **Exhibit B** and as depicted in a map attached hereto and incorporated herein as **Exhibit C**.

The City shall, upon completion of any work within the Property covered by this Easement, restore the surface of the Easement and any private improvements disturbed or destroyed by the City during execution of the work, as nearly as practicable, to the conditions described in the roadway improvement project's plans and specifications. This Temporary Construction Easement shall commence on the date of the City Council award of the Construction Project, and shall terminate on the date the roadway improvements are accepted by the City Council.

**B. Conditions.** The Temporary Construction Easement described above is subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully perform:

1. The City shall bear all costs and expenses associated with the tie in from the permanent Roadway improvements.

2. The Owners shall not use any portion of the areas within the temporary easement for any purpose inconsistent with the City's construction of the Roadway during the term of this Agreement. The Owners shall not construct any structures or plant any landscaping on or over the temporary easement during the term of this Agreement.

3. The City shall have all necessary access to the Temporary Construction Easements without prior notification to the Owners.

Section 2. The rights granted herein to the City shall continue in force until such time as the City Council accepts the roadway improvements for public ownership and maintenance.

Section 3. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 4. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Agreement, which contains the entire understanding of the parties on the subject.

Section 5. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.

Section 6. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

**ACCEPTANCE:**

MP2, Inc.

CITY OF GIG HARBOR

By: *Marty E. Paul*  
Marty E. Paul

By: \_\_\_\_\_  
Its Mayor

By: *Michael L. Paul*  
Michael L. Paul

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

Approved as to form:

By: \_\_\_\_\_  
City Attorney

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF PIERCE            )

I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
NOTARY PUBLIC, State of Washington,  
residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Marty E. Paul is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it as MEMBER of MP2, Inc, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: 7-06-2005

Kimberly M. Taurman  
(Signature)

KIMBERLY M. TAURMAN  
NOTARY PUBLIC, State of Washington,  
residing at: GIG HARBOR, PIERCE COUNTY  
My appointment expires: 7-25-05

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Michael L. Paul is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it as MEMBER of MP2, Inc, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: 7-07-05

Kimberly M. Taurman  
(Signature)

KIMBERLY M. TAURMAN  
NOTARY PUBLIC, State of Washington,  
residing at: GIG HARBOR, PIERCE COUNTY  
My appointment expires: 7-25-05

**EXHIBIT A**

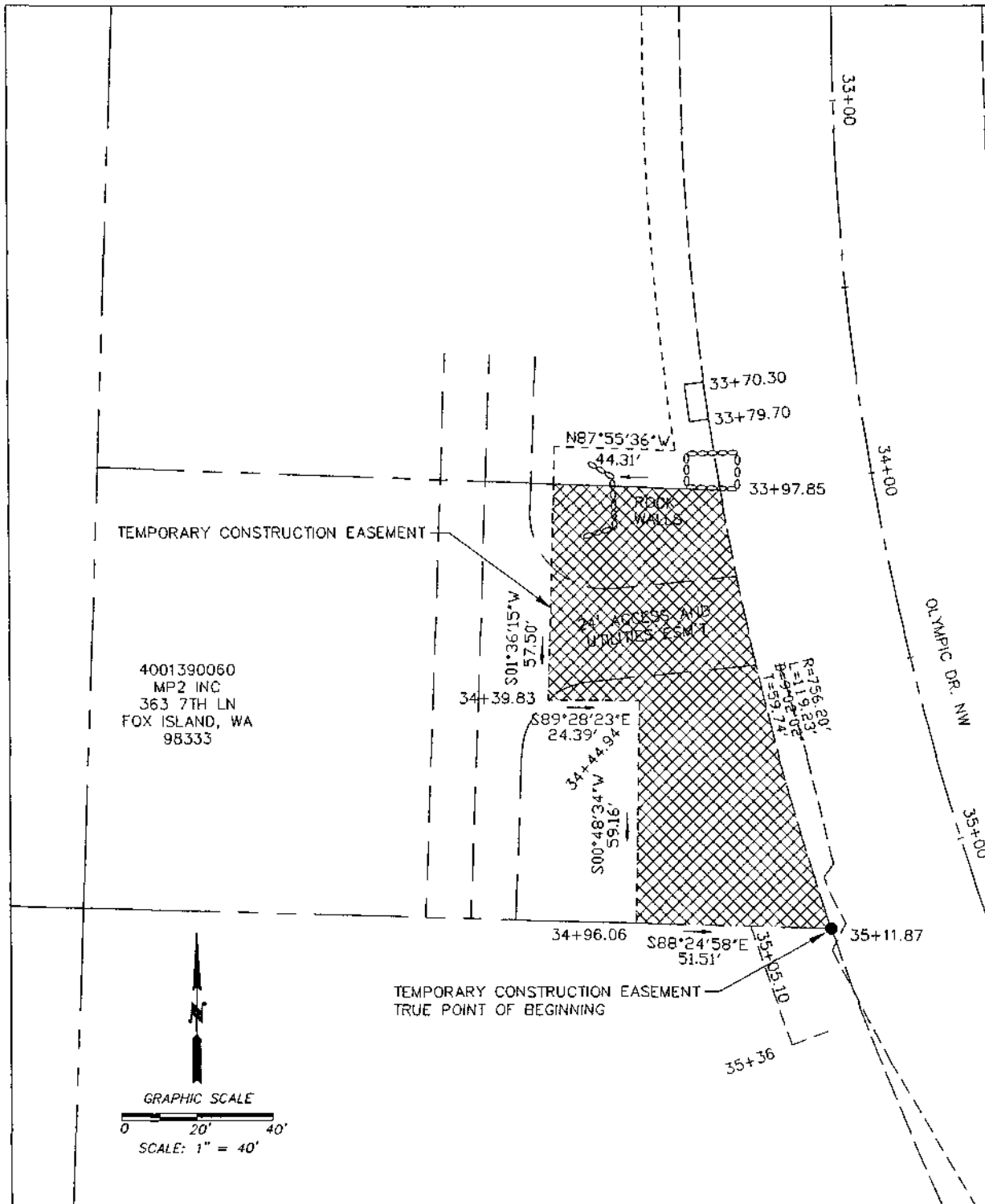
**PROPERTY LEGAL DESCRIPTION**

LOT(S) 5, WESTSIDE PROFESSIONAL PARK, ACCORDING TO THE PLAT RECORDED UNDER AUDITOR'S NO. 9701160313, IN PIERCE COUNTY, WASHINGTON.

## EXHIBIT B

### TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION

A PORTION OF PARCEL NO. 4001390060 AND DESCRIBED AS A "TEMPORARY CONSTRUCTION EASEMENT" AND WHOSE SOUTHEAST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE "TEMPORARY CONSTRUCTION EASEMENT TRUE POINT OF BEGINNING", THENCE ALONG A CURVE WHOSE RADIUS IS 756.20' AND WHOSE LENGTH IS 119.23' AND WHOSE ANGLE IS 9°02'02" AND WHOSE TANGENT IS 59.74', THENCE N87°55'36"W A DISTANCE OF 44.31', THENCE S01°36'15"W A DISTANCE OF 57.50', THENCE S89°28'23"E A DISTANCE OF 24.39', THENCE S00°48'34"W A DISTANCE OF 59.16', THENCE S88°24'58"E A DISTANCE OF 51.51' AND RETURNING TO THE "TEMPORARY CONSTRUCTION EASEMENT TRUE POINT OF BEGINNING".



56TH ST. NW AND OLYMPIC DR. NW ROADWAY IMPORVEMENT PROJECT  
TEMPORARY CONSTRUCTION EASEMENT

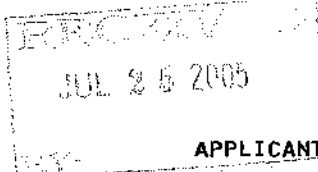


NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 7/22/05

TO: MOLLY TOWSLEE, CITY CLERK

RE: CHANGE OF LOCATION APPLICATION
from WATER TO WINE
3028 HARBORVIEW DR
GIG HARBOR



WA 98335-1962

APPLICANTS:

WATER TO WINE L.L.C.

FORECKI, GAIL MARIE 1966-07-02
FORECKI, PAUL ROBERT 1966-04-28

License: 082542 - 1U County: 27
UBI: 602-204-687-001-0002
Tradename: WATER TO WINE
New Loc: 9014 PEACOCK HILY AVE STE 103A
GIG HARBOR WA 98332

Mail: 6701 85TH AVE NW
GIG HARBOR WA 98335-6223

Phone No.: 253-853-9463 GAIL FORECKI

Privileges Applied For:
BEER/WINE SPECIALTY SHOP

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

- 1. Do you approve of applicant ?
2. Do you approve of location ?
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken?
4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based.

DATE SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



**POLICE**

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: CHIEF MIKE DAVIS** *MD*  
**SUBJECT: SECOND READING OF AN ORDINANCE ALLOWING THE**  
**RECOVERY OF EMERGENCY RESPONSE COSTS**  
**DATE: AUGUST 8, 2005**

**INFORMATION/BACKGROUND**

The legislature, through RCW 38.52.430 has authorized the recovery of reasonable costs incurred by public agencies that result from the investigation of an incident created by a person's intoxication. When the intoxication causes an incident that results in the defendant being found guilty or receiving a deferred prosecution for (1) driving while under the influence of intoxicating liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel while under the influence of alcohol or drugs, RCW 88.12.100; (4) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), the person responsible is liable for the expense of the emergency response by a public agency to the incident.

**FISCAL IMPACTS**

There will be no negative fiscal impacts. This assessment will cover the salary and benefits of an officer during the time period they are taken off normal patrol duties while processing a DUI case. Our officers spend an average of 3.5 hours processing a DUI, which results in an estimated assessment of \$150.00 per DUI. It is estimated that this revenue source will create additional revenue amounting to approximately \$7,500 a year to be used to fund police and administration of justice projects and activities.

**RECOMMENDATION**

I recommend approving an ordinance authorizing the adoption of RCW 38.52.430 by reference allowing for the recovery of investigative costs from persons convicted of driving while under the influence of alcohol and/or drugs.

**RCW 38.52.430****Emergency response caused by person's intoxication -- Recovery of costs from convicted person.**

A person whose intoxication causes an incident resulting in an appropriate emergency response, and who, in connection with the incident, has been found guilty of or has had their prosecution deferred for (1) driving while under the influence of intoxicating liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel while under the influence of alcohol or drugs, \*RCW 88.12.100; (4) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), is liable for the expense of an emergency response by a public agency to the incident.

The expense of an emergency response is a charge against the person liable for expenses under this section. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

In no event shall a person's liability under this section for the expense of an emergency response exceed one thousand dollars for a particular incident.

If more than one public agency makes a claim for payment from an individual for an emergency response to a single incident under the provisions of this section, and the sum of the claims exceeds the amount recovered, the division of the amount recovered shall be determined by an interlocal agreement consistent with the requirements of chapter 39.34 RCW.

[1993 c 251 § 2.]

**NOTES:**

\***Reviser's note:** RCW 88.12.100 was recodified as RCW 88.12.025 pursuant to 1993 c 244 § 45. RCW 88.12.025 was subsequently recodified as RCW 79A.60.040 pursuant to 1999 c 249 § 1601.

**Finding -- Intent -- 1993 c 251:** "The legislature finds that a public agency incurs expenses in an emergency response. It is the intent of the legislature to allow a public agency to recover the expenses of an emergency response to an incident involving persons who operate a motor vehicle, boat or vessel, or a civil aircraft while under the influence of an alcoholic beverage or a drug, or the combined influence of an alcoholic beverage and a drug. It is the intent of the legislature that the recovery of expenses of an emergency response under this act shall supplement and shall not supplant other provisions of law relating to the recovery of those expenses." [1993 c 251 § 1.]

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE RECOVERY OF COSTS FROM A CONVICTED PERSON RELATING TO AN EMERGENCY RESPONSE CAUSED BY THE PERSON'S INTOXICATION; ADOPTING RCW 38.52.430 BY REFERENCE, ALLOWING FOR THE RECOVERY OF SUCH COSTS FROM PERSONS WHO ARE CONVICTED OF VARIOUS CRIMES, ADOPTING STATE LAW BY REFERENCE RELATING TO DRIVING UNDER THE INFLUENCE (RCW 46.61.502); OPERATING AN AIRCRAFT WHILE UNDER THE INFLUENCE (RCW 47.68.220); OPERATING A VESSEL WHILE UNDER THE INFLUENCE (RCW 8.24.017); ADOPTING NEW GIG HARBOR CODE SECTIONS 9.04.040, 8.24.017, 9.04.040 AND 9.40.050; AMENDING GIG HARBOR CODE SECTION 10.04.010.

---

WHEREAS, a person whose intoxication causes an incident resulting in an appropriate emergency response, and who, in connection with the incident, has been found guilty of or has had their prosecution deferred for (1) driving while under the influence of intoxicating liquor/drug; (2) operating an aircraft under the influence of intoxicants/drugs; (3) use of a vessel while under the influence of alcohol/drugs; (4) vehicular homicide while under the influence of intoxicating liquor/drugs, is liable for the expense of an emergency response by the City to the incident (RCW 38.52.430); and

WHEREAS, the expense of the emergency response is a charge against the person liable for expenses under RCW 38.52.430; and

WHEREAS, RCW 9.95.210(2)(f) allows a court to require a person to make restitution to a public agency for the costs of an emergency response under RCW 38.52.430; and



WHEREAS, the City desires to adopt state law by reference to ensure proper collection of such costs; and

WHEREAS, the City desires to update its criminal code to ensure that the above mentioned crimes are also adopted by reference in order to be able to charge a violator with these crimes; Now, Therefore,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. A new Section 9.04.040 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**9.04.040. Emergency response caused by person's intoxication – Recovery of costs from convicted person.** RCW 38.52.430 is hereby incorporated by reference as if fully set forth herein.

Section 2. A new Section 9.04.050 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**9.04.050. Operating aircraft recklessly or under the influence of intoxicants or drugs.** RCW 47.68.220 is hereby incorporated by reference as if fully set forth herein.

Section 3. A new Section 8.24.017 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**8.24.017. Operation of a vessel in a reckless manner – Operation of a vessel under the influence of intoxicating liquor – Penalty.** RCW 79A.60.040 is hereby incorporated by reference as if fully set forth herein.

Section 4. Section 10.04.010 of the Gig Harbor Municipal Code is hereby amended to add the following new statute, which is incorporated by reference:

**10.04.010. Statutes adopted by reference.** The following state statutes, including all future amendments, repeals, or additions thereto, are hereby adopted by reference as if set forth herein:

\* \* \*

RCW 46.61.502. Driving under the influence.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 6. Pursuant to RCW 35A.12.140, copies of all of the above statutes adopted by reference are attached hereto. These copies have been filed in the office of the city clerk prior to the adoption of this ordinance for examination by the public, as required by RCW 35A.12.140.

Section 7. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of a summary, consisting of the title.

PASSED by the Gig Harbor City Council and the Mayor of the City of Gig Harbor this \_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF GIG HARBOR

\_\_\_\_\_  
GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:

By: \_\_\_\_\_  
CAROL A. MORRIS, CITY ATTORNEY

FIRST READING:  
DATE PASSED:  
DATE OF PUBLICATION:  
EFFECTIVE DATE:

**SUMMARY OF ORDINANCE NO.  
of the City of Gig Harbor, Washington**

On \_\_\_\_\_, 2005 the City Council of the City of Gig Harbor, Washington, approved Ordinance No. \_\_\_\_\_, the summary of text of which is as follows:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE RECOVERY OF COSTS FROM A CONVICTED PERSON RELATING TO AN EMERGENCY RESPONSE CAUSED BY THE PERSON'S INTOXICATION; ADOPTING RCW 38.52.430 BY REFERENCE, ALLOWING FOR THE RECOVERY OF SUCH COSTS FROM PERSONS WHO ARE CONVICTED OF VARIOUS CRIMES, ADOPTING STATE LAW BY REFERENCE RELATING TO DRIVING UNDER THE INFLUENCE (RCW 46.61.502); OPERATING AN AIRCRAFT WHILE UNDER THE INFLUENCE (RCW 47.68.220); OPERATING A VESSEL WHILE UNDER THE INFLUENCE (RCW 8.24.017); ADOPTING NEW GIG HARBOR CODE SECTIONS 9.04.040, 8.24.017, 9.04.040 AND 9.40.050; AMENDING GIG HARBOR CODE SECTION 10.04.010. THIS ORDINANCE WILL ALSO AUTHORIZE THE CREATION OF A NEW FUND TO BE KNOWN AS THE "INVESTIGATIVE ASSESSMENT FUND" DESIGNED TO ACCEPT THE EMERGENCY RECOVERY FUNDS.**

---

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting \_\_\_\_\_, 2005.

BY: \_\_\_\_\_  
MOLLY M. TOWSLEE, CITY CLERK



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: FIRST READING OF ORDINANCE TERMINATING THE**  
**WATERFRONT MILLVILLE MORATORIUM**  
**DATE: AUGUST 8, 2005**

**INFORMATION/BACKGROUND**

Ordinance No. 1003 imposed a two month moratorium on the acceptance of certain applications on the Waterfront Millville (WM) zone and was adopted by the City Council on May 31, 2005.

The two month period for the moratorium ended on July 31, 2005. The Council adopted Ordinance No. 1008 on July 25, 2005 which established waterfront building size limitations. As such, the need for a moratorium no longer exists. The moratorium itself must be terminated by ordinance; therefore an ordinance is attached that terminates the moratorium as established by Ordinance No. 1003.

**RECOMMENDATION**

Because the moratorium was adopted as an emergency measure, I recommend that this ordinance be adopted at this first reading by a majority plus one of the whole membership of the Council as provide for in GHMC 1.08.020 B.

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE TERMINATION OF AN EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OF NON-RESIDENTIAL STRUCTURES OR CERTAIN TYPES OF RE-DEVELOPMENT OF NON-RESIDENTIAL STRUCTURES IN THE WATERFRONT MILLVILLE (WM) ZONE.**

---

WHEREAS, on May 31, 2005, the Gig Harbor City Council passed Ordinance No. 1003, imposing an immediate moratorium on the acceptance of applications for new development of non-residential structures or certain types of re-development of non-residential structures in the Waterfront Millville (WM) zone; and

WHEREAS, on July 25, 2005, the City Council passed Ordinance No. 1007, which adopted findings and conclusions supporting the continued maintenance of the moratorium for a period of two months; and

WHEREAS, the purpose of the emergency moratorium was to allow the development of draft regulations to address the building size limitations in waterfront zones; and

WHEREAS, on July 25, 2005, after a public hearing, the City Council adopted Ordinance No. 1008 which, in part, established building size limitations in the waterfront zones; and

WHEREAS, the moratorium imposed by the City in the above-referenced ordinances is not terminated until the City Council terminates the moratorium by formal action; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,  
ORDAINS AS FOLLOWS:

Section 1. The City Council hereby terminates the moratorium imposed by Ordinance No. 1003 and all other ordinances amending such Ordinance.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Gig Harbor City Council and the Mayor of the City of Gig Harbor on this \_\_\_ day of August, 2005.

CITY OF GIG HARBOR

\_\_\_\_\_  
MAYOR GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
Molly Towslee, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Carol A. Morris, City Attorney

FIRST READING:  
DATE PASSED:  
DATE OF PUBLICATION:  
EFFECTIVE DATE:



**SUMMARY OF ORDINANCE NO.  
of the City of Gig Harbor, Washington**

On August \_\_, 2005 the City Council of the City of Gig Harbor, Washington, approved Ordinance No. \_\_\_\_\_, the summary of text of which is as follows:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE TERMINATION OF AN EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OF NON-RESIDENTIAL STRUCTURES OR CERTAIN TYPES OF RE-DEVELOPMENT OF NON-RESIDENTIAL STRUCTURES IN THE WATERFRONT MILLVILLE (WM) ZONE.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting of August \_\_, 2005.

BY: \_\_\_\_\_  
MOLLY M. TOWSLEE, CITY CLERK



COMMUNITY DEVELOPMENT DEPARTMENT

**TO:** MAYOR WILBERT AND CITY COUNCIL  
**FROM:** ROB WHITE, PLANNING MANAGER *RW*  
**SUBJECT:** FIRST READING OF AN ORDINANCE - SHORELINE MASTER  
PROGRAM PRECEDENCE (ZONE 05-796)  
**DATE:** AUGUST 8, 2005

**INFORMATION/BACKGROUND**

In response to recent public input, City Council directed the Planning Commission to draft ordinances that would allow rebuilding of nonconforming structures within the waterfront zones. At the work session and public hearing regarding this issue, the Planning Commission agreed that this would be appropriate as long as the destruction of nonconforming structures was due to an act of nature and not deliberate. The attached ordinance works in tandem with the proposed ordinance to allow reconstruction of nonconforming structures, (ZONE 05-794), to accomplish this goal.

The first ordinance, (ZONE 05-796), clarifies that in the event that there is a discrepancy between the zoning code and the Shoreline Master Program (SMP) that the SMP requirements would prevail. The second ordinance (ZONE 05-794) proposes to modify the SMP to raise the acceptable level of damage for reconstruction from seventy-five percent to one hundred percent.

**POLICY CONSIDERATIONS**

The proposed ordinance will cause the Shoreline Master Program to take precedence over the zoning code in regards to reconstruction of nonconforming structures within the shoreline area.

**ENVIRONMENTAL ANALYSIS**

The SEPA responsible official has reviewed the attached ordinance and determined that it is exempt from SEPA, pursuant to WAC 197-11-800(20).

**FISCAL IMPACTS**

None.

**RECOMMENDATION**

I recommend that the City Council approve the ordinance as presented following the second reading.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, SPECIFYING THAT THE REGULATIONS APPLICABLE TO NONCONFORMING STRUCTURES AND USES OF LAND IN THE ZONING CODE APPLY TO NONCONFORMING DEVELOPMENT AND USES WITHIN THE JURISDICTION OF THE CITY'S SHORELINE MASTER PROGRAM ONLY TO THE EXTENT THAT THEY ARE CONSISTENT, OTHERWISE THE SHORELINE MASTER PROGRAM CONTROLS, ADDING A NEW SECTION 17.68.015 TO THE GIG HARBOR MUNICIPAL CODE, AND REPEALING SECTION 17.68.090.

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WHEREAS, the City's Shoreline Master Program includes regulations relating to nonconforming uses and nonconforming developments within the shoreline jurisdiction; and

WHEREAS, the City also has a chapter in the Zoning Code relating to Nonconformities; and

WHEREAS, the City Council wishes to clarify its intent that the regulations in the Zoning Code relating to Nonconformities only apply within the area regulated under the City's Shoreline Master Program to the extent that the two are consistent, otherwise, the Shoreline Master Program controls; and

WHEREAS, this ordinance was sent to the Department of Community, Trade and Development at least 60 days prior to adoption, pursuant to RCW 36.70A; and

WHEREAS, the Gig Harbor SEPA Responsible Official has reviewed this Ordinance and determined that it is exempt from SEPA, pursuant to WAC 197-11-800(20);

WHEREAS, the Planning Commission held a public hearing on this Ordinance on July 21, 2005, and recommended that the City Council approve the Ordinance; and

WHEREAS, the City Council considered the Planning Commission's recommendation and this Ordinance during its regular meeting of \_\_\_\_\_;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO  
ORDAIN AS FOLLOWS:

Section 1. A new Section 17.68.015 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**17.68.015. Applicability to property regulated under the Shoreline Master Program.** This chapter shall apply to property within the jurisdiction of the Shoreline Management Act and regulated under the City's Shoreline Master Program, but only to the extent that it is consistent with the City's Shoreline Master Program. In the event that there is a conflict, the provisions of the Shoreline Master Program shall apply.

Section 2. Section 17.68.090 of the Gig Harbor Municipal Code is hereby repealed.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of a summary, consisting of the title.

PASSED by the Gig Harbor City Council and the Mayor of the City of Gig Harbor  
this \_\_\_th day of \_\_\_\_\_, 2005.



**SUMMARY OF ORDINANCE NO.  
of the City of Gig Harbor, Washington**

On \_\_\_\_\_, 2005 the City Council of the City of Gig Harbor, Washington, approved Ordinance No. \_\_\_\_\_, the summary of text of which is as follows:

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, SPECIFYING THAT THE REGULATIONS APPLICABLE TO NONCONFORMING STRUCTURES AND USES OF LAND IN THE ZONING CODE APPLY TO NONCONFORMING DEVELOPMENT AND USES WITHIN THE JURISDICTION OF THE CITY'S SHORELINE MASTER PROGRAM ONLY TO THE EXTENT THAT THEY ARE CONSISTENT, OTHERWISE THE SHORELINE MASTER PROGRAM CONTROLS, ADDING A NEW SECTION 17.68.015 TO THE GIG HARBOR MUNICIPAL CODE.**

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The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting on \_\_\_\_\_, 2005.

BY: \_\_\_\_\_

MOLLY M. TOWSLEE, CITY CLERK

**City of Gig Harbor Planning Commission**  
**Minutes of Work-Study Session**  
**Tuesday, June 21, 2005**  
**Gig Harbor Civic Center**

**PRESENT:** Commissioners Jim Pasin, Jill Guernsey, Marilyn Owel, and Chairperson Dick Allen. Commissioners Scott Wagner, Harris Atkins and Theresa Malich were absent. Staff present: Rob White, Jennifer Sitts and Diane Gagnon.

**CALL TO ORDER:** 4:45 p.m.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of June 16, 2005  
Pasin/Guernsey – unanimously approved

**OLD BUSINESS**

1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335** – (ZONE 05-790) A proposed ordinance of the City Council adopting a new section 17.04.367 GHMC defining footprint; and amending GHMC section 17.48.040 limiting the size of non-residential structures in the Waterfront Millville (WM) district.

Planning Manager Rob White explained to the Planning Commission that this item was a continuation of the last meeting and that the intent was to update those Planning Commission members not in attendance at the last meeting that may have some questions.

Commissioner Pasin asked about the applicability of multi-family structures, pointing out that Waterfront Millville currently allows up to 4 attached units.

Planning Manager Rob White reminded that Planning Commission that they cannot regulate by unit size, that they can look at footprint and building size but cannot dictate unit size.

The Commission then went through each zone looking at which ones allowed multi-family development. They noted that Waterfront Millville allows single family and duplex outright and a four-plex conditionally, Waterfront Commercial allows a four-plex outright, and Waterfront Residential only allows single family and duplex outright.

Commissioner Jill Guernsey noted that in Waterfront Residential while duplex is allowed you should not be able to double the size and that she thought that the sizes originally suggested in Version 3 were appropriate.

It was stated by Commissioner Pasin that he felt it was important to encourage residential uses in the waterfront commercial zone as mixed uses are beneficial to the

neighborhood. Commissioner Owel agreed and stated that the Planning Commission may want to revisit the topic of vertical zoning at some time in the future.

Commissioner Pasin stated that he agreed with what had been suggested in Version 3 for the Waterfront Residential zone.

Commissioner Guernsey suggested that they add that residential also means attached up to four units and to change the terminology to single family rather than residential.

After questions from the Planning Commission, Senior Planner Jennifer Sitts clarified how density is calculated.

Chairman Dick Allen pointed out that Waterfront Millville currently has no limit on residential currently and that imposing a limitation on residential simply clarifies that the size of all development is important.

Commissioner Owel asked if 3000 square feet per residential structure was enough for Waterfront Commercial when it allows a four-plex. Commissioner Pasin suggested that perhaps they should keep the 3000 sq ft max footprint or 6000 gross floor area per structure as we have for commercial uses in Waterfront Commercial.

Chairman Allen wondered what would happen with an underground parking situation, emphasizing that he felt that the parking was an additional activity and should be counted as such.

Senior Planner Jennifer Sitts reminded the Commission that changing the definition of floor area affects other areas of the city.

Commissioner Guernsey stated that she felt that whether a garage is on the waterfront or on the Westside the regulation should be consistent and further stated that she thought a distinction should be made between above ground and below ground parking.

Commissioner Pasin stated if are trying to encourage underground parking he didn't have a problem limiting underground parking in the Waterfront Millville and residential zones, however, he did think it should be allowed in more intense Commercial zones.

Commissioner Owel pointed out that parking was a use and should be regulated as such.

Commissioner Guernsey asked the commission on clarification of what they were trying to protect or change and if it was a residential versus non-residential issue. Commissioner Pasin stated that he felt it was more of a waterfront issue.

Senior Planner Jennifer Sitts suggested changing WR and WM to include garage area in the gross floor area rather than change the definition for everywhere.



The Planning Commission was cautioned by Commissioner Guernsey on having a justification for not allowing it in the waterfront zones. Chairman Allen stated that he felt it was because it is still an added activity.

Commissioner Pasin suggested leaving the underground parking issue alone but take Ms. Sitts suggestion that the definition of gross floor area be defined for WR and WM in the development standards. Chairman Allen stated that he thought that would be fine if everyone thinks that would serve the purpose.

Commissioner Guernsey clarified that the proposal was that in the development standards of WM and WR it state that gross floor area includes parking and in other zones to just let the definition stand.

It was decided to leave the definition of floor area as is except to add the word "gross".

It was also agreed to change 17.46.040 WR district and 17.48.040 WM district, to add into the development standards, "maximum gross floor area includes garages attached and detached.

A 30-minute recess was called at 5:50 pm.

Chairman Allen called the meeting to order 6:25.

### **NEW BUSINESS**

1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335** – Proposed ordinance (ZONE 05-794) eliminating the limitation on the reconstruction of nonconforming shoreline development after damage to the structure, amending Section 4.15 (C) of the Shoreline Master Program.

Planning Manager Rob White gave a brief outline in response to public input about concerns with the building size limitations preventing the existing multi-family structures from being rebuilt.

Commissioner Guernsey pointed out that there was a difference between nonconforming development as a use or a structure and wanted to make sure that it was recognized that there are differences between uses and structures. She continued by asking if they wanted people to be able to continue both the use and rebuild the structure. She further stated that she didn't see the reason for using 100%. She suggested saying if it is destroyed it can be rebuilt. Ms. Guernsey also suggested that they use the word structure rather than development.

Senior Planner Jennifer stated the use needs to coincide with the structure. If they are allowed to rebuild the structure the use should be able to remain also.

Commissioner Pasin voiced concern with having a timeframe in which they had to apply to rebuild as some insurance companies take forever. Commissioner Guernsey suggested that they add language allowing extensions.

The Planning Commission decided on the following language:

C. If a nonconforming structure is damaged or destroyed by earthquake, fire, flood, act of nature, or other unintentional act, it may be reconstructed to not more than the dimensions existing immediately prior to the time such structure was damaged or destroyed, if application for development permit is submitted within twelve months of the date of damage or destruction; however, the department may grant no more than 2 one year extensions based on good cause. The reconstruction shall comply with all applicable building codes in force at the time of application.

The following language was decided upon and it was decided to break it into two sections:

D. If a nonconforming use is discontinued in conjunction with the circumstances set forth in subsection (c) above, such use may be resumed upon completion of reconstruction.

E. If a nonconforming use is otherwise discontinued for twelve (12) months or for twelve months during any two year period, any subsequent use shall be conforming; it shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming right to expire.

It was decided to schedule both of these nonconforming issues for a public hearing on July 21, 2005.

→ 2. **City of Gig Harbor 3510 Grandview Street, Gig Harbor WA 98335** – Proposed ordinance (ZONE 05-796) specifying that the regulations in the zoning code relating to nonconformities only apply within the area regulated under the City's Shoreline Master Program when the two are consistent, otherwise the Shoreline Master Program controls, adding a new Section 17.68.015.

Commissioner Guernsey clarified that in the designated shoreline area the zoning code says that if over 50% of your building is destroyed you cannot rebuild and the Shoreline Master Program says that you can then the Shoreline Master Program applies.

Commissioner Pasin asked if there were any waterward properties that would be left out of the designated shoreline area since they were more than 200' away from ordinary high water.

Senior Planner Jennifer Sitts mapped it on GIS and determined that were two lots that may be really close to being outside of the designated shoreline area and they are what is currently the Out of the Garden shop and the Ross building where Suzanne's and a

nail shop are located. She pointed out that they may be within the shoreline area and might need a survey of the bulkhead area.

Ms. Sitts then stated that section 17.68.090 within the nonconformities section seems like it should be repealed, as it is contradictory. Everyone agreed that it should be repealed.

**NEXT REGULAR MEETING:**

June 30, 2005 at 6:00pm – Special Meeting and Public Hearing

**ADJOURN:**

**MOTION:** Move to adjourn at 7:55 p.m.  
Pasin/Owel – unanimously approved

CD recorder utilized:  
Disc #1 Track 1 and 2  
Disc #2

**City of Gig Harbor Planning Commission  
Minutes of Public Hearing  
Thursday, July 21, 2005  
Gig Harbor Civic Center**

**PRESENT:** Commissioners Jim Pasin, Jill Guernsey, Harris Atkins, Theresa Malich and Chairperson Dick Allen. Commissioners Scott Wagner and Marilyn Owel were absent. Staff present: Rob White and Jennifer Sitts.

**CALL TO ORDER:** 7:00 p.m.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of July 7, 2005.  
Malich/Guernsey – unanimously approved

**PUBLIC HEARING**

- 1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –**  
Proposed ordinance (ZONE 05-796) specifying that the regulations in the zoning code relating to nonconformities only apply within the area regulated under the City's Shoreline Master Program when the two are consistent, otherwise the Shoreline Master Program controls, adding a new Section 17.68.015.

Chairman Allen read the background information from the staff report and then opened the public hearing on the proposed ordinance at 7:05 pm.

There being no public testimony, Chairman Allen closed the public hearing.

2. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –**  
Proposed ordinance (ZONE 05-794) eliminating the limitation on the reconstruction of nonconforming shoreline development after damage to the structure, amending Section 4.15(C) of the Shoreline Master Program.

Chairman Allen read the background information from the staff report for the record and opened the public hearing on the proposed ordinance at 7:10.

There being no public comment, Chairman Allen closed the public hearing.

Discussion followed on Section 4.15 of the Shoreline Master Program.

Commissioner Pasin read Section 4.15 for the record and expressed concern with the effective date of buildings constructed after 1975. Chairman Allen pointed out that it also said "or amendments".

Commissioner Guernsey suggested removing the phrase regarding the effective date. A consensus was reached to remove the wording, "prior to the effective date of the act, or amendments thereto".

Discussion followed on the definition of structure

Commissioner Pasin suggested that the word "replacement" be changed to "reconstruction", everyone agreed.

Commissioner Pasin additionally pointed out that currently non-conforming Single Family development may be 100% replaced if restoration is completed within three years and that with the new regulations they would have to apply for extensions to get three years. The Planning Commission acknowledged this change and agreed that it did require single family development to go through some additional regulations, however, was not more restrictive. He then pointed out that in the introduction of the SMP it alludes to the Shoreline Master Program applying to properties within 200' and then refers to properties on the other side of the street. Discussion followed on where the SMP would apply and which buildings would be allowed to be rebuilt.

Associate Planner Jennifer Sitts explained the difference between a non-conforming use and non-conforming structures.

It was suggested by Commissioner Pasin that the language in 17.68.040(C) match the language in the Shoreline Master Program 4.15E.

Planning Manager Rob White pointed out that changing this language may not be within the scope of the proposed changes.

Commissioner Pasin asked about the section 17.68.090 and questioned whether it conflicted with the current proposal. Chairman Allen pointed out that this section was being stricken. Commissioner Pasin pointed out that perhaps it should not be stricken as it requires an owner to provide water access opportunities.

Jennifer Sitts stated that she believed that this was suggested to be repealed because the new language allows an owner to replace a non-conforming structure to it's original dimensions and that would not be possible if you are also requiring them to add an additional water access opportunities.

Consensus was reached that section 17.68.090 should be stricken as proposed. Planning Manager Rob White stated that he would modify the title to include the repeal of section 17.68.090.

Commissioner Atkins asked if there weren't some areas of waterfront districts that were not within the scope of the Shoreline Master Program. Commissioner Pasin read the applicability section of the Shoreline Master Program. It was clarified by staff that all waterfront districts are within the Shoreline jurisdiction and it was agreed that section 17.68.090 be stricken.

**MOTION:** Move to recommend approval of the proposed ordinance (ZONE 05-794) with the proposed changes.  
Malich/Pasin – unanimously approved.

Discussion followed on the 2<sup>nd</sup> ordinance and possibly changing the language in item F.

Associate Planner Jennifer Sitts pointed out that state law may require the current language in item F and suggested that the staff research this.

Chairman Allen called a 10-minute recess to research the state law.

Jenn Sitts read the section from State Code, pointing out that changing from one non-conforming use to another non-conforming use required obtaining a conditional use permit. She further pointed out that it does say that this is only necessary if there are no local regulations. Ms. Sitts stated that our local regulations are more restrictive and would recommend checking with our City Attorney if it would be appropriate to allow something less restrictive. Commissioner Guernsey suggested replacing the language in item F. be replaced with WAC 173-27-080(6). Consensus was reached to replace the language.

Commissioner Atkins asked for clarification that the commission was in agreement with the language in Item G. Consensus was reached that the language in Item G should remain.

**MOTION:** Move to recommend approval of the proposed ordinance (ZONE 05-796) with the following changes:  
Section 4.15, 1<sup>st</sup> paragraph. Remove the phrase "to the effective date of the act or the Master Program, or amendments thereto".  
Section 4.15, Item C. Replace the word "replacement" with "reconstruction".  
Section 4.15, Item F. Replace with WAC 173-27-080(6).

Guernsey/Malich – unanimously approved

Planning Manager Rob White gave a brief update on the Waterfront Building Size ordinance.

Senior Planner Jennifer Sitts briefed the Planning Commission on an issue that had been brought to staff on Boundary Line Adjustments and whether they could be approved if it created a lot that was less non-conforming. She asked the Planning Commission if they wanted to initiate a text amendment or did they want the applicant to initiate his own application. Consensus was reached that the party suggesting the amendment should make application.

Commissioner Pasin brought up the issue of Senate Bill 6593 which deals how manufactured homes are regulated. Mr. Pasin suggested that the Planning Commission initiate a text amendment to bring city code into compliance with new laws.

Planning Manager Rob White acknowledged that this was being worked on by the City Attorney and had been added to their agenda.

**UPCOMING MEETINGS**

August 4, 2005 – Work Study Session at 6:00 pm

**MOTION:** Move to adjourn at 9:30 pm  
Pasin/Guernsey – passed unanimously



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: ROB WHITE, PLANNING MANAGER** *rw*  
**SUBJECT: FIRST READING OF AN ORDINANCE - ALLOWING  
RECONSTRUCTION OF NONCONFORMING STRUCTURES (ZONE 05-794)**  
**DATE: AUGUST 8, 2005**

**INFORMATION/BACKGROUND**

In response to recent public input, City Council directed the Planning Commission to draft ordinances that would allow rebuilding of non-conforming structures within the waterfront zones. At the work session and public hearing regarding this issue, the Planning Commission agreed that this would be appropriate as long as the destruction of nonconforming structures was due to an act of nature and not deliberate. The attached ordinance works in tandem with the proposed ordinance that clarifies the applicability of the shoreline master program, (ZONE 05-796), to accomplish this goal.

The first ordinance, (ZONE 05-796), clarifies that in the event that there is a discrepancy between the zoning code and the Shoreline Master Program (SMP) that the SMP requirements would prevail. The second ordinance (ZONE 05-794) proposes to modify the SMP by raising the acceptable level of damage for reconstruction from seventy-five percent to one hundred percent.

**POLICY CONSIDERATIONS**

The proposed ordinance will raise the acceptable level of damage for reconstruction of nonconforming structures from seventy-five percent to one-hundred percent.

**ENVIRONMENTAL ANALYSIS**

The SEPA responsible official has reviewed the attached ordinance and determined that it is exempt from SEPA, pursuant to WAC 197-11-800(20).

**FISCAL IMPACTS**

None.

**RECOMMENDATION**

I recommend that the City Council direct staff to forward the ordinance on to the Department of Ecology for their review prior to adoption.



ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO SHORELINE DEVELOPMENT, ELIMINATING THE LIMITATION ON THE RECONSTRUCTION OF NONCONFORMING SHORELINE DEVELOPMENT AFTER DAMAGE TO THE STRUCTURE NOT EXCEEDING SEVENTY-FIVE PERCENT OF THE REPLACEMENT COST OF THE STRUCTURE SO THAT THE PROPERTY OWNER MAY RECONSTRUCT NONCONFORMING SHORELINE DEVELOPMENT AFTER DAMAGE OF ANY EXTENT TO THE STRUCTURE, AMENDING SECTION 4.15(C) OF THE SHORELINE MASTER PROGRAM OF THE CITY OF GIG HARBOR, WASHINGTON.**

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WHEREAS, the City of Gig Harbor has adopted the Shoreline Master Program, which has not been codified in the Gig Harbor Municipal Code; and

WHEREAS, the City is required to periodically review its Shoreline Master Program and to make amendments deemed necessary to reflect changing local circumstances (WAC 183-26-090); and

WHEREAS, any amendments to the Shoreline Master Program must be consistent with RCW 90.58.080; and

WHEREAS, prior to submittal of an amendment to the Shoreline Master Program to the Washington State Department of Ecology (DOE), the City is required to solicit public and agency comment (WAC 173-16-100); and

WHEREAS, the City plans under the Growth Management Act, and local citizen strategies must be implemented through early and continuous public participation consistent with WAC 365-195-600; and

WHEREAS, the City has submitted a copy of this ordinance to the Washington State Department of Community Trade and Economic Development (CTED), signifying intent to adopt this ordinance, pursuant to RCW 36.70A.106; and

WHEREAS, the Gig Harbor SEPA Responsible Official has reviewed this Ordinance and determined that it is exempt from SEPA, pursuant to WAC 197-11-800(20); and

WHEREAS, the City has complied with the minimum requirements of public participation for adoption of this ordinance, pursuant to WAC 173-26-100, as follows:

1. A public hearing on the ordinance was conducted by the City Planning Commission on July 21, 2005 to solicit comments and local citizen involvement; and
2. Notice of the public hearing was provided as set forth in WAC 173-26-100(2); and
3. The City has solicited comments from appropriate state agencies through CTED about the proposal prior to local approval; and

WHEREAS, on \_\_\_\_\_, [DOE REVIEW OF THIS ORDINANCE OCCURS AFTER LOCAL APPROVAL, BUT PRIOR TO FINAL COUNCIL ADOPTION] the City submitted this ordinance to the Department of Ecology for review and formal action, as required by WAC 173-26-110; and

WHEREAS, on \_\_\_\_\_, the City Council considered this ordinance during its regularly scheduled Council meeting;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Section 4.15 of the City's Shoreline Master Program is hereby amended to read as follows:

4.15 Nonconforming Development. Nonconforming development is a shoreline use or structure which was lawfully constructed or established ~~prior to the effective date of the Act or the Master Program, or amendments thereto,~~ but which does not conform to present regulations or standards of the Master Program or policies of the Act. In such cases, the following standards shall apply:

A. Nonconforming development may be continued provided that it is not enlarged, intensified, increased or altered in any way which increases its nonconformity.

B. A nonconforming development which is moved any distance must be brought into conformance with the Master Program and the Act.

C. ~~If a nonconforming development is damaged to an extent not exceeding seventy five (75) percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage, with the exception that, exempt single family nonconforming development may be one hundred (100) percent replaced if restoration is completed within three years of the date of damage.~~

If a nonconforming structure is damaged or destroyed by earthquake, fire, flooding, other act of nature, or other unintentional act, it may be reconstructed to not more than the dimensions existing immediately prior to the time such structure was damaged or destroyed if application for a development permit is submitted within twelve (12) months of the date of damage or destruction; however, the department may grant not more than two (2) one-year extensions based on good cause. The reconstruction shall comply with all applicable building codes in force at the time of reconstruction.

D. If a nonconforming use is discontinued in conjunction with the circumstances set forth in subsection C above, such use may be resumed upon completion of reconstruction.

E. If a nonconforming use is otherwise discontinued for twelve (12) months or for twelve (12) months during any two year period, any subsequent use shall be conforming; it shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire.

~~E-F.~~ A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

1. No reasonable alternative conforming use is practical; and
2. The proposed use will be at least as consistent with the policies and provisions of the shoreline master program and as compatible with the uses in the area as the pre-existing use.
3. In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the shoreline master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

~~F-G.~~ An undeveloped lot, tract, parcel, site or division which was established prior to the effective date of the act and the Master Program but which does not conform to the present lot size or density standards may be developed as long as such development conforms to all other requirements of the Master Program and Act.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of a summary, consisting of the title.

PASSED by the Gig Harbor City Council and the Mayor of the City of Gig Harbor this \_\_\_th day of \_\_\_\_\_, 2005.

CITY OF GIG HARBOR

\_\_\_\_\_  
GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:

By: \_\_\_\_\_  
CAROL A. MORRIS, CITY ATTORNEY

FIRST READING:  
DATE PASSED:  
DATE OF PUBLICATION:  
EFFECTIVE DATE:

**SUMMARY OF ORDINANCE NO.  
of the City of Gig Harbor, Washington**

On \_\_\_\_\_ the City Council of the City of Gig Harbor, Washington, approved Ordinance No. \_\_\_\_, the summary of text of which is as follows:

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO SHORELINE DEVELOPMENT, ELIMINATING THE LIMITATION ON THE RECONSTRUCTION OF NONCONFORMING SHORELINE DEVELOPMENT AFTER DAMAGE TO THE STRUCTURE NOT EXCEEDING SEVENTY-FIVE PERCENT OF THE REPLACEMENT COST OF THE STRUCTURE SO THAT THE PROPERTY OWNER MAY RECONSTRUCT NONCONFORMING SHORELINE DEVELOPMENT AFTER DAMAGE OF ANY EXTENT TO THE STRUCTURE, AMENDING SECTION 4.15(C) OF THE SHORELINE MASTER PROGRAM OF THE CITY OF GIG HARBOR, WASHINGTON, AS ADOPTED IN ORDINANCE \_\_\_\_.**

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting on \_\_\_\_\_, 2005.

BY: \_\_\_\_\_

MOLLY M. TOWSLEE, CITY CLERK

**City of Gig Harbor Planning Commission  
Minutes of Work-Study Session  
Tuesday, June 21, 2005  
Gig Harbor Civic Center**

**PRESENT:** Commissioners Jim Pasin, Jill Guernsey, Marilyn Owel, and Chairperson Dick Allen. Commissioners Scott Wagner, Harris Atkins and Theresa Malich were absent. Staff present: Rob White, Jennifer Sitts and Diane Gagnon.

**CALL TO ORDER:** 4:45 p.m.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of June 16, 2005  
Pasin/Guernsey – unanimously approved

**OLD BUSINESS**

1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –**  
(ZONE 05-790) A proposed ordinance of the City Council adopting a new section 17.04.367 GHMC defining footprint; and amending GHMC section 17.48.040 limiting the size of non-residential structures in the Waterfront Millville (WM) district.

Planning Manager Rob White explained to the Planning Commission that this item was a continuation of the last meeting and that the intent was to update those Planning Commission members not in attendance at the last meeting that may have some questions.

Commissioner Pasin asked about the applicability of multi-family structures, pointing out that Waterfront Millville currently allows up to 4 attached units.

Planning Manager Rob White reminded that Planning Commission that they cannot regulate by unit size, that they can look at footprint and building size but cannot dictate unit size.

The Commission then went through each zone looking at which ones allowed multi-family development. They noted that Waterfront Millville allows single family and duplex outright and a four-plex conditionally, Waterfront Commercial allows a four-plex outright, and Waterfront Residential only allows single family and duplex outright.

Commissioner Jill Guernsey noted that in Waterfront Residential while duplex is allowed you should not be able to double the size and that she thought that the sizes originally suggested in Version 3 were appropriate.

It was stated by Commissioner Pasin that he felt it was important to encourage residential uses in the waterfront commercial zone as mixed uses are beneficial to the

neighborhood. Commissioner Owel agreed and stated that the Planning Commission may want to revisit the topic of vertical zoning at some time in the future.

Commissioner Pasin stated that he agreed with what had been suggested in Version 3 for the Waterfront Residential zone.

Commissioner Guernsey suggested that they add that residential also means attached up to four units and to change the terminology to single family rather than residential.

After questions from the Planning Commission, Senior Planner Jennifer Sitts clarified how density is calculated.

Chairman Dick Allen pointed out that Waterfront Millville currently has no limit on residential currently and that imposing a limitation on residential simply clarifies that the size of all development is important.

Commissioner Owel asked if 3000 square feet per residential structure was enough for Waterfront Commercial when it allows a four-plex. Commissioner Pasin suggested that perhaps they should keep the 3000 sq ft max footprint or 6000 gross floor area per structure as we have for commercial uses in Waterfront Commercial.

Chairman Allen wondered what would happen with an underground parking situation, emphasizing that he felt that the parking was an additional activity and should be counted as such.

Senior Planner Jennifer Sitts reminded the Commission that changing the definition of floor area affects other areas of the city.

Commissioner Guernsey stated that she felt that whether a garage is on the waterfront or on the Westside the regulation should be consistent and further stated that she thought a distinction should be made between above ground and below ground parking.

Commissioner Pasin stated if are trying to encourage underground parking he didn't have a problem limiting underground parking in the Waterfront Millville and residential zones, however, he did think it should be allowed in more intense Commercial zones.

Commissioner Owel pointed out that parking was a use and should be regulated as such.

Commissioner Guernsey asked the commission on clarification of what they were trying to protect or change and if it was a residential versus non-residential issue.

Commissioner Pasin stated that he felt it was more of a waterfront issue.

Senior Planner Jennifer Sitts suggested changing WR and WM to include garage area in the gross floor area rather than change the definition for everywhere.



The Planning Commission was cautioned by Commissioner Guernsey on having a justification for not allowing it in the waterfront zones. Chairman Allen stated that he felt it was because it is still an added activity.

Commissioner Pasin suggested leaving the underground parking issue alone but take Ms. Sitts suggestion that the definition of gross floor area be defined for WR and WM in the development standards. Chairman Allen stated that he thought that would be fine if everyone thinks that would serve the purpose.

Commissioner Guernsey clarified that the proposal was that in the development standards of WM and WR it state that gross floor area includes parking and in other zones to just let the definition stand.

It was decided to leave the definition of floor area as is except to add the word "gross".

It was also agreed to change 17.46.040 WR district and 17.48.040 WM district, to add into the development standards, "maximum gross floor area includes garages attached and detached.

A 30-minute recess was called at 5:50 pm.

Chairman Allen called the meeting to order 6:25.

### **NEW BUSINESS**

- 1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335** – Proposed ordinance (ZONE 05-794) eliminating the limitation on the reconstruction of nonconforming shoreline development after damage to the structure, amending Section 4.15 (C) of the Shoreline Master Program.

Planning Manager Rob White gave a brief outline in response to public input about concerns with the building size limitations preventing the existing multi-family structures from being rebuilt.

Commissioner Guernsey pointed out that there was a difference between nonconforming development as a use or a structure and wanted to make sure that it was recognized that there are differences between uses and structures. She continued by asking if they wanted people to be able to continue both the use and rebuild the structure. She further stated that she didn't see the reason for using 100%. She suggested saying if it is destroyed it can be rebuilt. Ms. Guernsey also suggested that they use the word structure rather than development.

Senior Planner Jennifer stated the use needs to coincide with the structure. If they are allowed to rebuild the structure the use should be able to remain also.

Commissioner Pasin voiced concern with having a timeframe in which they had to apply to rebuild as some insurance companies take forever. Commissioner Guernsey suggested that they add language allowing extensions.

The Planning Commission decided on the following language:

C. If a nonconforming structure is damaged or destroyed by earthquake, fire, flood, act of nature, or other unintentional act, it may be reconstructed to not more than the dimensions existing immediately prior to the time such structure was damaged or destroyed, if application for development permit is submitted within twelve months of the date of damage or destruction; however, the department may grant no more than 2 one year extensions based on good cause. The reconstruction shall comply with all applicable building codes in force at the time of application.

The following language was decided upon and it was decided to break it into two sections:

D. If a nonconforming use is discontinued in conjunction with the circumstances set forth in subsection (c) above, such use may be resumed upon completion of reconstruction.

E. If a nonconforming use is otherwise discontinued for twelve (12) months or for twelve months during any two year period, any subsequent use shall be conforming; it shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming right to expire.

It was decided to schedule both of these nonconforming issues for a public hearing on July 21, 2005.

**2. City of Gig Harbor 3510 Grandview Street, Gig Harbor WA 98335 –**  
Proposed ordinance (ZONE 05-796) specifying that the regulations in the zoning code relating to nonconformities only apply within the area regulated under the City's Shoreline Master Program when the two are consistent, otherwise the Shoreline Master Program controls, adding a new Section 17.68.015.

Commissioner Guernsey clarified that in the designated shoreline area the zoning code says that if over 50% of your building is destroyed you cannot rebuild and the Shoreline Master Program says that you can then the Shoreline Master Program applies.

Commissioner Pasin asked if there were any waterward properties that would be left out of the designated shoreline area since they were more than 200' away from ordinary high water.

Senior Planner Jennifer Sitts mapped it on GIS and determined that were two lots that may be really close to being outside of the designated shoreline area and they are what is currently the Out of the Garden shop and the Ross building where Suzanne's and a

nail shop are located. She pointed out that they may be within the shoreline area and might need a survey of the bulkhead area.

Ms. Sitts then stated that section 17.68.090 within the nonconformities section seems like it should be repealed, as it is contradictory. Everyone agreed that it should be repealed.

**NEXT REGULAR MEETING:**

June 30, 2005 at 6:00pm – Special Meeting and Public Hearing

**ADJOURN:**

**MOTION:** Move to adjourn at 7:55 p.m.  
Pasin/Owel – unanimously approved

CD recorder utilized:  
Disc #1 Track 1 and 2  
Disc #2

**City of Gig Harbor Planning Commission  
Minutes of Public Hearing  
Thursday, July 21, 2005  
Gig Harbor Civic Center**

**PRESENT:** Commissioners Jim Pasin, Jill Guernsey, Harris Atkins, Theresa Malich and Chairperson Dick Allen. Commissioners Scott Wagner and Marilyn Owel were absent. Staff present: Rob White and Jennifer Sitts.

**CALL TO ORDER:** 7:00 p.m.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of July 7, 2005.  
Malich/Guernsey – unanimously approved

**PUBLIC HEARING**

1. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –**  
Proposed ordinance (ZONE 05-796) specifying that the regulations in the zoning code relating to nonconformities only apply within the area regulated under the City's Shoreline Master Program when the two are consistent, otherwise the Shoreline Master Program controls, adding a new Section 17.68.015.

Chairman Allen read the background information from the staff report and then opened the public hearing on the proposed ordinance at 7:05 pm.

There being no public testimony, Chairman Allen closed the public hearing.

2. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –**  
Proposed ordinance (ZONE 05-794) eliminating the limitation on the reconstruction of nonconforming shoreline development after damage to the structure, amending Section 4.15(C) of the Shoreline Master Program.

Chairman Allen read the background information from the staff report for the record and opened the public hearing on the proposed ordinance at 7:10.

There being no public comment, Chairman Allen closed the public hearing.

Discussion followed on Section 4.15 of the Shoreline Master Program.

Commissioner Pasin read Section 4.15 for the record and expressed concern with the effective date of buildings constructed after 1975. Chairman Allen pointed out that it also said "or amendments".

Commissioner Guernsey suggested removing the phrase regarding the effective date. A consensus was reached to remove the wording, "prior to the effective date of the act, or amendments thereto".

Discussion followed on the definition of structure

Commissioner Pasin suggested that the word "replacement" be changed to "reconstruction", everyone agreed.

Commissioner Pasin additionally pointed out that currently non-conforming Single Family development may be 100% replaced if restoration is completed within three years and that with the new regulations they would have to apply for extensions to get three years. The Planning Commission acknowledged this change and agreed that it did require single family development to go through some additional regulations, however, was not more restrictive. He then pointed out that in the introduction of the SMP it alludes to the Shoreline Master Program applying to properties within 200' and then refers to properties on the other side of the street. Discussion followed on where the SMP would apply and which buildings would be allowed to be rebuilt.

Associate Planner Jennifer Sitts explained the difference between a non-conforming use and non-conforming structures.

It was suggested by Commissioner Pasin that the language in 17.68.040(C) match the language in the Shoreline Master Program 4.15E.

Planning Manager Rob White pointed out that changing this language may not be within the scope of the proposed changes.

Commissioner Pasin asked about the section 17.68.090 and questioned whether it conflicted with the current proposal. Chairman Allen pointed out that this section was being stricken. Commissioner Pasin pointed out that perhaps it should not be stricken as it requires an owner to provide water access opportunities.

Jennifer Sitts stated that she believed that this was suggested to be repealed because the new language allows an owner to replace a non-conforming structure to it's original dimensions and that would not be possible if you are also requiring them to add an additional water access opportunities.

Consensus was reached that section 17.68.090 should be stricken as proposed. Planning Manager Rob White stated that he would modify the title to include the repeal of section 17.68.090.

Commissioner Atkins asked if there weren't some areas of waterfront districts that were not within the scope of the Shoreline Master Program. Commissioner Pasin read the applicability section of the Shoreline Master Program. It was clarified by staff that all waterfront districts are within the Shoreline jurisdiction and it was agreed that section 17.68.090 be stricken.

**MOTION:** Move to recommend approval of the proposed ordinance (ZONE 05-794) with the proposed changes.  
Malich/Pasin – unanimously approved.

Discussion followed on the 2<sup>nd</sup> ordinance and possibly changing the language in item F.

Associate Planner Jennifer Sitts pointed out that state law may require the current language in item F and suggested that the staff research this.

Chairman Allen called a 10-minute recess to research the state law.

Jenn Sitts read the section from State Code, pointing out that changing from one non-conforming use to another non-conforming use required obtaining a conditional use permit. She further pointed out that it does say that this is only necessary if there are no local regulations. Ms. Sitts stated that our local regulations are more restrictive and would recommend checking with our City Attorney if it would be appropriate to allow something less restrictive. Commissioner Guernsey suggested replacing the language in item F. be replaced with WAC 173-27-080(6). Consensus was reached to replace the language.

Commissioner Atkins asked for clarification that the commission was in agreement with the language in Item G. Consensus was reached that the language in Item G should remain.

**MOTION:** Move to recommend approval of the proposed ordinance (ZONE 05-796) with the following changes:  
Section 4.15, 1<sup>st</sup> paragraph. Remove the phrase “to the effective date of the act or the Master Program, or amendments thereto”.  
Section 4.15, Item C. Replace the word “replacement” with “reconstruction”.  
Section 4.15, Item F. Replace with WAC 173-27-080(6).

Guernsey/Malich – unanimously approved

Planning Manager Rob White gave a brief update on the Waterfront Building Size ordinance.

Senior Planner Jennifer Sitts briefed the Planning Commission on an issue that had been brought to staff on Boundary Line Adjustments and whether they could be approved if it created a lot that was less non-conforming. She asked the Planning Commission if they wanted to initiate a text amendment or did they want the applicant to initiate his own application. Consensus was reached that the party suggesting the amendment should make application.

Commissioner Pasin brought up the issue of Senate Bill 6593 which deals how manufactured homes are regulated. Mr. Pasin suggested that the Planning Commission initiate a text amendment to bring city code into compliance with new laws.

Planning Manager Rob White acknowledged that this was being worked on by the City Attorney and had been added to their agenda.

**UPCOMING MEETINGS**

August 4, 2005 – Work Study Session at 6:00 pm

**MOTION:** Move to adjourn at 9:30 pm  
Pasin/Guernsey – passed unanimously



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: STEPHEN MISIURAK, P.E. *Stm***  
**CITY ENGINEER**  
**SUBJECT: GIG HARBOR NORTH TRAFFIC OPTIONS COMMITTEE ASSISTANCE**  
**CONTRACT AUTHORIZATION**  
**DATE: AUGUST 8, 2005**

**INFORMATION/BACKGROUND**

Due to the directive from Council to have staff facilitate a solution to the predicted future traffic deficiencies expected to occur within the Gig Harbor North area, consultant services are needed to lend technical assistance and guidance to the City.

David Evans and Associates is currently under contract with the City developing a corridor wide comprehensive traffic study and traffic mitigation plan. Assistance under this contract will consist of meeting attendance as well as originate potential feasible non interchange solutions.

The standard consultant services contract is being utilized for this project.

**FISCAL CONSIDERATIONS**

These services were not anticipated in the adopted 2005 Budget, however funds are available within the City's general fund for this expenditure.

**RECOMMENDATION**

I recommend that Council approve a consultant services contract with David Evans and Associates, Inc. for the Gig Harbor North Traffic Options Committee Assistance in the amount not-to-exceed Twenty-four Thousand Nine Hundred Fifty-four Dollars (\$24,954.00).



**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
DAVID EVANS AND ASSOCIATES, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and David Evans and Associates, Inc., a corporation organized under the laws of the State of Washington, located and doing business at 3700 Pacific Highway East, Suite 311, Tacoma, (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the traffic engineering, transportation planning and general engineering services on an on-call basis for the Gig Harbor North area and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated August 1, 2005, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

**TERMS**

**I. Description of Work**

The Consultant shall perform all work as described in **Exhibit A**.

**II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed twenty four thousand nine hundred fifty-four dollars and no cents (\$24,954.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

### III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. 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.

### IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2005, provided however, that additional time shall be granted by the City for excusable days or extra work.

### V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as

described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

## **VI. Discrimination**

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

## **VII. Indemnification**

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' 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. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

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. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

### VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig

Harbor at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

### **IX. Exchange of Information**

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

### **X. Ownership and Use of Records and Documents**

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

### **XI. City's Right of Inspection**

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

### **XII. Consultant to Maintain Records to Support Independent Contractor Status**

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

### **XIII. Work Performed at the Consultant's Risk**

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

### **XIV. Non-Waiver of Breach**

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

### **XV. Resolution of Disputes and Governing Law**

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Director of Operations determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

### **XVI. Written Notice**

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT  
Randy A. Anderson, P.E.  
Senior Associate, Project Manager  
David Evans & Associates, Inc.  
3700 Pacific Highway East, Ste. 311  
Tacoma, WA 98424  
(253) 922-9780

CITY OF GIG HARBOR  
Stephen Misiurak, P.E.  
City Engineer  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170

**XVII. Assignment**

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

**XVIII. Modification**

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

**XIX. Entire Agreement**

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of August 2005.

CONSULTANT  
By: Randy Anderson  
Its Principal  
SR. ASSOCIATE

CITY OF GIG HARBOR  
By: \_\_\_\_\_  
Mayor

Notices to be sent to:  
Randy A. Anderson, P.E.  
David Evans & Associates, Inc.  
3700 Pacific Highway East, Ste. 311  
Tacoma, WA 98424  
(253) 922-9780

CITY OF GIG HARBOR  
Stephen Misiurak, P.E.  
City Engineer  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170

APPROVED AS TO FORM:

---

City Attorney

ATTEST:

---

City Clerk





STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF PIERCE        )

I certify that I know or have satisfactory evidence that Gretchen A. Wilbert is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_

(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing at:

My Commission expires: \_\_\_\_\_

**CITY OF GIG HARBOR**

**EXHIBIT A**

**SCOPE OF SERVICES**

**for**

**TRAFFIC ENGINEERING AND RELATED SERVICES**

David Evans and Associates, Inc. (DEA) is pleased to provide this Scope of Services to the City of Gig Harbor (CITY) for traffic engineering and related services. This is in response to the City creation of a Hospital Steering Committee, which seeks to facilitate a solution to the predicted future traffic deficiencies within the Gig Harbor North area. DEA will provide the CITY with traffic engineering, transportation planning and general engineering services on an on-call basis at the request of the CITY. Work will be done on a task by task basis with each task assigned a separate accounting number for billing purposes. Work will be done on a time and expense basis using DEA's normal billing rates and expenses.

The CITY will request that DEA perform a general work task or provide a general engineering service. DEA will provide the CITY with a written description of that work task with a not to exceed cost for the work. The CITY will direct DEA to proceed with that work task either verbally or in writing. Thereafter DEA will perform the work and submit a standard invoice to the CITY for the work.

Task 1---All Tasks---Project Management and Engineering Administrative Services

This work task will include project status reports either in writing or verbal updates on the status of work, preparing and submitting standard invoices, project management and engineering supervision, and QA/QC work.

At the time of this original agreement the following work task has been identified by the CITY and will be performed by DEA.

Task 2---North Gig Harbor Traffic Committee Representation and Related Work

A committee has been established by the CITY to resolve traffic issues associated with the Saint Anthony's Hospital project sited in the North Gig Harbor area. The committee will meet on a regular basis and DEA will attend those meetings to lend technical assistance and guidance to the CITY. As the need arises DEA will provide the CITY with traffic engineering, transportation planning or general engineering services as a result of those meetings. It is anticipated that there will be two meetings per month for a minimum of six months. Work will include meeting preparation time and providing

engineering responses to committee questions when directed to do so by the CITY. In addition to the regularly scheduled committee meetings additional meetings will be held with CITY staff, the project applicant or staff from adjacent municipalities or the Washington State Department of Transportation. It is anticipated that Task 1 will have a duration of six months.

#### **ADDITIONAL SERVICES**

DEA has in-house expertise and will be available to perform additional services in connection with the project at the request of the CITY. This includes general engineering and environmental services work.

#### **SCHEDULE OF RATES AND ESTIMATED HOURS**

DEA work on this project will be on a time and expense basis as requested by the CITY. The hourly rates are shown on the attached Exhibit B. The hours shown in Exhibit are anticipated hours with work being done as directed by the CITY. The rates are standard DEA billing rates and will be used to the end of 2005 with adjustments made for standard rate increases thereafter. If requested by the CITY DEA will retain the services of a subconsultant at a markup rate of 1.1.

#### **REIMBURSABLES**

- Fees for reprographics and postage
- Mileage
- Subconsultant services

#### **PROJECT SCHEDULE**

DEA and the CITY will agree on a project schedule for each particular work task when applicable.

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**CITY OF KING HARBOR  
EXHIBIT B  
TRAFFIC ENGINEERING AND RELATED SERVICES**

	Principal In Charge	Senior Engineer	Senior Planner	Managing Prof. Eng.	Managing Prof. Eng.	Design Engineer	Administrative Assistant	Executive Administrator			Task Costs	Task Sums And Expenses
<b>DAVID EVANS AND ASSOCIATES, INC</b>		R. Anderson	M. Birdsall	J. Przychodzen	V. Salemann	N. Ching	A. Behner	R. Genett				
3700 PACIFIC AVENUE EAST, SUITE 311 TACOMA, WA. 98424												
<b>TASK 1---PROJECT MANAGEMENT</b>												
Project Status Reports		6										
Prepare and Submit Invoices		6					6	2		0		
Project Management and Engineering Supervision---4 hours per month		24										
QA/QC		6										
<b>Total</b>	0	42	0	0	0	0	6	2	0	0	\$ 6,046.00	\$ 6,046.00
<b>TASK 2---NGH TRAFFIC COMMITTEE REPRESENTATION</b>												
Scheduled Committee Meetings---Prepare and Attend---Eight hours/month for six months	0	0	0	0	48					0		
City Meetings---Prepare and Attend	0	0	0	0	12							
Unscheduled Meetings---Prepare and Attend---Estimated	0	0	0	0	0							
Additional Work as Directed by the CITY	0	0	6	20	12	16						
	0	0	0	0	0							
	0	0	0	0	0							
<b>Total</b>	0	0	6	20	72	16	0	0	0	0	\$ 16,508.00	\$ 16,508.00
<b>Total</b>	0	0	0	0	0	0	0	0	0	0	\$ -	\$ -
Total Hours	0	42	6	20	72	16	6	2	0	0		
Rate	\$ 130.00	\$ 130.00	\$ 130.00	\$ 130.00	\$ 161.00	\$ 96.00	\$ 56.00	\$ 125.00	\$ 70.00	\$ 45.00		
Direct Labor	-	5,460.00	780.00	2,600.00	11,592.00	1,536.00	336.00	250.00	-	-	22,554.00	\$ 22,554.00
<b>CONTINGENCY WORK (Done only at the direction of the City)</b>											\$ 2,000.00	
											\$ -	
											\$ -	
<b>EXPENSES</b>												
Reproduction, Postage, Express Delivery											\$ 200.00	
Mileage at \$.36 per mile											\$ 200.00	
											\$ -	
<b>TOTAL PROJECT COST</b>												24,954.00
P/C/COGH22/CON/PROPOSALS/TRAFFICSERVICES072905												



**POLICE**

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: CHIEF MIKE DAVIS** *(Signature)*  
**SUBJECT: APPROVAL OF A MEMORANDUM OF UNDERSTANDING WITH PARTICIPATING FEDERAL, STATE, COUNTY AND MUNICIPAL AGENCIES TO SHARE INFORMATION WITHIN AN INITIATIVE KNOWN AS LInX**  
**DATE: AUGUST 8, 2005**

**INFORMATION/BACKGROUND**

The Gig Harbor Police Department wishes to enter into a Memorandum of Understanding (MOU) with the Naval Criminal Investigative Service (NCIS) and other participating federal, state, county and municipal agencies to share pertinent information from our report management system (RMS) database. Our information, along with the information from all participating agency databases will be forwarded to a central depository creating a single warehouse of databases. The impetus for this initiative is to support the war against crime and terrorism in the aftermath of the September 11<sup>th</sup> terrorist attacks against the United States. This information sharing initiative is named the Puget Sound Law Enforcement Information Exchange (LInX).

This MOU will give our officers the ability to query this vast database when investigating criminal and terrorist activities. It will also give our officers access to powerful analytical tools valuable in managing the information accessed from the database.

The attached MOU has been reviewed and approved by City Attorney Carol Morris.

**FISCAL IMPACTS**

There are no fiscal impacts associated with the approval of this MOU.

**RECOMMENDATION**

I recommend that the City Council authorize approval of the attached MOU.

MEMORANDUM OF UNDERSTANDING  
AMONG THE NAVAL CRIMINAL INVESTIGATIVE SERVICE  
AND PARTICIPATING FEDERAL, STATE, COUNTY AND MUNICIPAL AGENCIES  
FOR AN INFORMATION SHARING INITIATIVE KNOWN AS  
THE PUGET SOUND LAW ENFORCEMENT INFORMATION EXCHANGE (LInX)

**A. PURPOSE.**

1. This Memorandum of Understanding (MOU) is entered into by the Naval Criminal Investigative Service and the Federal, State, and local law enforcement agencies and the Federal Bureau of Investigation participating in an information sharing initiative for operation of a regional warehouse of databases, known as the Puget Sound Law Enforcement Information Exchange (LInX). The purpose of this MOU is to set forth the policy and procedures for the use of the LInX by the participating parties, including the ownership and control of the information within the system, which may be contributed by each party for use by the LInX and the participating agencies.

2. The driving impetus for this initiative and MOU is to further the wars against crime and terrorism in the wake of the September 11<sup>th</sup> terrorist attacks against the United States. This includes: identifying and locating criminals, terrorists and their supporters; identifying, assessing, and responding to crime and terrorist risks and threats; and otherwise preventing, detecting, and prosecuting criminal and terrorist activities. To achieve these ends, it is essential that all Federal, State, and local law enforcement agencies cooperate in efforts to share pertinent information. The LInX will integrate relevant records of the parties within a single warehouse of databases, effectively providing each participating agency with a single source for regional law enforcement information. (For security purposes, LInX access to this information will be via a separate, sensitive but unclassified server located in the Seattle FBI field office.)

3. The LInX will be available for use by participating law enforcement agencies in furtherance of authorized law enforcement activities as well as the prevention and detection of terrorist risks and threats. Utilizing the LInX capabilities will significantly advance public safety and security, and will enhance the protection of this Nation's critical Naval and military resources in the Puget Sound area of the State of Washington.

**B. PARTIES.**

1. The parties to this MOU are: the Naval Criminal Investigative Service; Bainbridge Police Department; Bremerton Police Department; Everett Police Department; Kitsap County Sheriff's Office; Port of Seattle Police Department; Port Orchard Police Department; Poulsbo Police Department; Seattle Police Department; Snohomish County Sheriff's Office; Tukwila Police Department; Washington Jail and Booking Records System, Washington Association of Sheriffs and Police Chiefs; and the Washington State Patrol; Gig Harbor Police Department and the Federal Bureau of Investigation.

2. The above parties agree that the Puget Sound Joint Terrorism Task Force (JTTF) and the Joint Analytical Center will be permitted access to the Puget Sound LInX upon their proper written request.

3. The Washington Jail and Booking Records System, Washington Association of Sheriffs and Police Chiefs, will be a contributing agency only with no querying capability.

4. The parties agree that maximum participation by all eligible law enforcement agencies will strengthen the purposes of this MOU. Accordingly, the parties anticipate and desire that other eligible agencies will join this MOU in the future. An eligible agency must apply for and be approved by the Governance Board to become a joining agency. The Governance Board shall establish criteria for eligibility to join such as but not limited to security compliance, data accountability, technical capability, and operational history. A joining agency once approved by the Governance Board shall also be considered a party and shall have the same rights, privileges, obligations, and responsibilities as the original parties.

**C. POINTS OF CONTACT.** Each party shall designate an individual as the party's point of contact (POC) for representing that party in regard to the MOU. A party may change its POC at any time upon providing written notification thereof to the Governance Board.

**D. AUTHORITY.**

1. Authority for the Naval Criminal Investigative Service to enter into this MOU includes Department of Defense (DoD) Instruction 5505.3 dated July 11, 1986 and SECNAVINST 5520.3B dated January 4, 1993.

2. Authority for Washington State, county, and local agencies to enter into this MOU includes Revised Code of Washington Chapter 39.34.

3. Authority for the FBI to enter into this MOU includes: 28 U.S.C. 533, 534; 28 C.F.R. 0.85; and Presidential Decision Directives 39 and 62.

**E. MISSION/OBJECTIVES.** This initiative seeks to capture the cumulative knowledge of regional law enforcement agencies in a systematic and ongoing manner to maximize the benefits of information gathering and analysis to prevent and respond to terrorist and criminal threats; to support preventive, investigative and enforcement activities; and to enhance public safety and force protection for the Nation's critical infrastructure in the Puget Sound area. The specific objectives of the LInX are to:

1. Integrate specific categories of law enforcement, criminal justice and investigative data from participating agencies in near real time within one data warehouse that will be accessible by all participating agencies.

2. Dramatically reduce the time spent by participating agency personnel in search and retrieval of relevant data by providing query and analytical tools.

3. Provide the means for the participating agencies to develop analytical products to support law enforcement, force protection, and counterterrorism operational and investigative activities.

4. Provide an enhanced means for the participating agencies to produce strategic analytical products to assist administrative decision-making processes for area law enforcement executives.



**F. CONCEPT.**

1. The LInX is a cooperative partnership of Federal, State, county, and local law enforcement agencies, in which each agency is participating under its own individual legal status, jurisdiction, and authorities, and all LInX operations will be based upon the legal status, jurisdiction, and authorities of the individual participants. The LInX is not intended to, and shall not, be deemed to have independent legal status.

2. The LInX will become a central, electronic repository of derivative Federal, State, county, and local law enforcement and investigative data, with each party providing for use copies of information from its own records which may be pertinent to LInX's mission. Once the database warehouse is populated and properly structured, the system will function with querying and analytical tools in support of law enforcement activities, criminal investigations, force protection, and counter terrorism, and for the development of reports by the participating agencies for the use of their executive decision makers.

3. LInX functionality may be enhanced via acquisition and use of commercially available references, public source information, and software applications such as commercial directories, census data, mapping applications, and analytical applications.

4. The LInX database warehouse collection will be resident on a server located at Seattle Division, Federal Bureau of Investigation, 1110 Third Avenue, Seattle, Washington, and the warehouse will contain "Sensitive But Unclassified" (SBU) information from the records systems of the MOU parties. All parties with the exception of B.3 to this MOU contributing data to the LInX will have equal access to the LInX functionality via secure Internet connections for read, analytical and lead purposes only.

**G. OWNERSHIP, ENTRY, AND MAINTENANCE OF INFORMATION.**

1. Each party retains sole ownership of, exclusive control over content and sole responsibility for the information it contributes, and may at will at any time update or correct any of its information in LInX, or delete it from the LInX entirely. All system entries will be clearly marked to identify the contributing party.

2. Just as each party retains sole ownership and control of the information it contributes, so does a party retain sole ownership and control of the copies of that information replicated in the LInX.

3. The contributing party has the sole responsibility and accountability for ensuring that no information is entered into LInX that was obtained in violation of any Federal, State, or local law applicable to the contributor.

4. The contributing party has the sole responsibility and accountability for ensuring compliance with all applicable laws, regulations, policies, and procedures applicable to the party's entry and sharing of information into the LInX.

5. The contributing party has the sole responsibility and accountability for making reasonable efforts to ensure the accuracy upon entry, and continuing accuracy thereafter, of information contributed. Each

party will notify the contributing party and the Governance Board of any challenge to the accuracy of the contributing party's information.

6. Because information housed by LInX will be limited to duplicates of information obtained and separately managed by the entering party within its own record system(s), and for which the contributing party is solely responsible and accountable, information submitted by the participating parties shall not be altered or changed in any way, except by the contributing party. The contributing party should not make any changes to the data in the LInX warehouse that is not mirrored within the contributing party's source records.

7. The LInX will thus only be populated with mirrored information derived from each contributing party's "own records," and is not in any manner intended to be an official repository of original records, or to be used as a substitute for one, nor is the information in the system to be accorded any independent record system status. Rather, this electronic system is merely a means to provide timely access for the law enforcement parties to information that replicates existing files/records systems.

8. To the extent that any newly discovered links, matches, relationships, interpretations, etc., located in "mining" of LInX information may be relevant and appropriate for preservation as independent records, it will be the responsibility of the accessing party to incorporate such information as records of the accessing party in the party's own official records system(s) in accordance with that party's records management processes (subject to obtaining any contributing party's consent as provided below). A party that desires to incorporate in its own separate records information contributed by another party, including any analytical products based on another party's information, must first obtain the entering party's express permission.

9. Commercially available references, public source information, and software applications, such as commercial directories, census data, mapping applications, and analytical applications are considered to be nonrecord material and will be maintained in accordance with applicable contracts and/or licensing agreements. To the extent that any such information is relevant and appropriate for preservation as independent records, it will be the responsibility of the accessing party to incorporate such information as records of the accessing party in the party's own official records system(s) in accordance with that party's records management processes and any applicable contract or licensing agreement.

10. Each agency has agreed to submit law enforcement, criminal justice and investigative types of records, reports, and information into the LInX warehouse.

11. There is no obligation and there should be no assumption that a particular party's records housed in the LInX database warehouse represent the totality of all records of that party's records system for any subject or person.

#### H. ACCESS TO AND USE OF INFORMATION

1. Each party will contribute information to the LInX and agrees to permit the access, dissemination, and/or use of such information by every other party under the provisions of this MOU (and any other applicable

agreements that may be established for the LInX). The contributing party has the sole responsibility and accountability for ensuring that it is not constrained from permitting this by any laws, regulations, policies, and procedures applicable to the submitting party.

2. Agencies that do not provide data for inclusion in the LInX are not eligible to be parties without express, written approval of the LInX Governance Board. Only duly constituted law enforcement agencies of a Federal, military, state, county, or local jurisdiction may become a party of the LInX.

3. All parties will have access via a secure Internet connection to all the information in the LInX, as provided in this MOU and any other applicable agreements that may be established for the LInX; and each agency is responsible for providing its own internet connectivity.

4. An accessing party has the sole responsibility and accountability for ensuring that an access comports with any laws, regulations, policies, and procedures applicable to the accessing party.

5. A party may only access the LInX when it has a legitimate, official need to know the information for an authorized law enforcement, counter terrorism, public safety, and/or national security purpose, after receiving training appropriate to this MOU.

6. An accessing party may use information for official matters only. The system can not be used for general licensing and employment purposes, background investigations of federal, state or local employees or any other non-law enforcement purpose.

7. Information in the system, including any analytical products, may not be used for any unauthorized or non-official purpose and shall not be disseminated outside of an accessing party without first obtaining express permission of each party that contributed the information in question. Specifically included within this prohibition is the use of information in the preparation of judicial process such as affidavits, warrants, subpoenas, etc.

8. Notwithstanding the requirement in the previous provision that information may not be disseminated without first obtaining express permission of each party that contributed the information in question, in accordance with and to the extent permitted by applicable law, required court process, or guidelines issued jointly by the Attorney General of the United States and the Director of Central Intelligence, immediate dissemination of information can be made if a determination is made by the recipient of the information:

(a) that the matter involves an actual or potential threat of terrorism, immediate danger of death or serious physical injury to any person, or imminent harm to the national security; and

(b) requires dissemination without delay to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat.

The owner of the information shall be immediately notified of any and all disseminations made under this exception.

9. Any requests for reports or data in LInX records from anyone other than a party to this MOU will be directed to the contributing party.

10. Agencies other than the exception noted in paragraph B.2 above who are not part of this MOU will not have direct access to LInX. Requests by such agencies for copies of information contained in LInX must be referred to the individual LInX party that owns the information.

11. The information in the LInX shall not be used to establish or verify the eligibility of, or continuing compliance with statutory and regulatory requirements by applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under the Federal or Commonwealth benefit programs, or to recoup payments or delinquent debts under such Federal or Commonwealth benefit programs.

12. The LInX will include an audit capability that will log all user actions, including queries executed, responses, alerts set, and notifications received. The log shall be maintained for the life of the record plus five (5) years. Any contributing party may request to receive copies of the audit log showing access to that party's data.

#### I. SECURITY.

1. Each party will be responsible for designating those employees who have access to the LInX. This system has been developed with the capability to record each use of the system, including the identity of the individual accessing the system, and the time of the access to the system, and the information queried. The system was developed with security in mind. It should be remembered by each participating member that access to the information within the system should be on a strictly official, need-to-know basis, and that all information is law enforcement sensitive.

2. Each party agrees to use the same degree of care in protecting information accessed under this MOU as it exercises with respect to its own sensitive information. Each party agrees to restrict access to such information to only those of it's (and it governmental superior's) officers, employees, detailees, agents, representatives, task force members, contractors/subcontractors, consultants, or advisors with a official "need to know" such information.

3. Each party is responsible for training those employees authorized to access the LInX system regarding the use and dissemination of information obtained from the system. Specifically, employees should be given a clear understanding of the need to verify the reliability of the information with the contributing party before using the information for purposes such as preparing affidavits, or obtaining subpoenas and warrants etc. Parties should also fully brief accessing employees about the proscriptions for using third party information as described in Section H, paragraphs 4-11, above.

#### J. PROPERTY.

1. The equipment purchased by the NCIS to support this effort will remain the property of the NCIS. After expiration of any warranties, the NCIS, FBI, and the Puget Sound LInX Regional Governance Board will determine the responsibility for the maintenance of the server.

2. Ownership of all property purchased by parties other than the NCIS will remain the property of the purchasing party. Each party accessing the LInX from the party's facility shall provide its own computer stations for its designated employees to have use and access to the LInX. The accessing party is responsible for configuring its computers to conform to the access requirements. Maintenance of the equipment purchased by the accessing party shall be the responsibility of that party.

#### K. COSTS.

1. Unless otherwise provided herein or in a supplementary writing, each party shall bear its own costs in relation to this MOU. Even where a party has agreed (or later does agree) to assume a particular financial responsibility, the party's express written approval must be obtained before the incurring by another party of each expense associated with the responsibility. All obligations of and expenditures by the parties will be subject to their respective budgetary and fiscal processes and subject to availability of funds pursuant to all laws, regulations, and policies applicable thereto. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

#### L. LIABILITY.

1. The LInX is not a separate legal entity capable of maintaining an employer-employee relationship and, as such, all personnel assigned by a party to perform LInX related functions shall not be considered employees of the LInX or of any other party for any purpose. The assigning party thus remains solely responsible for supervision, work schedules, performance appraisals, compensation, overtime, vacations, retirement, expenses, disability, and all other employment-related benefits incident to assignment of its personnel to LInX functions.

2. Unless specifically addressed by the terms of this MOU (or other written agreement), the parties acknowledge responsibility for the negligent or wrongful acts or omissions of their respective officers and employees, but only to the extent they would be liable under the laws of the jurisdiction(s) to which they are subject.

#### M. GOVERNANCE.

1. The parties recognize that the success of this project requires close cooperation on the part of all parties. To this end, the LInX will be operated under a shared management concept in which the parties will be involved in formulating operating policies and procedures. The Puget Sound LInX Regional Governance Board will consist of the head (or authorized designee) of each participating law enforcement agency. The parties agree to comply with all future policies and procedures developed by this Governance Board.

2. Each member of the Governance Board shall have an equal vote and voice on all board decisions. Unless otherwise provided, Roberts Revised Rules of Order shall govern all procedural matters relating to the business of the Governance Board.

3. A chairperson shall be elected by its members, together with such other officers as a majority of the Board may determine. The chairperson, or

any board member, may call sessions as necessary. For a meeting to occur a minimum of 51% of the membership must be present and a simple majority of those present shall be required for passage of any policy matters. A tie vote does not pass the matter. In emergency situations, the presiding officer may conduct a telephone or email poll of Board members to resolve any issues. The Board of Governors may also establish any needed committees such as technical, user, and legal.

4. Disagreements among the parties arising under or relating to this MOU shall be resolved only via consultation at the lowest practicable level by and between the affected parties and their sponsoring agencies (or as otherwise may be provided under any separate governance procedures) and will not be referred to any court, or to any other person or entity for settlement. All unresolved matters will go before the Governance Board.

5. The Governance Board may establish additional procedures and rules for the governance of LInX and in furtherance thereof may enter into one or more separate formal or informal agreements, provided that any such agreement does not conflict with the spirit, intent, or provisions of this MOU, and is sufficiently memorialized to meet the business purposes of LInX governance (including adequately informing current and future parties). Such governance agreement(s) may, for instance address: organizational structure and control; executive management and administration; delegation of authority; operating policies, procedures, rules, and practices; meetings, quorums, and voting procedures; audits; and sanctions (including involuntary termination of a party's participation in this MOU).

#### N. NO RIGHTS IN NON-PARTIES.

1. This MOU is an agreement among the parties and is not intended, and should not be construed, to create or confer on any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise against the NCIS, the Department of the Navy, the Department of Defense, the FBI, the Department of Justice, the United States, a party, or any State, county, locality, or other sponsor under whose auspices a party is participating in the LInX or the officers, directors, employees, detailees, agents, representatives, contractors, subcontractors, consultants, advisors, successors, assigns or other agencies thereof.

#### O. EFFECTIVE DATE/DURATION/MODIFICATION/TERMINATION.

1. As among the original parties, this MOU shall become effective when the duly authorized representatives of each party have all signed it. For parties who subsequently join, this MOU shall become effective when completed and signed by the joining party's duly authorized representative and countersigned by the representatives of the LInX authorized to do so under LInX Governance procedures applicable at the time of joining.

2. This MOU shall continue in force indefinitely for so long as it continues to advance the participants' mission purposes, contingent upon approval and availability of necessary funding.

3. This MOU may be modified upon the mutual written consent of the duly authorized representatives of all parties. However, the parties may, without the need of formal MOU modification, cooperatively address and resolve administrative, technical, and operational details relating to this MOU, provided that any such resolution: does not conflict with the spirit, intent,

or provisions of this MOU; could not reasonably be viewed as particularly sensitive, controversial, or objectionable by one or more parties; and is sufficiently memorialized to meet the business purposes of LInX governance (including adequately informing current and future parties).

4. This MOU may be terminated at any time by the mutual written agreement of the duly authorized representatives of all parties. A party's duly authorized representative may also terminate the party's participation in the MOU upon written notice to all other parties of not less than thirty 30 days. A party's participation may also be terminated involuntarily as may be provided in applicable governance agreement.

5. Upon termination of this MOU, all property being used under its purview will be returned to the respective supplying party. Similarly, if an individual party's participation in this MOU is terminated, the party will return any property to supplying parties, and the remaining parties will return any property supplied by the withdrawing party.

6. All information contributed to the LInX by a terminating party will be deleted from LInX.

7. As to information in the LInX during a party's participation under this MOU, the rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of such information shall survive any termination. This applies both as to a terminating party's information, and to the other parties' disclosure and use of a terminating party's information.

#### **P. APPENDICES**

- A. Form for new agencies to join MOU (and copies of executed forms for each new agency which has so joined)
- B. Points of Contact
- C. Governance Provisions (may be added later at the discretion of the Board)
- D. Security Policy (may be added later).

**IN WITNESS WHEREOF**, the parties have executed this MOU by the signatures of the duly authorized representative of each participating agency on an individual page attached hereto and incorporated herein as part of this MOU.

**APPENDIX A - Puget Sound LInX MEMORANDUM OF UNDERSTANDING**

**PURPOSE.** This document effects the joining by the \_\_\_\_\_ in the MEMORANDUM OF UNDERSTANDING AMONG THE NAVAL CRIMINAL INVESTIGATIVE SERVICE AND PARTICIPATING FEDERAL, STATE, AND LOCAL AGENCIES FOR AN INFORMATION SHARING INITIATIVE KNOWN AS THE PUGET SOUND LAW ENFORCEMENT INFORMATION EXCHANGE (LInX).

**AUTHORITY.** Authority for the Joining Party to enter into this MOU includes:  
\_\_\_\_\_  
\_\_\_\_\_.

**AGREEMENT.** The Joining Party agrees to abide by all provisions and assume all obligations and responsibilities of the MOU, including any formal changes and any administrative, technical, and operational resolutions in effect at the time of execution (as to which the Joining Party acknowledges being provided copies or other adequate notice). In return, the Joining Party shall also be considered a party and shall have the same rights and privileges as the original parties.

**POINT OF CONTACT.** The Joining Party's POC is:

Name and Title: Mike Davis Chief of Police  
Office Phone: 252.853.2420 Cell: 253.250.1789 Fax:253.851.2399  
Address: 3510 Grandview Street Gig Harbor WA 98335  
Email/Other: davism@cityofgigharbor.net

**COSTS.** Unless otherwise agreed in writing, the Joining Party shall bear its own costs in relation to the MOU.

**EFFECTIVE DATE/DURATION/TERMINATION.** This document shall take effect when completed and signed by the Joining Party's duly authorized representative and countersigned by the representatives of the LInX authorized to do so under LInX governance procedures applicable at the time of joining. Thereafter, duration and termination of the Joining Party's participation in the MOU shall be as provided in the MOU.

**FOR THE JOINING PARTY:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title and Agency: \_\_\_\_\_

**FOR THE LInX:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title and Agency: \_\_\_\_\_

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Name: \_\_\_\_\_  
Title and Agency: \_\_\_\_\_

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Name: \_\_\_\_\_  
Title and Agency: \_\_\_\_\_

APPENDIX B - Puget Sound LInX MEMORANDUM OF UNDERSTANDING

Point of Contact for the Naval Criminal Investigative Service:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Bainbridge Police Department:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Bremerton Police Department:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Everett Police Department:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Kitsap County Sheriff's Office:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Port of Seattle Police Department:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Port Orchard Police Department:

Name and Title: **Alan L. Townsend, Chief of Police**  
Office Phone: (360)876-1700 Cell: \_\_\_\_\_ Fax: (360)876-5546  
Address: 546 Bay Street, Port Orchard, WA 98366  
E-mail/Other: atownsend@ci.port-orchard.wa.us

Point of Contact for the Poulsbo Police Department:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Seattle Police Department:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Snohomish County Sheriff's Office:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Tukwila Police Department:

Name and Title: Keith E. Haines, Chief of Police  
Office Phone: (206)433-1827 Cell: (206)391-5142 Fax: (206)433-7197  
Address: Tukwila Police Department, 6200 Southcenter Blvd., Tukwila, WA 98188  
E-mail/Other: khaines@ci.tukwila.wa.us

Point of Contact for the Washington Jail and Booking Records System,  
Washington Association of Sheriffs and Police Chiefs:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Washington State Patrol:

Name and Title: \_\_\_\_\_  
Office Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail/Other: \_\_\_\_\_

Point of Contact for the Gig Harbor Police Department

Name and Title: Mike Davis Chief of Police  
Office Phone: 253.853.2420 Cell: 253.250.1789 Fax: 253.851.2399  
Address: 3510 Grandview Street Gig Harbor, WA 98335  
E-mail/Other: davism@cityofgigharbor.net

**Puget Sound LInX Memorandum of Understanding  
Signatory Page**

**For the City of Gig Harbor:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Gretchen Wilbert

Title: Mayor

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Mike Davis

Title: Chief of Police



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: STEPHEN MISURAK, P.E.** *hm*  
**CITY ENGINEER**  
**SUBJECT: STAFF REPORT – BRIARWOOD PEDESTRIAN STREET**  
**IMPROVEMENT PROJECT**  
**DATE: AUGUST 8, 2005**

**STAFF REPORT**

City staff held a public meeting on July 27, 2005 at 6:00 p.m. in the Community Conference Room to discuss the Briarwood Pedestrian Street Improvement Project. In an effort to notify the adjacent property owners and public about this project, the public meeting notification was posted on the city website and approximately one hundred seventy notices were mailed to the surrounding property owners, as well as a public notice of the meeting in the Gateway. Members of the City Council, Planning Commission and Design Review Board were also notified of the public meeting.

In addition to the seven citizens in attendance, Mayor Wilbert, Councilman Conan and four city staff members were in attendance. Steve Misiurak, City Engineer opened the meeting and explained the scope of the project and asked those in attendance for any questions they may have. He explained to the group that final design is being completed at this time. This improvement project will consist of barrier curb and gutter along both sides of the street along with the construction of a planter strip and a 5.5 foot wide sidewalk along the south side of the roadway.

Questions were asked in regards to the speed along Briarwood Lane, and the contractor's start and finish dates and roadway reconstruction. The questions were answered to the satisfaction of all those in attendance and the meeting adjourned at 6:40 p.m.



COMMUNITY DEVELOPMENT DEPARTMENT  
3510 GRANDVIEW STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-6170 • WWW.CITYOFGIGHARBOR.NET

**Date: August 2, 2005**

**SUBJ: Briarwood Public Meeting Minutes**

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On July 27, 2005 the Operations and Engineering Dept. conducted a public meeting regarding the forthcoming Briarwood Lane Pedestrian Street Improvement Project (CSP-0405). The intent was to inform the local residents and community and solicit comment regarding the preliminary design. Separate invitations were extended to members of the DRB and Planning Commission. A total of 11 people attended the forum, 6 of which were from the City.

Meeting Start: 6:00 PM

A brief introduction of the project scope and limits was presented by the City Engineer. Topics of discussion included:

- 2004 and 2005 Speed Study analysis of Briarwood Lane conducted by the City Engineering Dept. The findings and conclusions discussed were,
  - 27 MPH average speed and expected volume of approximately 2000 ADT which is well with in the design parameters of the existing road way design capacity.
  - No conditions present that necessitate traffic calming features such as speed tables, chicanes, or traffic circles.
- Pedestrian improvements considered as an alternative to provide safe pedestrian facilities for the local residents and other members of the community. Additional discussion regarding the design of the project was provided by the City Engineer.
  - Curb and Gutter on both the north and south sides of Briarwood Lane proposed, with sidewalk located on the south side.
  - Planter Strips included with future pedestrian lighting and street trees.
  - Installation of pedestrian facilities would have an ancillary effect of traffic calming based on the visual narrowing of the road while maintaining 11 to 12 foot travel lanes.
- Proposed time frame for the project was presented as:
  - Final Design in the next 6 to 8 weeks
  - Construction of a portion of the project from Point Fosdick to potentially 31<sup>st</sup> Ave.

- Application of pedestrian grants for the TIB for construction of the remainder of the project in 2006.

Public Comment received included the following requests and inquires:

- Mayor Wilbert:
  - Possibility of bike lanes located on Briarwood Lane
  - Potential for future sidewalks located on Point Fosdick from the Library to Briarwood Lane
- Mr. And Mrs. Tallarti
  - Expressed concern regarding a possible blind spot in the vicinity of 32<sup>nd</sup> Ave and Briarwood Lane.
  - Extended support for the pedestrian project and look forward to seeing it constructed.
- Brett Walker
  - Commented on the difficulty of the entering and exiting the Safeway parking lot

A summary of the project was provided by Steve Misiurak, City Engineer. All attendees had their individual questions and concerns addressed by City Staff.

Meeting Adjourned: 6:40 PM

Meeting Attendees:

- Ron Eccles
- Jim and Alice Tallarti
- Brett Walker
- Charles Perry
- Mayor Wilbert
- Paul Conan, Council
- Stephen Misiurak
- Dave Brereton
- Gus Garcia
- Jami Chunn



**POLICE**

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: CHIEF OF POLICE MIKE DAVIS** *MDH*  
**SUBJECT: GHPD MONTHLY REPORT FOR JULY 2005**  
**DATE: AUGUST 8<sup>TH</sup>, 2005**

**DEPARTMENTAL ACTIVITIES**

Year to date (YTD) 2005 activity statistics compared to YTD 2004 activity statistics through July show calls for service in 2005 have continued to decrease. July YTD totals show we have 338 fewer calls for service this year when compared to 2004. (2004/3203, 2005/2865), yet we have seen an YTD increase of 246 reports written in 2005 (2004/780, 2005/1026). July YTD DUI arrests in 2005 are up by 14 (2004/25, 2005/39) and July YTD infractions in 2005 are up by 155 (2004/625, 2005/779). Traffic accidents 2005 YTD are down by 23 accidents when compared to the same YTD period in 2004 (2004/137, 2005/114). This is a preliminary indication that our objective to develop a comprehensive traffic safety program may be working.

I mentioned in the June report that we were going to track what proportion of our traffic accidents involve individuals from different ages categories. Provided below is a table that shows the monthly breakdown of accidents and the age category involved in those accidents. The breakdown was surprising— common knowledge would tend to suggest that teenagers would be involved in more accidents due to their inexperience with driving. It appears our senior drivers are involved in the largest numbers of traffic accidents within the city limits so far this year. A more valid measure would entail determining what percentage of each age group is currently licensed to drive in the Gig Harbor area. Another caveat to consider is the different population sizes of each age category.

**TRAFFIC ACCIDENT INVOLVEMENT ACCORDING TO AGE CATEGORY 2005**

	<b>Teens (15-18)</b>	<b>Young Adult (19-25)</b>	<b>Adult (26-50)</b>	<b>Seniors (51 over)</b>
<b>January</b>	1	1	2	8
<b>February</b>	4	2	5	4
<b>March</b>	4	6	9	3
<b>April</b>	3	4	5	2
<b>May</b>	2	6	9	6
<b>June</b>	4	1	1	6
<b>July</b>	1	7	2	6
<b>YTD Totals</b>	<b>19</b>	<b>27</b>	<b>33</b>	<b>35</b>



Attached you will find several graphs that track selected 2004 and 2005 monthly statistics. I have updated the graphs for July so you can visually evaluate and track our monthly activity trends. Remember the graphs contain cumulative numbers.

The Reserve Unit supplied 100 hours of volunteer time assisting our officers in July.

The Marine Services Unit (MSU) assisted Tacoma Police Department with the Tall Ships Celebration from June 29th through July 4th contributing 43.5 hours of marine patrol time. We received a letter from Tacoma Police Chief Donald Ramsdell thanking our MSU for their overall assistance with the event. The MSU provided 64.5 hours of patrol time during the month of July completing 28 safety inspection, 24 verbal warnings, eight (8) boaters assist and conducting two (2) search and rescue operations. The Wave Runner has been used during many of these patrol hours and has proved so far to be an asset with our marine patrol operations.

**Some of the more interesting calls for the month of July 2005 included:**

- July 3<sup>rd</sup>: Officer Welch arrested a male subject for an outstanding warrant after subject contacted the department to retrieve his wallet. Case #050817
- July 4<sup>th</sup>: Officer Welch arrested a male subject for DUI. Officer Welch, during a bar check of a local cocktail lounge advised the subject not to drive to the fact he was visibly too drunk to drive. The subject disregarded the advice and drove to a local apartment complex. When stopped the subject asked if "it could just go away." Case #050818
- July 5<sup>th</sup>: Sgt. Dougil investigated a domestic violence incident at a local apartment complex. The male suspect pushed and kicked the victim, his 17-year old live in girlfriend who is pregnant. She stated that he continued pushing her around the apartment until she threatened to call 911. The suspect then became enraged punching holes in the walls, breaking light fixtures and lamps, smashing his head into a double pane mirror causing cuts to his head, and then drank a bottle of kitchen cleaner. The victim stated that the suspect then threatened to kill himself with a knife he had in his possession if she called the police. The suspect fled the scene and was arrested on July 7<sup>th</sup> by Officer Cabacungan. Case #050820
- July 8<sup>th</sup>: Officer Chapman and Officer Welch served three warrants totaling \$18,000 worth of bail on a cook at a local tavern. One of the warrants was for a Hit & Run involving a Gig Harbor Police Officer's daughter as the victim. Case #050834
- July 12<sup>th</sup>: Officer Welch assisted PCSO Deputies with the investigation and arrest of a father who assaulted his son. The father had two active no contact orders out against him; one for his father and one for his 15-year old son, who is the victim in this case. The victim suffered a black eye, cut lip, cut cheek, and cut

temple from the assault along with a possible concussion and fractured cheek. The father is an individual known to us and has beaten the son before. He had just been arrested the month prior for the same thing. Case #050843

- July 15<sup>th</sup>: Officer Welch responded to a report of a possible DUI in the drive-thru of a local restaurant. Upon contacting the driver, it was discovered he had three warrants for minor in possession of alcohol and DUI. The warrants were served and the suspect was arrested. Searching the car Officer Welch found a glass marijuana bong and 12.8 grams of marijuana. The suspect was transported to the Pierce County Jail where he was booked for the warrants and possession of marijuana. Case #050857
- July 16<sup>th</sup>: Officer Dahm responded to a report of three suspicious males located at the 3500 block of Harborview Drive. After contacting the three individuals, Officer Dahm smelled the odor of fresh burnt marijuana. Officer Dahm observed the outline of a marijuana pipe in one of the subject's pants. Examining the pipe Officer Dahm found fresh burnt marijuana residue. The suspect was arrested for unlawful possession of a controlled substance, cited and released. Case #050861
- July 16<sup>th</sup>: Officer Cabacungan stopped a vehicle for expired tabs in the 5100 block of Borgen Blvd. The male driver had two warrants for his arrest from Kitsap County. One of the warrants was for vehicle prowling; coincidentally, the subject also had a set of shaved car keys for various makes of vehicles in his possession-- the kind used to gain entry into other people's automobiles. The suspect was booked into the Kitsap County Jail for the warrants; we decided to keep the keys. Case #050862
- July 17<sup>th</sup>: Officer Dahm responded to a reported shoplift at a local department store. When Officer Dahm questioned the 16-year old female suspect, she stated it was pretty self-evident what she had done. The female said she had taken the items because she was mad at her mother. Along with the twenty-nine audio CD's, the female shoplifted eleven (11) pieces of lingerie, two (2) books, one (1) penciled bag, one (1) pack of colored pencils, one (1) pack of markers, two (2) pairs of sandals, three (3) stuffed animals, one (1) pair of scissors, one (1) pack of stickers, nine (9) cosmetic items, and one (1) backpack. Total value of items stolen was \$668.61. The female was arrested and released to her father. Case #050867
- July 18<sup>th</sup>: Officer Cabacungan arrested a 28-year old male on a ten-year old shoplift warrant out of Kitsap County District Court. The arrest occurred during a traffic stop. When Officer Cabacungan asked whether the suspect knew about the warrant--the subject stated he did, but just hadn't had time to take care of it. Case # 050877

- July 20<sup>th</sup>: Officer Garcia was driving past a local restaurant on Pioneer when he noticed a crowd gathered around a subject lying next to a wheelchair. When Officer Garcia stopped to investigate, he discovered that an altercation had taken place and the male subject had fallen out of the wheelchair while attempting to swing what appeared to be "nunchuks"-- but were actually the detachable arms from his wheelchair. As Officer Garcia was gathering information, an intoxicated 28-year old male became very disorderly and attempted to fight with another subject at the scene. The subject failed to comply and was subsequently taken into custody and booked into the Pierce County Jail on charges of Assault 4<sup>th</sup> and Obstructing. Case # 050882
- July 21<sup>st</sup>: Officer Jahn arrested a 14-year old male and his 10-year old sidekick for stealing two (2) pairs of tennis shoes from a local sports equipment store. Officer Jahn located the two juveniles walking in a nearby parking lot each with brand new bright white tennis shoes on. They had left their old shoes in the boxes and walked out of the store. Case # 050883
- July 21<sup>st</sup>: Officer Busey responded to an address on Mitts Lane after a Tacoma Police Officer had tracked a stolen Acura Integra to that location using the "Lo-jack" system. This is a theft recovery system where a device is activated in a stolen vehicle than enables police vehicles equipped with a special set of antennas to track the stolen vehicle using the Global Information System (GIS). After a thorough investigation, a 24-year old male was arrested for the auto theft and a 19-year old male was arrested on a misdemeanor warrant. Case # 050885
- July 21<sup>st</sup>: Officer Chapman arrested a 46-year old male on a Gig Harbor Municipal Court warrant. The suspect has an on-going dispute with a local car dealership and has been arrested for trespassing at the business. Officer Chapman received information that the suspect was threatening to drive his pickup truck into the service area of the local dealership and kill or injure as many people as possible. The subject denied threatening the car dealership and was booked into the Pierce County Jail on the warrant. Case # 050887
- July 22<sup>nd</sup>: A 21-year old male was arrested by Officer Cabacungan for possession of marijuana and drug paraphernalia. During a traffic stop, Officer Cabacungan smelled a strong odor of burning marijuana coming from the inside of the subject's vehicle. A small amount of marijuana and a pot pipe were discovered during a search incident to arrest. Case # 050889
- July 23<sup>rd</sup>: Officer Chapman arrested a 16-year old male for delivery of a controlled substance (marijuana) and drug paraphernalia. Officer Chapman also arrested two females; a 14-year old and a 15-year old for possession of marijuana. Officers Chapman and Welch discovered the subjects in a vehicle parked in an empty parking lot behind 4700 Pt. Fosdick. After questioning the subjects, it was discovered that the 16-year old had sold the marijuana to the

girls and the three were smoking it when confronted by our officers. Case # 050891

- July 25<sup>th</sup>: At 1013 hours, a dark-skinned male entered a local sandwich shop located on Pt. Fosdick with a semi-automatic pistol and ordered the female clerk to give him two bank deposit bags. The male then fled the store on foot. Two other employees were in the store at the time of the robbery and no one was harmed. There are no suspects at this time. Detective Entze is investigating the case. Case # 050896
- July 26<sup>th</sup>: Sgt Emmett arrested an 18-year old male on two outstanding Gig Harbor Municipal Court warrants and for possession of drug paraphernalia. The suspect was riding a bicycle in a housing development at 0245 hours and provided false information when questioned. Case # 050900
- July 28<sup>th</sup>: Officer Jahn and Reserve Officer Meyers arrested a 27-year old male for possession of pseudoephedrine w/ intent to manufacture meth. The suspect had stolen six (6) blister packs of the cold medicine from a grocery store located at 4800 Pt. Fosdick. The suspect said that he was stealing them for another subject to make "crank." Case # 050911

#### COYOTE FROM MARS



- July 28<sup>th</sup>: Officer Busey assisted with a strange case involving a wild coyote. The coyote had somehow got his head struck in a clear plastic jar and was running around disoriented in the area of Borgen Boulevard. A citizen captured the coyote by grabbing it by the tail and holding its back legs off the ground until Officer Busey arrived. While using a snare, the plastic jar was cut off of the coyote's head and he was set free. You would have to see it to believe it, so I have provided the picture to the left as proof.
- July 30<sup>th</sup>: Officer Busey arrested a 45-year old male for possession of a controlled substance and physical control. Responding to a call of a possible drunk driver at a local gas station, Officer Busey arrived to witness the subject smoking crack cocaine while seated in his vehicle. When Officer Busey opened the door of the vehicle and asked the driver to turn the motor off, the suspect

stated "you got me...I'm going to jail". Sure enough, the subject was arrested and booked into jail. Case # 050922

### **TRAVEL/TRAINING**

- Officer Welch attended First Responder administrator training. This is a continuation of the mapping program developed to provide critical information on local schools in case of a critical incident such as a barricaded subject or active shooter incident.
- Officer Douglas and Allen attended police motorcycle certification training with the Seattle Police Department from July 11<sup>th</sup> through the 22<sup>nd</sup>. Both officers graduated from the intensive training with high marks from their instructors. We were very fortunate to receive this training free of charge and were able to use two of Seattle's training bikes during the training. This alleviated the potential of damaging our brand new Harley.
- Sgt. Emmett received training from Tacoma Police Department in use of the Wave Runner for Law Enforcement purposes and will share that training with MSU members.

### **SPECIAL PROJECTS**

Council candidate Tim Payne conducted a ride-a-long with the department on July 16<sup>th</sup> and Councilman Derek Young completed a ride-a-long on July 22<sup>nd</sup>. I would like to encourage all members of the council to arrange a ride-a-long with our officers. It is a great opportunity to see first hand what issues our department is facing and have any questions you may have answered. We are always eager to share our vision of what the future holds for the GHPD.

The portable speed trailer has been utilized on a regular basis this last month. We have received very positive comments on the program and it seems to have a calming effect on traffic.

Officer Busey and Allen participated in the Tacoma/Pierce County DUI Emphasis in Tacoma on July 22<sup>nd</sup>. In addition, each officer took a civilian rider from Gig Harbor. These particular riders were winners of a "Police Chief for the Day" Rotary auction item. In the next few weeks Chief Davis will be taking these same citizens on a tour of the basic training academy in Burien, the Pierce County Jail, LESA (our dispatch and records provider) and a tour of the police station.

Our Citizens on Patrol (COPS) program is getting under way. We recently interviewed two outstanding candidates who are currently going through background investigations. The female candidate works within education and had some great ideas about creating a program where COP volunteers could check on senior citizens who live alone. The male candidate is a retired UPS driver from California who is looking to get involved in our community.

We have been working with Kay Truitt to revamp our web-page. The site is still under construction, but it is looking very nice. We plan on creating a traffic safety page and a drug enforcement page that will allow citizens to forward information to the police department electronically.

Several police staff members along with Court Administrator Paul Nelson traveled to the Kitsap County Jail on July 26<sup>th</sup> to receive an orientation on booking and billing procedures. We are currently housing commitments at the jail.

We have created an Alarm Compliance Report to be used in conjunction with our current city ordinance covering responses to false alarms. As you may remember our most common call the last three years has been responding to alarms in the city, most of which turn out to be false. With this new tracking system we will be able to address unregistered and chronic false alarms, thus freeing our officers to engage in more productive activities.

#### **PUBLIC CONCERNS**

Speeding complaints on Vernhardsen near the City Park and on North Creek and Elk Creek were addressed with enhanced radar enforcement.

Due to complaints of unruly behavior, drug use and other aberrant behavior at the City Skate Park, CSO Mock has been keeping an eye on the facility.

#### **FIELD CONTACTS**

Staff made the following contacts in the community:

- July 9<sup>th</sup> Lynn Mock participated in the first annual "Child Safety Day" at Skansie Park. This event was sponsored by the Crocker Group and was well attended.
- July 19<sup>th</sup> CSO Mock completed her first Neighborhood Watch program in the Shyleen neighborhood. There was a great turn-out and Lynn is eager to give additional presentations.
- CSO Mock attended a Crime Stoppers meeting in Tacoma and is working to get the word out in our community on the benefits of reporting crimes.

Chief Davis made the following community contacts:

- July 12<sup>th</sup> met with Risk Manager Fred Crumbly from Association of Washington Cities and received our annual audit. We passed without zero deficiencies.
- On July 12<sup>th</sup> attended a meeting at the City/ County Building to discuss video arraignments. We were able to witness the procedure and gathered information necessary to eventually implement the program within our municipal court.

- July 12<sup>th</sup> met with Eileen O'Brien from the Pierce County Prosecutor's Office to discuss our DV Advocate Interlocal Agreement.
- On July 14<sup>th</sup> met with attorney Cliff Peterson to complete the remaining paperwork for the Jaycox Gig Harbor Police Benevolent Fund (501-C3).
- On July 15<sup>th</sup> met with Dennis Taylor from Safe Streets, PCSD Lt. Bauer and Lt. Colberg to discuss progress in formulating a county ordinance to address businesses selling drug paraphernalia. Councilman Terry Lee is spearheading a campaign to have an ordinance created within the county that can then be adopted by the Pierce County cities.
- On July 15<sup>th</sup> Lt. Colberg and Chief Davis met with the Tacoma Narcotics Enforcement Team (TNET) to discuss participation with the drug task force.
- July 20<sup>th</sup> attended the Tacoma/Pierce County DUI Task Force meeting.
- July 21<sup>st</sup> attended the Pierce County Sheriff's and Chief's meeting at Fircrest.
- July 26<sup>th</sup> gave a tour to members of the Bainbridge Police Department who are in the planning stages of building a Criminal Justice Center.
- July 27<sup>th</sup> attended the Cooperative Cities meeting in Lakewood.

#### **OTHER COMMENTS**

The department is fully-staffed

#### **ATTACHMENTS**

- July Monthly Activity Report
- July Activity Graphs
- June and July Traffic Accident Reports



**POLICE**

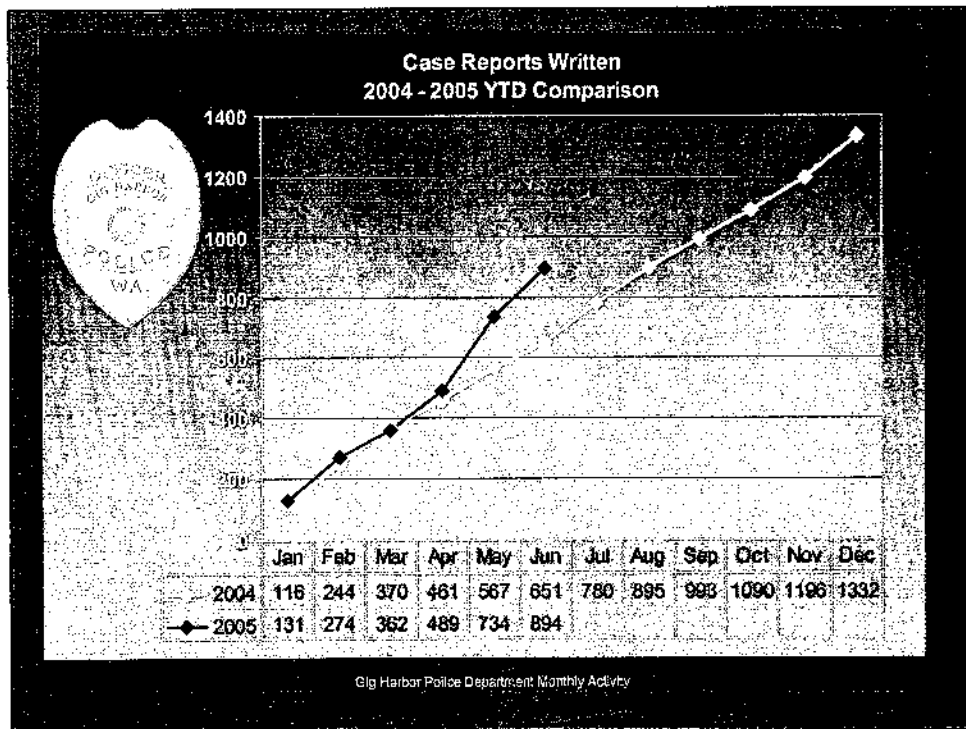
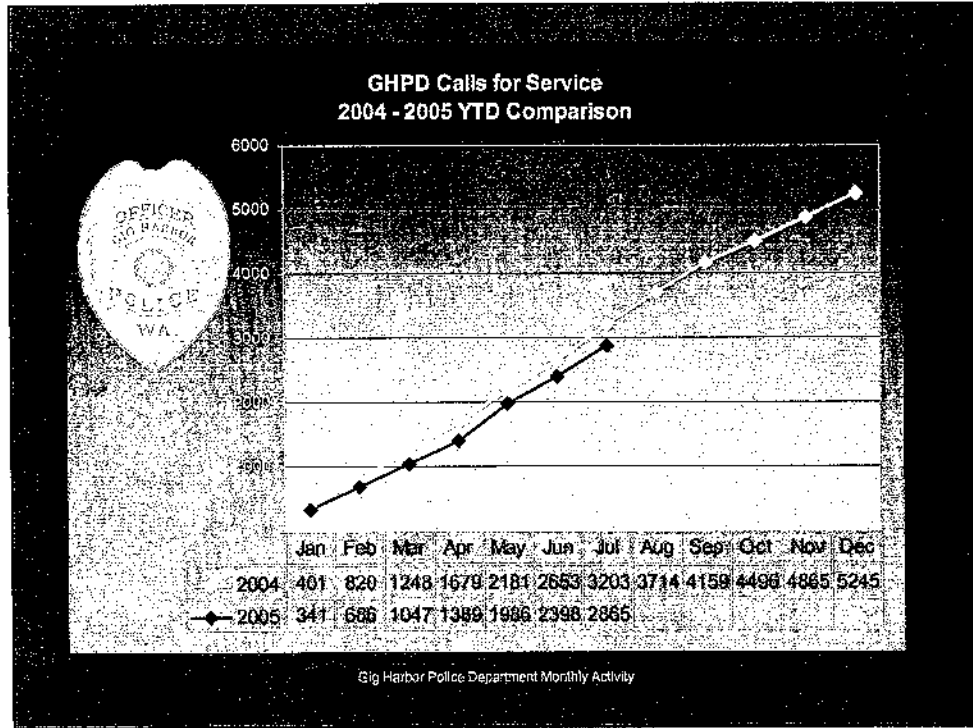
**2005 TRAFFIC ACCIDENTS  
June and July**

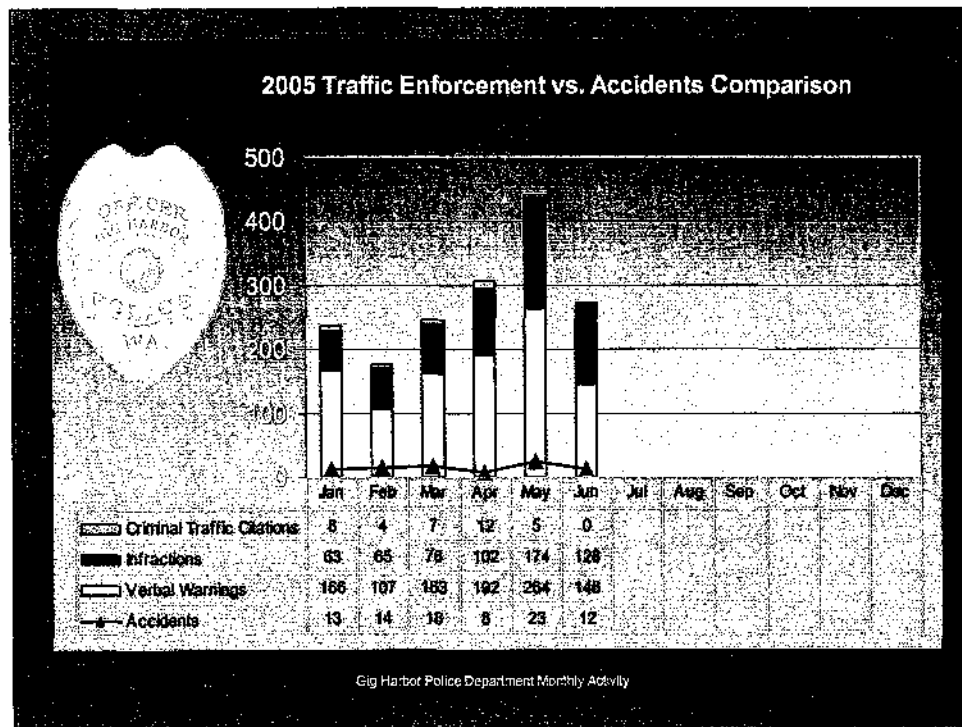
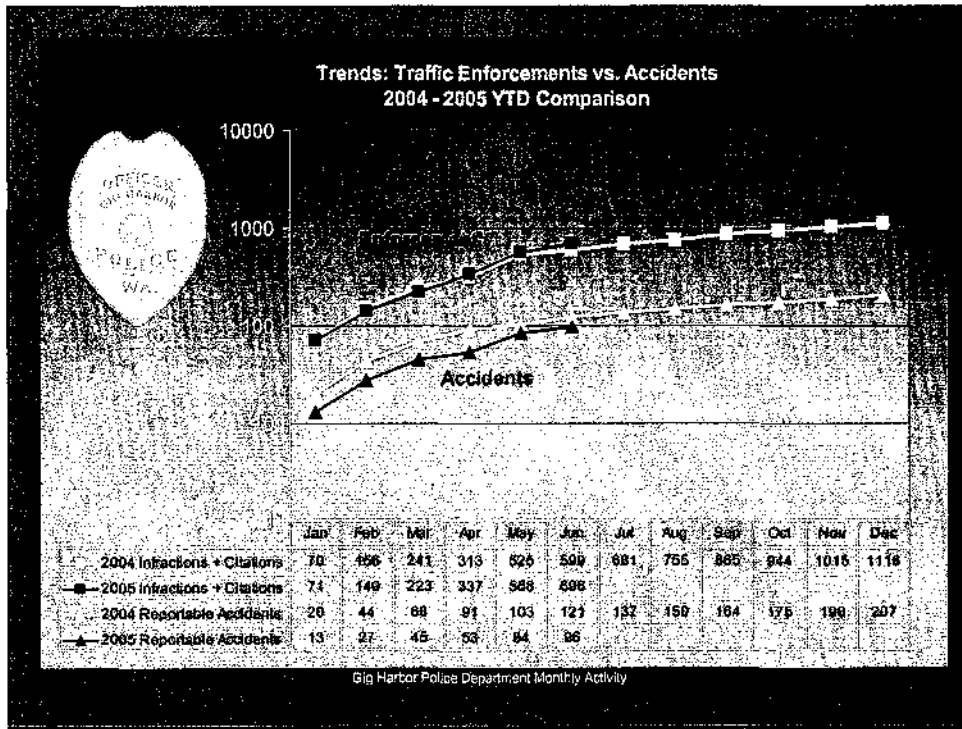
**LEGEND:**

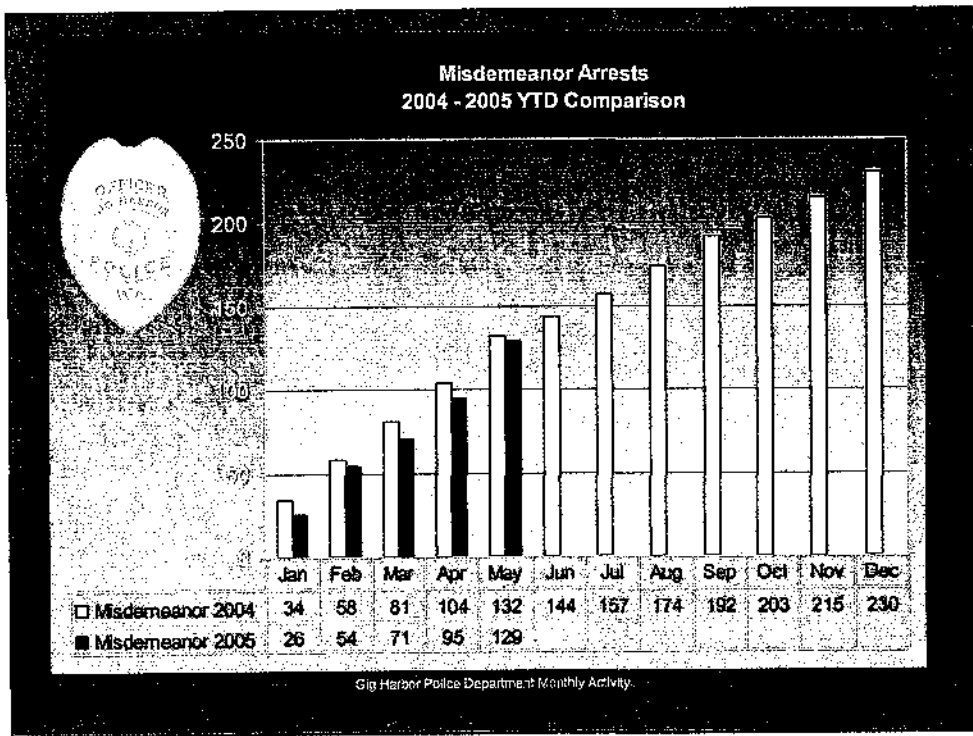
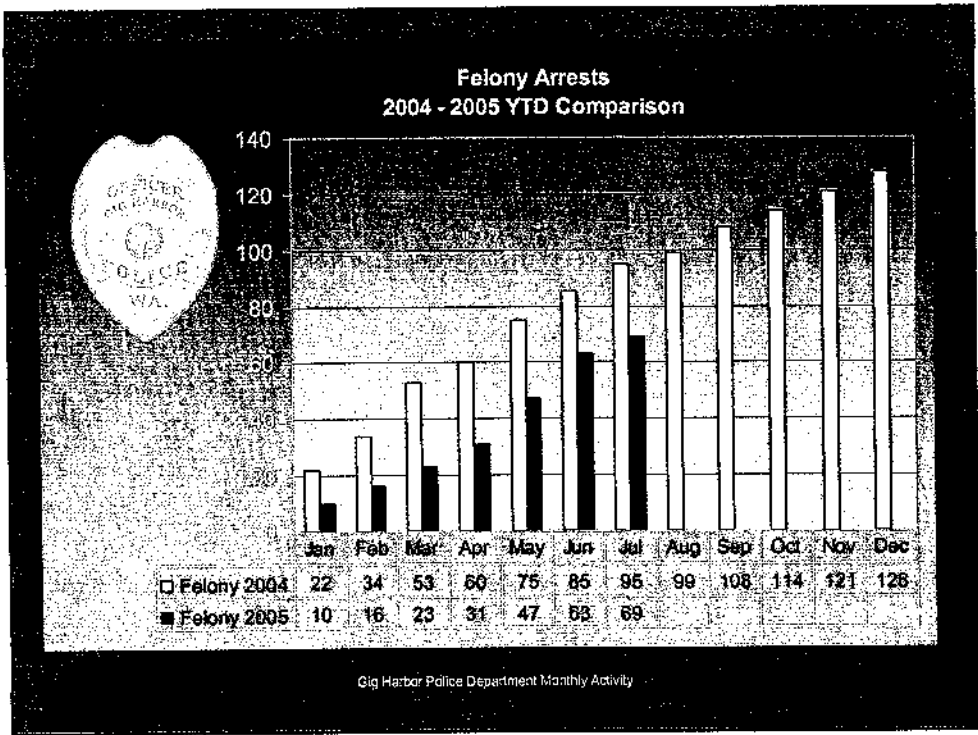
<b>P-LOT</b>	<b>PARKING LOT</b>
<b>NON</b>	<b>NON INJURY</b>
<b>INJ</b>	<b>INJURY</b>
<b>H&amp;R</b>	<b>HIT &amp; RUN</b>
<b>PED/CYC</b>	<b>PEDESTRIAN/CYCLIST</b>
<b>R/A</b>	<b>ROUNDBABOUT</b>

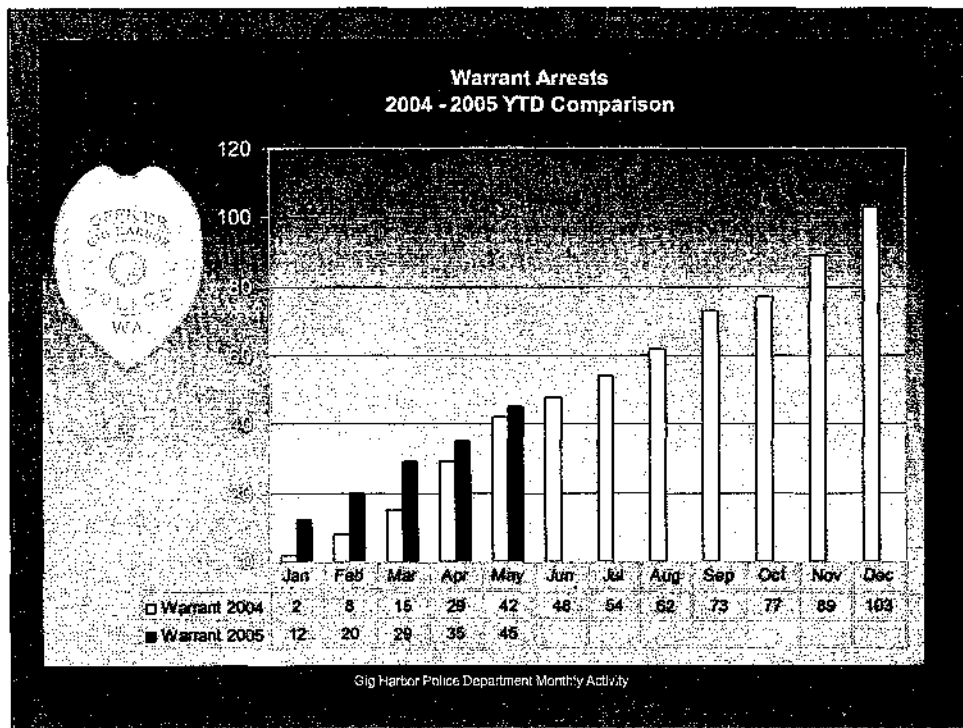
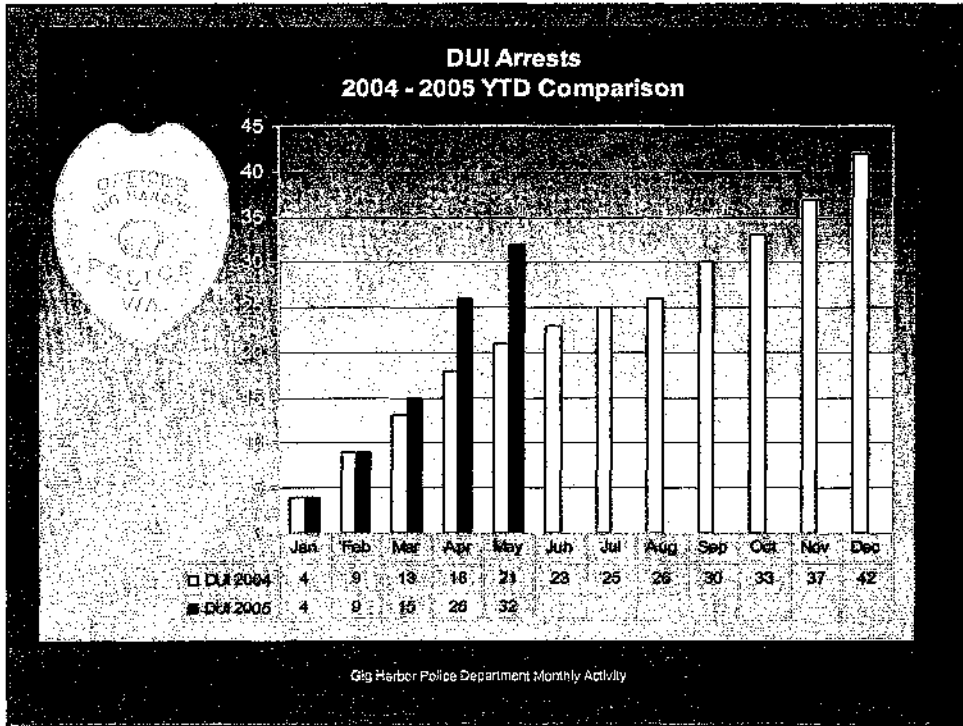
<b>DATE</b>	<b>LOCATION</b>	<b>CASE#</b>
06-01-05	Canterwood & Borgen Roundabout	GH050699
06-08-05	8800 N. Harborview Dr. NON	GH050730
06-09-05	5100 Rosedale St P/LOT	GH050732
06-10-05	Brianwood Ln & 38 <sup>th</sup> Ave NON	GH050736
06-12-05	4413 Harbor Country P/LOT	GH050739
06-13-05	56 <sup>th</sup> St & 38 <sup>th</sup> Ave NON	GH050743
06-14-05	5500 Olympic Dr H&R	GH050748
06-15-05	4500 Pt. Fosdick Dr INJ	GH050757
06-18-05	5500 Olympic Dr P/LOT	GH050768
07-14-05	Rosedale & 54 <sup>th</sup> Ave. NON	GH050852
07-15-05	3100 Blk Judson St. NON	GH050855
07-17-05	Soundview & Hunt St. NON	GH050866
07-19-05	5000 Pt. Fosdick Dr. P-LOT	GH050875
07-20-05	Pt. Fosdick & Olympic NON	GH050878
07-21-05	Pt. Fosdick Dr & 45 <sup>th</sup> St. Ct. NON	GH050886
07-29-05	Olympic & SR 16 INJ	GH050919













COMMUNITY DEVELOPMENT DEPARTMENT

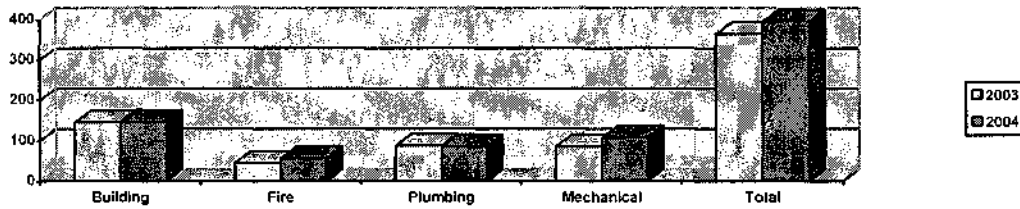
**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: STAFF REPORT - SECOND QUARTER 2005 BUILDING PERMIT DATA**  
**DATE: AUGUST 8, 2005**

Attached for your review is the Building division's quarterly activity summary for the second quarter of 2005. Please feel free to contact Dick Bower, Building Official/Fire Marshal or myself should you have any comments or questions regarding this information.

**City of Gig Harbor  
Building Division  
Quarterly Activity Summary  
As of 3<sup>rd</sup> Quarter of 2004**

The following information provides a snapshot of building division activity for the first three quarters of 2004 with a comparison to activity from the prior year.

**PERMIT ACTIVITY**

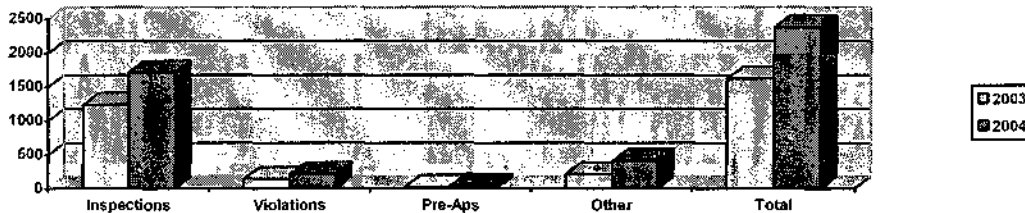


Type	03	04	% Increase
Building	146	147	.7
Fire	45	57	26
Plumbing	88	86	(2)
Mechanical	86	108	25
Total	365	396	8.4

Permit types include all commercial and residential construction, including civil works structures such as retaining walls, detention vaults, water tanks and similar facilities. For each permit issued, plan review services at an average of 2 hours per plan are provided.

Fire permits include permits for sprinkler systems, fire alarm systems, commercial cooking suppression systems and similar fire protection and suppression equipment.

**OTHER CONSTRUCTION SERVICES**



Service	03	04	% Increase
Inspections	1237	1711	38
Violations	144	214	49
Pre-Application Conferences	25	44	76
Other	214	408	90
Total	1620	2377	46

Inspections include building, plumbing, mechanical, and fire code inspections for new and remodel construction. Figure does not include annual fire safety inspections, fire inspection referrals, or fire marshal inspections performed to assure code compliance prior to business license issuance.

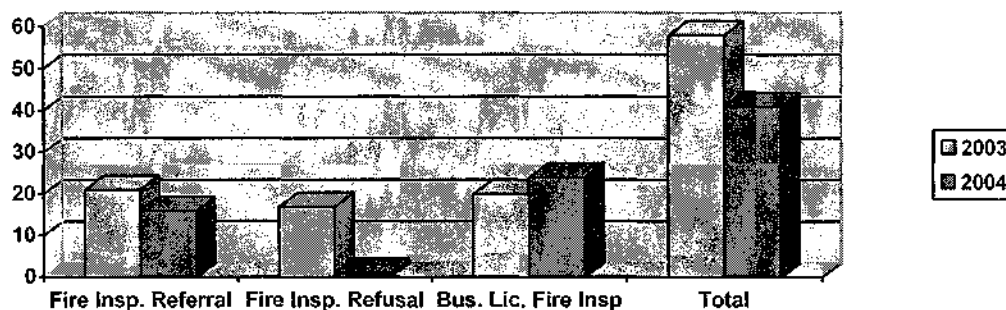
Violations include citizen complaints and staff generated investigations, and include those settled prior to issuance of a Notice of Violation as well as those resulting in legal enforcement action.

Pre-Application Conferences include those scheduled by the Planning Division for discussion of general planning, zoning, public works and building requirements as well as those scheduled by the Building division for discussion of project specific fire and building code requirements.

The other category includes permits reviewed and issued over the counter through the City's Permit by Appointment program. Also included is staff member attendance at training programs and meetings.

Not included in any category are counter and phone consultations with members of the public on code and project related issues, administrative projects, and similar efforts.

### *FIRE PREVENTION SERVICES*



Service	03	04	%
<b>Change</b>			
<b>Fire Inspection Referral</b>	21	16	(23)
<b>Fire Inspection Refusal</b>	17	1	(94)
<b>Fire Marshal Insp. For Bus. Lic.</b>	20	24	2
<b>Total</b>	58	41	(29)

Fire inspection referrals include annual fire safety inspections, done under contract by Fire District 5, which have not achieved voluntary compliance within the reinspection period. These are referred to the City fire marshal for legal enforcement action. The referral category also includes follow-up on deficiencies found during required annual inspections of fire protection systems performed by private contractors.

Fire inspection refusals include buildings and occupancies which have denied Fire District 5 personnel access for an annual fire safety inspection. These are referred to the City for documentation of the denial and consideration of enforcement action.

Fire marshal inspections for business license issuance are performed by the City fire marshal to assure compliance with GHMC Chapter 15.12 prior to approval of business license issuance.

### ***SPECIAL SERVICES PROJECTS***

Special services projects are those that due to their magnitude or technical difficulty have already, or are anticipated to, constitute extraordinary demands on staff time. These projects typically result in numerous partial inspections, reinspections, and technically demanding plan reviews and inspections. The following list includes those projects that currently fall into this category.

Address	Permit Yr.	Special Services
4700 Pt. Fosdick	2002-04	MG, TM, MTI, TMS, MPI
3220-3320 Rosedale	2004	MPI, MR
7700 Skansie	2003	MPI, MR
5101 Rosedale	2004	MR, MPI, TMS
4905 Rosedale	2004	MR, MPI, TMS
5401 Olympic	2004	MTI, MPI
MG – Medical gas systems MR – Multiple significant revisions MTI – Multiple tenant improvements MPI – Multiple partial inspections TM – Technical medical facility TMS- Technical mechanical systems or equipment		

Medical gas systems (MG) include systems providing oxygen, air, nitrous oxide and similar gases for inhalation therapy as well as air, nitrogen and oxygen systems for operating medical/dental instruments. Med gas systems require multiple inspections as well as coordination with medical gas certification contractors.

Multiple significant revisions (MR) includes projects that have undergone significant revisions to the civil plans and structural or fire resistive systems during construction. MR projects demand additional plan review, inspections and require considerable additional coordination between inspectors and contractors to facilitate project scheduling concerns.

Multiple tenant improvements (MTI) projects include projects in which tenant improvement work has been permitted during shell construction, and projects where shell and core projects are anticipated to result in numerous future tenant improvement permits. Concurrent shell and TI projects demand additional coordination between plan reviewers, inspectors,

Multiple partial inspections (MPI) denotes projects that, due to the type of construction or project scheduling concerns are afforded numerous partial inspections for typical single inspection





**TO: CITY COUNCIL MEMBERS**  
**FROM: MAYOR GRETCHEN WILBERT** *gw*  
**SUBJECT: MULTICARE LIMITED CERTIFICATE OF NEED**  
**DATE: AUGUST 3, 2005**

**INFORMATION/BACKGROUND**

Multicare is seeking a limited certificate of need from the state for a day surgery component to its proposed facility on Pt. Fosdick, and has asked for a letter of city support. I am proposing the attached draft for signature.

**RECOMMENDATION**

I recommend that the City Council motion to approve the mayoral signature on behalf of the City of Gig Harbor as presented.



August 8, 2005

Karen Neidermeyer  
Department of Health  
Certificate of Need Program  
1112 Southeast Quince  
PO Box 47851  
Olympia, WA 98504-7851

Dear Ms. Neidermeyer:

We are writing to voice our support for a MultiCare Day Surgery Center in Gig Harbor.

Gig Harbor is a growing community and our local citizens expect – and deserve – local businesses and professional services to be located conveniently within our community.

Last year, our residents and the city wrote letters in support of a new hospital to be located in Gig Harbor. The Department of Health recognized our need and granted approval for the hospital project to proceed.

MultiCare's proposal to expand health care services will be another important boost for our city. The Day Surgery Center is a very important and strongly supported part of the overall plan. The location of these important specialty services with Primary Care Physicians and the Urgent Care Center will add both convenience and better coordination of services.

We are particularly glad that Mary Bridge Children's Hospital Pediatricians and Surgeons will be available at the new facility. With Women's Health services also a focus in the same medical complex, many family health needs can be met in a single visit in a single location.

MultiCare has long been an important provider of health services to our community. Since locating their first clinic here 15 years ago, MultiCare has consistently expanded its services to meet changing needs.

We strongly support MultiCare's application for a Certificate of Need to build a Day Surgery Center at their new Gig Harbor Medical Park.

We urge you to approve this project.

Sincerely,

Gretchen A. Wilbert, Mayor on behalf of the  
Gig Harbor City Council