

# **Gig Harbor City Council Meeting**

**August 22, 2005  
7:00 p.m.**



**"THE MARITIME CITY"**

**AGENDA FOR  
GIG HARBOR CITY COUNCIL MEETING  
August 22, 2005 - 7:00 p.m.**

**CALL TO ORDER:**

**PLEDGE OF ALLEGIANCE:**

**SPECIAL PRESENTATION:** Randy Lumsden, Program Coordinator/Claims Manager for Association of Washington Cities, to present an Equity Distribution check from the AWC/RMSA.

**PUBLIC HEARING:** Resolution Accepting the Wright Annexation.

**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 August 8, 2005.
2. Correspondence / Proclamations: a) Proclamation - Aids Walk Day b) Proclamation - National Payroll Week.
3. Purchase Authorization - Crosswalk Lighting System.
4. Olympic Drive and 56<sup>th</sup> Street Roadway Improvement Project - Easements.
5. Public Art Contract Authorization - Rotary Pavilion at Skansie Brothers Park.
6. Liquor License Renewals: Hy-lu-Hee-Hee; Olympic Village 76.
7. Approval of Payment of Bills for August 22, 2005:  
Checks #47913 through #48061 in the amount of \$370,700.13.

**OLD BUSINESS:**

1. Second Reading of Ordinance - Shoreline Master Program Precedence (Zone 05-796).
2. Resolution Accepting the Wright Annexation.

**NEW BUSINESS:**

1. First Reading of Ordinance - Changing the Equivalent Residential Unit Assignment (ERU) for Laundromats.
2. First Reading of Ordinance - Prentice Street Vacation - Boyd.
3. Comprehensive Plan Amendments SEIS Preparation - Consultant Services Contract.

**STAFF REPORT:**

Laureen Lund, Market Director - Welcome Center.

**PUBLIC COMMENT:**

**COUNCIL COMMENTS / MAYOR'S REPORT:** Gig Harbor Community Center.

**ANNOUNCEMENT OF OTHER MEETINGS:**

**ADJOURN:**

## GIG HARBOR CITY COUNCIL MEETING OF AUGUST 8, 2005

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

**CALL TO ORDER:** 7:01 p.m.

### **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.

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

### **OLD BUSINESS:**

1. Second Reading of Ordinance – Allowing Recovery of Emergency Response Costs. Mike Davis, Chief of Police, presented this ordinance that will allow the city to recover investigative costs associated with the emergency response to certain types of crimes.

**MOTION:** Move to adopt Ordinance No. 1009 as presented.  
Dick / Conan – unanimously approved.

### **NEW BUSINESS:**

1. First Reading of Ordinance – Terminating the Waterfront Millville Moratorium. John Vodopich, Community Development Director, presented this ordinance to end the moratorium on building in the WM zone established by emergency measure on May 31st. He recommended passing the ordinance at this first reading by a majority plus one of the whole membership.

**MOTION:** Move to adopt Ordinance No. 1010 at its first reading.  
Young / Ekberg – unanimously approved.

Councilmember Franich commented that he is opposed to passing an ordinance at its introduction, but it is appropriate for this ordinance because the moratorium was adopted as an emergency.

2. First Reading of Ordinance – Shoreline Master Program Precedence (Zone 05-796). John Vodopich presented this ordinance that would address the issue of non-conforming structures in the shoreline area. It would clarify that in the event of a discrepancy between the zoning code and the Shoreline Master Program that the SMP would prevail. The companion ordinance follows and proposes amendments to the Shoreline Master Program.

Chuck Carlson – 3505 Harborview Drive. Mr. Carlson spoke on behalf of the condominium owners saying that if the two ordinances are passed, it will alleviate their concerns that they would not be able to rebuild if a disaster strikes. He thanked Council, staff, and the Planning Commission for coming up with the ordinance.

Bill Boris – 3519 Harborview Drive. Mr. Boris also spoke in support of the two ordinances. He asked why it was done in this complicated manner. He said that this way of obtaining the objective “kicks” the responsibility to Shoreline Management and out of Gig Harbor’s hands. He voiced concern that in the future, they could be fighting the same battle again.

Carol Morris, City Attorney, explained that state law requires the city pass on any proposed amendments to the Shoreline Master Program to the Department of Ecology for review. They then send it back for adoption. Once an amendment is made to the city’s Shoreline Master Program, it becomes a regulation of the state. She further explained that the shoreline is regulated is through the city’s zoning code, and that the Shoreline Master Program is an overlay zone required by DOE that also regulates development along the shoreline. If there are no non-conforming regulations in the Shoreline Master Program, it would default to the Washington Administrative Code which does not allow 100% development in the shoreline area to rebuild if destroyed.

Councilmember Dick explained that in this area, the city needed the authority under state law to allow the non-conforming provision.

Carlos Moravek – 3889 Harborview Drive. Mr. Moravek thanked the Mayor and Council for listening to the condo owners and for understanding their dilemma.

Councilmember Ekberg asked legal counsel for clarification for language in Section 4.15 (C) of the second ordinance. Ms. Morris explained that this language came from the WACs; the difference being that the WACs contain language regarding percentages that trigger the ability to rebuild to existing standards. The language in the draft ordinance tries to clarify that it must be an unintentional act to prevent a property owner from burning their own structure in order rebuild. She agreed that this language would only be important if there was a percentage beyond which you could not reconstruct, and asked if Council wished her to remove the language before it is transmitted to DOE

for approval. The language would then read "If the non-conforming structure is damaged or destroyed, it may be reconstructed to not more than the dimensions..."

Councilmember Dick voiced concern that if you eliminate the limitations on the method of destruction, then this doesn't meet the intent of the Planning Commission, and someone could interpret the destruction of a structure as simply remodeling. Councilmember Ekberg responded that he had not considered a remodel in the definition of destroyed. He clarified that he did not want to have to come back and amend the list because of some unanticipated disaster.

Councilmember Young said that he didn't want to be too specific in the list of limitations in light of the recent health issue of mold. This was further discussed and determined that mold would be considered an act of nature.

Ms. Morris voiced concern that without the percentage, if a non-conforming structure is damaged you don't have an idea how much damage would trigger the clause to allow reconstruction. Councilmember Dick said that the existing language should be enough, and that the Planning Commission should be commended for their prompt solution to a thorny problem. The suggested amendment would significantly change the intent.

The Mayor asked for clarification on what would happen if a structure was destroyed by arson. Councilmembers discussed whether or not arson would be considered an intentional act if it was not done by the owner. Councilmember Franich said that the word "fire" would include arson. After further discussion, Council decided to leave the language as is.

Councilmember Franich moved on to Section 4.15 Nonconforming Development. He asked if any "uses" would be grandfathered. John Vodopich said that structures built prior to the adoption of the ordinance would be grandfathered, but that he was unaware of any "uses" that might come into question. Councilmember Franich then asked about paragraph 'B.' Mr. Vodopich said that although unlikely that any future structure would be moved, if that were to occur, the structure would have to be brought into conformance.

3. First Reading of Ordinance – Allowing Reconstruction of Nonconforming Structures (Zone 05-794). This was discussed during the previous agenda item. John Vodopich asked for direction from Council on whether to forward the ordinance to DOE for review. Carol Morris clarified that any changes must be made to the ordinance before it is sent to DOE.

**MOTION:** Move to direct staff to forward the draft ordinance to the Department of Ecology for review.  
Dick / Young – unanimously approved.

4. Gig Harbor North Traffic Options Committee Assistance – Consultant Contract. John Vodopich presented this consultant services contract with David Evans and

Associates, traffic engineering firm that is assisting the city with the evaluation of the Gig Harbor North / Borgen Boulevard corridor. This contract is specifically to give technical assistance to the Gig Harbor North Traffic Options Committee.

**MOTION:** Move to authorize the Mayor to execute the consultant services contract with DEA.  
Dick / Conan – unanimously approved.

5. Approval of a Memorandum of Understanding to Share Information within an Initiative Known as LInX. Chief Davis presented this memorandum of understanding between law enforcement agencies. He explained that shortly after September 11, 2001, the federal government became involved in several projects aimed at sharing information. One of these programs is the Puget Sound Information Exchange, or LInX. He gave an overview of the program, and explained that the Gig Harbor Police Department would like to become a member of this organization to share the city's records and to access information to assist in investigations.

Councilmember Franich commented that we all have to live with the aftermath of September 11<sup>th</sup>, which is putting many of our Fourth Amendment rights in jeopardy. He said that the present federal administration has programs aimed at compiling computer information. The memorandum of understanding being presented has many acronyms in relation to law enforcement, adding that he believes that this is getting totally out of hand. He said that personally, he feels that once information gets put into a computer, mistakes can be made and there can be occasions in which two people with the same name or characteristics could be affected. He said that he will not support this.

Chief Davis responded that the information is report management right out of the police computers consisting of data from officer reports. This information is unclassified and restricted to law enforcement agencies that are members of this consortium.

Councilmember Franich said that the terms "mining of data" and "non-obvious recognition" refer to a lot of what is going on with computers in this day and age. He said that not all this is bad, and some good things could come from it. But in aggregate, there are Fourth Amendment problems going on in our society today.

Councilmember Young asked for clarification on what part of the information Councilmember Franich was referring to. Councilmember Franich responded that this is just one piece of a whole aggregate puzzle and that there aren't enough fail safe mechanisms built in. There are many things that are being classified as crimes, and that put a person's information in a data center that could lead to unlawful search and seizure.

Chief Davis explained that this is an analytical, investigative tool similar to what is currently in place with LESA. Member agencies that belong to LESA place their report information into a clearing house and share it. This just expands the sharing to federal, other state and county agencies. It is in regions with a high military installation

representation and focuses on not only crime, but terrorist activities. The initial participants in LInX were NCIS, the FBI, Everett with its new military base, and Kitsap County. Recently, Pierce County was offered the opportunity to join, and all other agencies that share information through LESA will be signing up.

**MOTION:** Move to approve the Memorandum of Understanding to Share Information within an Initiative known as LInX.  
Young / Conan – five voted in favor. Councilmember Franich voted no.

**STAFF REPORT:**

1. Stephen Misiurak, City Engineer: Briarwood Lane Public Meeting. John Vodopich explained that this report was prepared primarily as an informational summary of the meeting regarding the Briarwood Lane improvements. Seven citizens attended the short meeting.

2. Mike Davis, Police Chief: July Stats. Councilmember Young asked how the jar was removed from the coyotes head. Chief Davis reported that it was done with tin-snips.

3. John Vodopich, Community Development Director: Second Quarter 2005 Building Permit Data. John Vodopich explained that this report was prepared as an informational summary.

**PUBLIC COMMENT:** None.

**COUNCIL COMMENTS / MAYOR'S REPORT:** Multicare Limited Certificate of Need. Mayor Wilbert gave an overview of the letter that she drafted in support of Multicare to obtain a limited certificate of need. She introduced John Long, Strategic Executive for Multicare, and gave a brief overview of his credentials. She said that she has encouraged Multicare to coordinate to bring health services to Gig Harbor that will be complimentary to a hospital.

John Long- 8218 86<sup>th</sup> Ave NW. Mr. Long extended the appreciation of the Board of Directors, Executive Team, and the staff of Multicare for the support that has been given to Multicare. He explained that his assignment has been to figure out that in addition to the hospital, what other services that Multicare could provide to improve the health of the community. He described the process to gather information, which resulted in dozens of ideas for health services that could be offered. Their proposal had to meet five criteria: 1. to improve the health of the community; 2. to be perceived by the population as being needed; 3. that it made sense to provide; 4. that it was something that Multicare could do well; and 5. that it makes economic sense in the long run.

Mr. Long said that the Board of Directors of Multicare approved the proposal and they have been moving forward since that time. He described the development team and the location, adding that they expect to have SEPA approval later this month, will go before the Design Review Board later this month, before the Hearing Examiner in

September, and if approved, they will break ground in October. By spring of 2007 they should be open.

Mr. Long closed by thanking staff. He said that from the beginning, staff was very clear and straight-forward, and truly acted as partners. He said that they have felt good about the experience. He then complimented Mark Hoppen, City Administrator, for helping to explain the traffic mitigation for this project at several presentations around town.

Mr. Long pledged to bring to the community a facility which everyone will be proud. The medical services will be top-quality, and there is also a commitment to excellent customer service.

**ANNOUNCEMENT OF OTHER MEETINGS:**

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

**MOTION:** Move to adjourn to Executive Session for approximately 15 minutes to discuss property acquisition at 7:52 p.m.  
Franich / Young – unanimously approved.

**MOTION:** Move to return to regular session at 8:02 p.m.  
Young / Franich – unanimously approved.

**MOTION:** Move to authorize the Mayor to send the letter for limited certificate of need for Multicare.  
Conan / Young – unanimously approved.

**ADJOURN:**

**MOTION:** Move to adjourn at 8:02 p.m.  
Young / Ekberg – unanimously approved.

CD recorder utilized:  
Disc #1 Tracks 1 – 20.

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Gretchen A. Wilbert, Mayor

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Molly Towslee, City Clerk



# PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

**Whereas**, the global epidemic of HIV infection and AIDS requires a worldwide effort to increase communication, education and united action to stop the spread of HIV/AIDS; and,

**Whereas**, UNAIDS estimates that there are close to 40 million people worldwide currently living with HIV/AIDS, with 14,000 new infections each day, young people under the age of 25 accounting for more than half of all new infections; and,

**Whereas**, the U.S. Centers for Disease Control recognizes that the number of people diagnosed with HIV and AIDS in the United States continues to increase, with over 1 million people in the U.S. now infected and one-third of them believed to be unaware that they are infected; and,

**Whereas**, there have been 15,182 diagnosed cases of HIV/AIDS in the state of Washington since 1982, 1,560 of them having received services from the Pierce County AIDS Foundation, and 600 of them are known to have died from complications related to AIDS as of June 2005; and,

**Whereas**, by raising awareness and promoting acceptance of people living with HIV/AIDS, we help to improve the lives of millions of people around the world within our community; and,

**Now, therefore, be it proclaimed** that I, Gretchen Wilbert, Mayor of the City of Gig Harbor, on behalf of the Gig Harbor City Council, do hereby declare that Gig Harbor will observe September 10, 2005 as

## **AIDS WALK DAY**

and encourage all citizens to join with me to unite against HIV/AIDS by participating in the 14<sup>th</sup> annual Pierce County AIDS Walk to benefit the Pierce County AIDS Foundation and other AIDS service organizations through support of their programs and the use of community resources to help educate, medically treat, and provide emotional support for afflicted individuals within our own community.

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Gretchen A. Wilbert, Mayor

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Date



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: DAVID BRERETON *Dave***  
**DIRECTOR OF OPERATIONS**  
**SUBJECT: PURCHASE AUTHORIZATION – CROSSWALK LIGHTING SYSTEM**  
**DATE: AUGUST 22, 2005**

**INTRODUCTION/BACKGROUND**

An identified Street Objective in the 2005 Budget was the purchase and installation of a crosswalk lighting system.

Price quotations for the lighting system were obtained from three vendors in accordance with the City's Small Works Roster process for the purchase of materials (Resolution 593). The price quotations are summarized below:

<u>Vendors</u>	<u>Total</u>
Traffic Safety Corp.	\$10,560.00 + shipping + tax
F.M.A. Marketing	\$11,205.00 + shipping + tax
Flight Light	\$11,938.00 + shipping + tax

The lowest price quotation received was from Traffic Safety Corp. in the amount of \$10,560.00, not including shipping or Washington state sales tax.

**ISSUES/FISCAL IMPACT**

This work was anticipated in the adopted 2005 Budget, identified under the Street Operating Fund, objective #10, and is within the allocated amount of \$17,000.00. City crews will install the crosswalk lighting system. Work is expected to begin following delivery of the material in mid-October.

**RECOMMENDATION**

I recommend that Council authorize the purchase of the crosswalk lighting system from Traffic Safety Corp. as the lowest vendor, for their price quotation proposal amount of Ten thousand Five hundred Sixty dollars and zero cents (\$10,560.00).



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: STEPHEN MISIURAK, P.E. SM**  
**CITY ENGINEER**  
**SUBJECT: OLYMPIC DRIVE AND 56<sup>TH</sup> STREET ROADWAY IMPROVEMENT**  
**PROJECT (CSP-0133)**  
**- TEMPORARY SLOPE AND CONSTRUCTION, AND RIGHT-OF-WAY**  
**EASEMENT AGREEMENTS FOR PARCEL NOS. 0221177055,**  
**4001390020, 0221177049, AND 0221177033**  
**DATE: AUGUST 22, 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 Permanent Right-of-Way Easement for parcel number 0221177055 owned by Quality Ventures Limited Partnership
- 2) Agreement for Dedication of Temporary Slope and Construction Easements for parcel number 4001390020 owned by Scott and Myung Hui Drake.
- 3) Agreement for Dedication of Temporary Slope and Construction Easements for parcel number 0221177049 owned by 5125 Olympic Dr. NW L.L.C.
- 4) Agreement for Dedication of Permanent Right-of-Way Easement for parcel number 0221177033 owned by Charles R. Hogan.

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 Slope and Construction, and Right-of-Way Easement Agreements 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 Slope and Construction, and Permanent 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 4<sup>th</sup> day of August, 2005, by and between CITY OF GIG HARBOR, a Washington municipal corporation, (hereinafter the "City"), and SCOTT R. DRAKE AND MYUNG HUI DRAKE, husband and wife, (hereinafter the "Owners"), whose mailing address is 3312 SOUNDVIEW DR W, UNIVERSITY PLACE, WA 98466-1615.

**RECITALS**

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as the WESTSIDE PROFESSIONAL PARK, 5334 OLYMPIC DRIVE NW, (Tax Parcel Number 4001390020) 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 abutting 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 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 adjoining Property 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 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 and construction 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 easements during the term of this Agreement with the exception of a rock base around the existing building sign.

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.

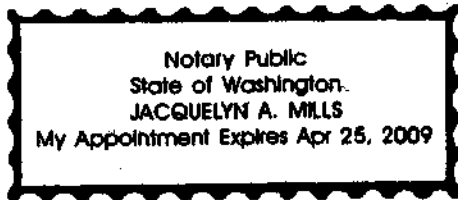
Section 5. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Scott R. Drake 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: August 4, 2005

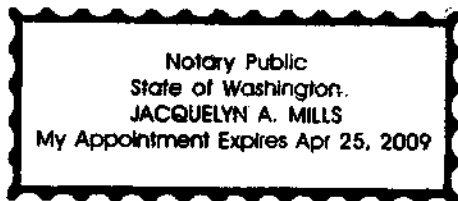


Jacquelyn A. Mills  
(Signature)  
Jacquelyn A. Mills  
NOTARY PUBLIC, State of Washington,  
residing at: Lacey  
My appointment expires: April 25, 2009

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Myung Hui Drake 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: August 4, 2005



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

# EXHIBIT A

## PROPERTY LEGAL DESCRIPTION

LOT(S) 2, WESTSIDE PROFESSIONAL PARK, ACCORDING TO THE PLAT RECORDED UNDER AUDITOR'S NO. 9701160313, IN PIERCE COUNTY, WASHINGTON.



## **EXHIBIT B**

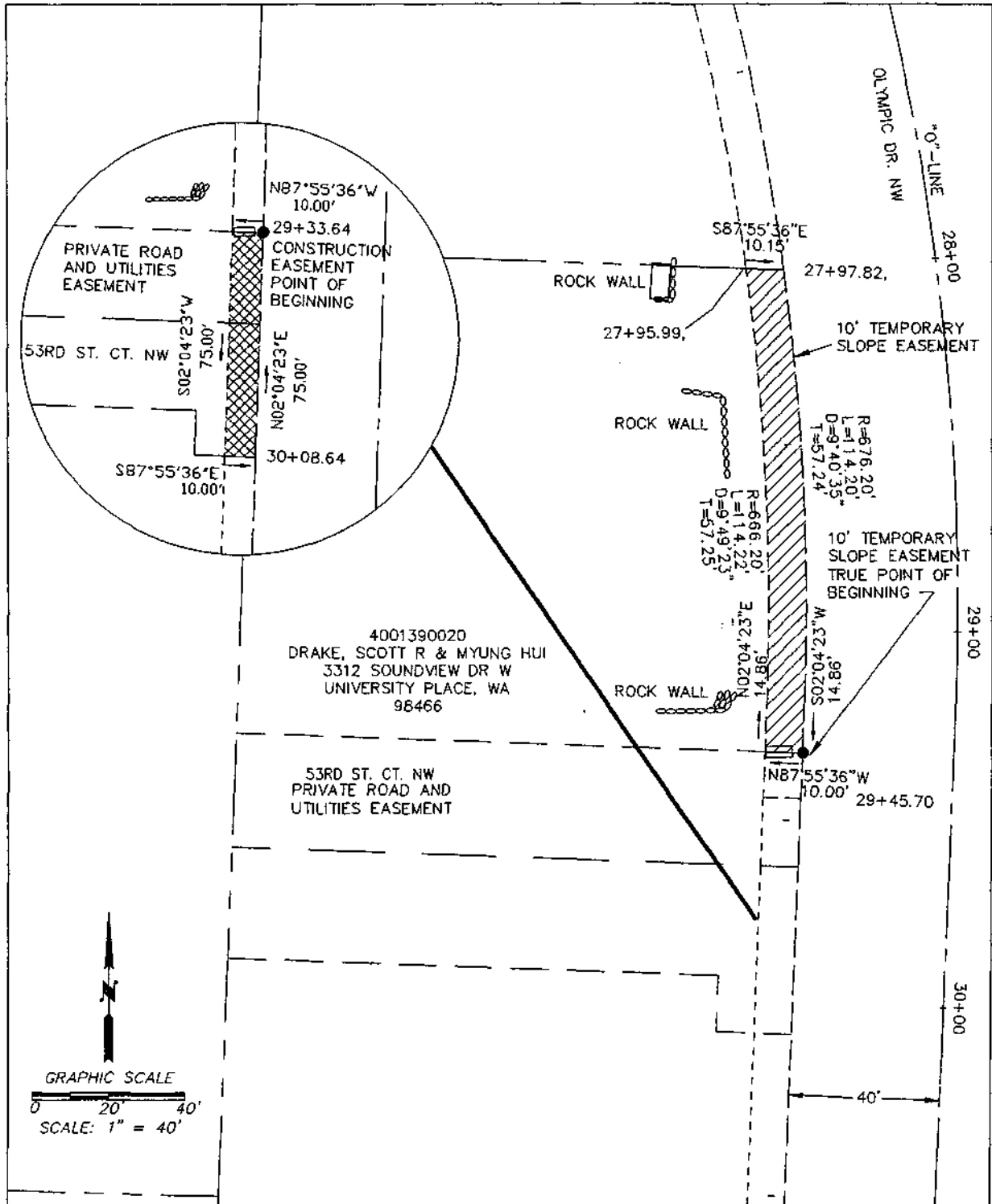
### **TEMPORARY SLOPE EASEMENT**

A PORTION OF PARCEL NO. 4001390020 AND DESIGNATED AS A 10' TEMPORARY SLOPE EASEMENT AND WHOSE SOUTHEAST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE "10' TEMPORARY SLOPE EASEMENT TRUE POINT OF BEGINNING", THENCE N87°55'36"W A DISTANCE OF 10.00', THENCE N02°04'23"E A DISTANCE OF 14.86', THENCE ALONG A CURVE WHOSE RADIUS IS 666.20' AND WHOSE LENGTH IS 114.22' AND WHOSE ANGLE IS 9°49'23" AND WHOSE TANGENT IS 57.25', THENCE S87°55'36"E A DISTANCE OF 10.15', THENCE ALONG A CURVE WHOSE RADIUS IS 676.20' AND WHOSE LENGTH IS 114.20' AND WHOSE ANGLE IS 9°40'35" AND WHOSE TANGENT IS 57.24', THENCE S02°04'23"W A DISTANCE OF 14.86' AND RETURNING TO THE "10' TEMPORARY SLOPE EASEMENT TRUE POINT OF BEGINNING".

**AND**

### **TEMPORARY CONSTRUCTION EASEMENT ON PRIVATE ROAD AND UTILITIES EASEMENT**

A PORTION OF A PRIVATE ROAD AND UTILITIES EASEMENT ALONG OLYMPIC DRIVE NW KNOWN AS 53<sup>RD</sup> ST. CT. NW AND ABUTTING PARCELS 4001390020 AND 4001390030 AND WHOSE POINT OF BEGINNING BEING "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 "29+33.64 CONSTRUCTION EASEMENT POINT OF BEGINNING".



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

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

Quality Ventures Limited Partnership

**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 4, Short Plat No. 200008215001

**Assessor's Property Tax Parcel or Account Number:** 0221177055

**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, a Washington municipal corporation, (hereinafter the "City"), and QUALITY VENTURES LIMITED PARTNERSHIP, a limited partnership, (hereinafter the "Owners"), whose mailing address is 1019 PACIFIC AVE STE 916 TACOMA WA 98402-4492.

**RECITALS**

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as the HARBOR MALL CINEMA, 5410 OLYMPIC DRIVE NW, GIG HARBOR, WA, (Tax Parcel Number 0221177055) 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"** ("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 to construct a modular block cut retaining wall 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 North ten (10) feet and corner radius of 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 the 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 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.

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:**

OWNERS

By: *[Handwritten Signature]*  
Its *Governing Partner*

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

CITY OF GIG HARBOR

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

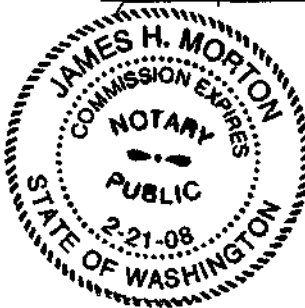
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
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 John C. Dinner 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 to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: 7/28/2005



James H. Morton  
(Signature)

James H. Morton  
NOTARY PUBLIC, State of Washington,  
residing at: Gig Harbor  
My appointment expires: 2/21/08

# **EXHIBIT A**

## **PROPERTY LEGAL DESCRIPTION**

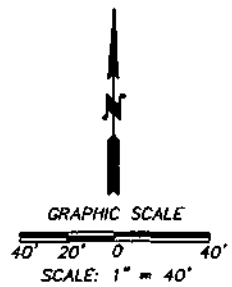
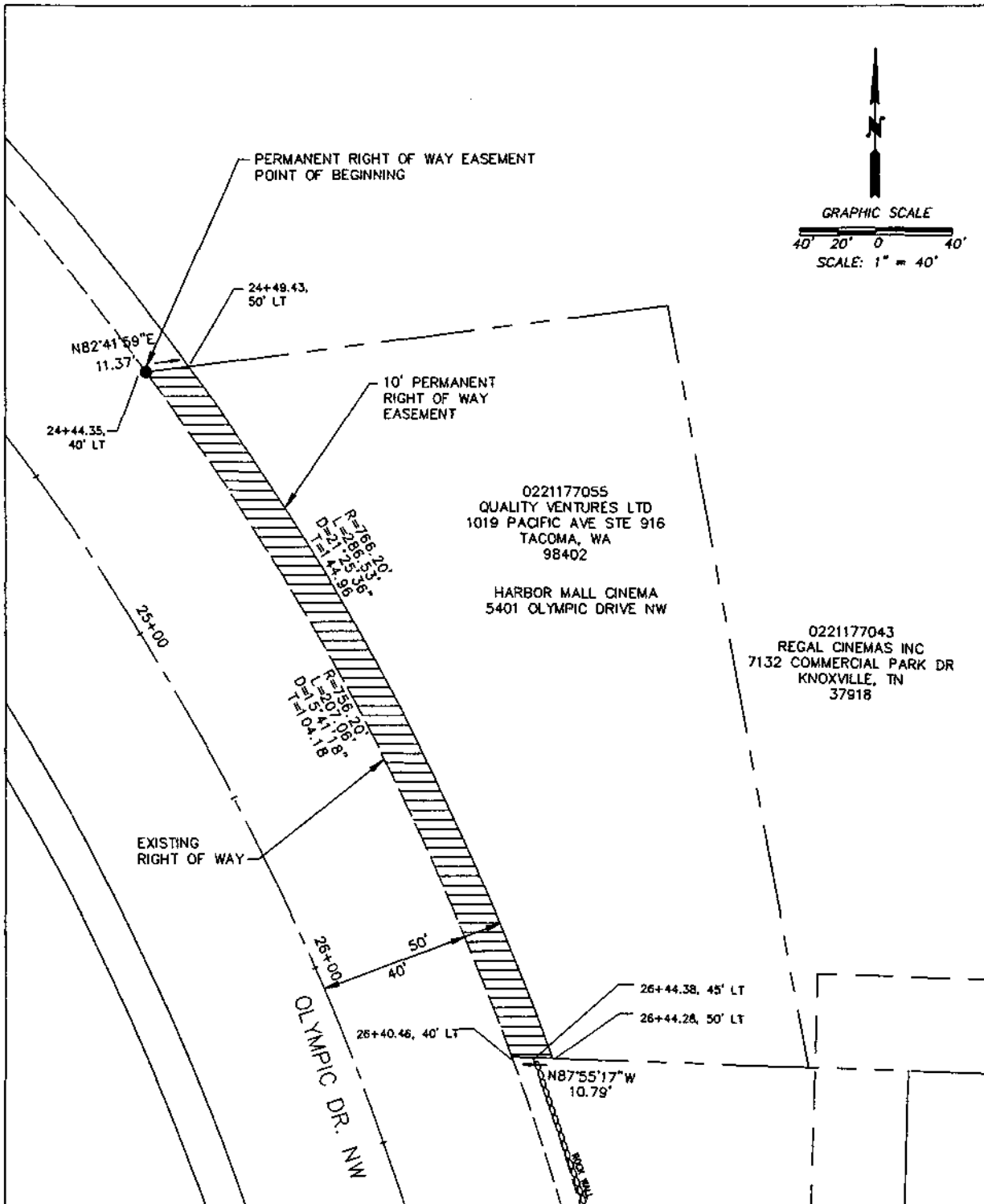
LOT 4, AS SHOWN ON SHORT PLAT NO. 200008215001, FILED WITH PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.



## EXHIBIT B

### PERMANENT RIGHT OF WAY EASEMENT DESCRIPTION

A PORTION OF PARCEL NO. 0221177055 THAT ABUTTS THE RIGHT OF WAY OF OLYMPIC DRIVE NW AND DESIGNATED AS "10' PERMANENT RIGHT OF WAY EASEMENT", WHOSE NORTHWEST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE "PERMANENT RIGHT OF WAY EASEMENT POINT OF BEGINNING", THENCE N82°41'59"E A DISTANCE OF 11.37', THENCE ALONG A CURVE WHOSE RADIUS IS 766.20' AND WHOSE LENGTH IS 286.53' AND WHOSE ANGLE IS 21°25'36" AND WHOSE TANGENT IS 144.96', THENCE N87°55'17"W A DISTANCE OF 10.79', THENCE ALONG A CURVE WHOSE RADIUS IS 756.20' AND WHOSE LENGTH IS 207.06' AND WHOSE ANGLE IS 15°41'18" AND WHOSE TANGENT IS 104.18' AND RETURNING TO THE "PERMANENT RIGHT OF WAY EASEMENT POINT OF BEGINNING".



0221177055  
 QUALITY VENTURES LTD  
 1019 PACIFIC AVE STE 916  
 TACOMA, WA  
 98402

HARBOR MALL CINEMA  
 5401 OLYMPIC DRIVE NW

0221177043  
 REGAL CINEMAS INC  
 7132 COMMERCIAL PARK DR  
 KNOXVILLE, TN  
 37918

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

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

THIS AGREEMENT is made this \_\_\_\_ day of August, 2005, by and between CITY OF GIG HARBOR, a Washington municipal corporation, (hereinafter the "City"), and 5125 OLYMPIC DR NW LLC, a Washington Limited Liability Company, (hereinafter the "Owner"), whose mailing address is c/o NWIP, 7457 S. Madison, Suite 102, Tacoma WA 98409.

**RECITALS**

WHEREAS, the Owner is a holder of a fee or substantial beneficial interest in the real property commonly known as RETAIL CENTER, 5125 OLYMPIC DR NW, GIG HARBOR, WASHINGTON (Tax Parcel Number 0221177049) which is legally described in **Exhibit A**, (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owner has 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 are 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 abutting 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 Owner will have access to the Roadway. In exchange for the Owner's dedication of the Temporary Slope and Construction Easements, the Owner 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 Owner 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 Owner hereby grants 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 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 easements described in **Exhibit B** and as depicted in a map attached hereto and incorporated herein as **Exhibit C** for the Temporary Slope and Construction Easements.

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 and construction improvements.

2. The Owner 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 Owner 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 Owner.

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:**

5125 OLYMPIC DR NW LLC

CITY OF GIG HARBOR

By:



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

Its Mayor

Attest:

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

City Clerk

Approved as to form:

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

City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

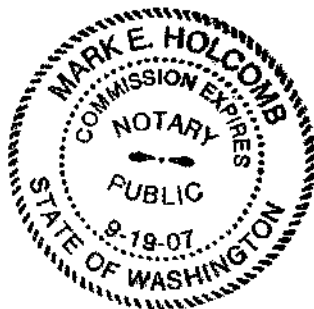
I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

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 Trishna Paulson is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument as the Managing Member of the 5125 OLYMPIC DR NW LLC and acknowledged it to be the free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED: August 12, 2005  
\_\_\_\_\_  
(Signature) [Signature]  
\_\_\_\_\_  
NOTARY PUBLIC, State of Washington  
residing at: Tacoma  
My appointment expires: 9/19/07



**EXHIBIT A**

**PROPERTY LEGAL DESCRIPTION**

LOT(S) 2, AS SHOWN ON SHORT PLAT 9809095002, FILED WITH PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.

## **EXHIBIT B**

### **TEMPORARY SLOPE EASEMENT**

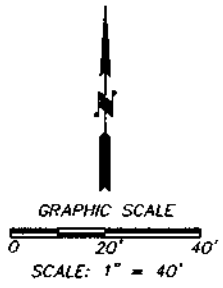
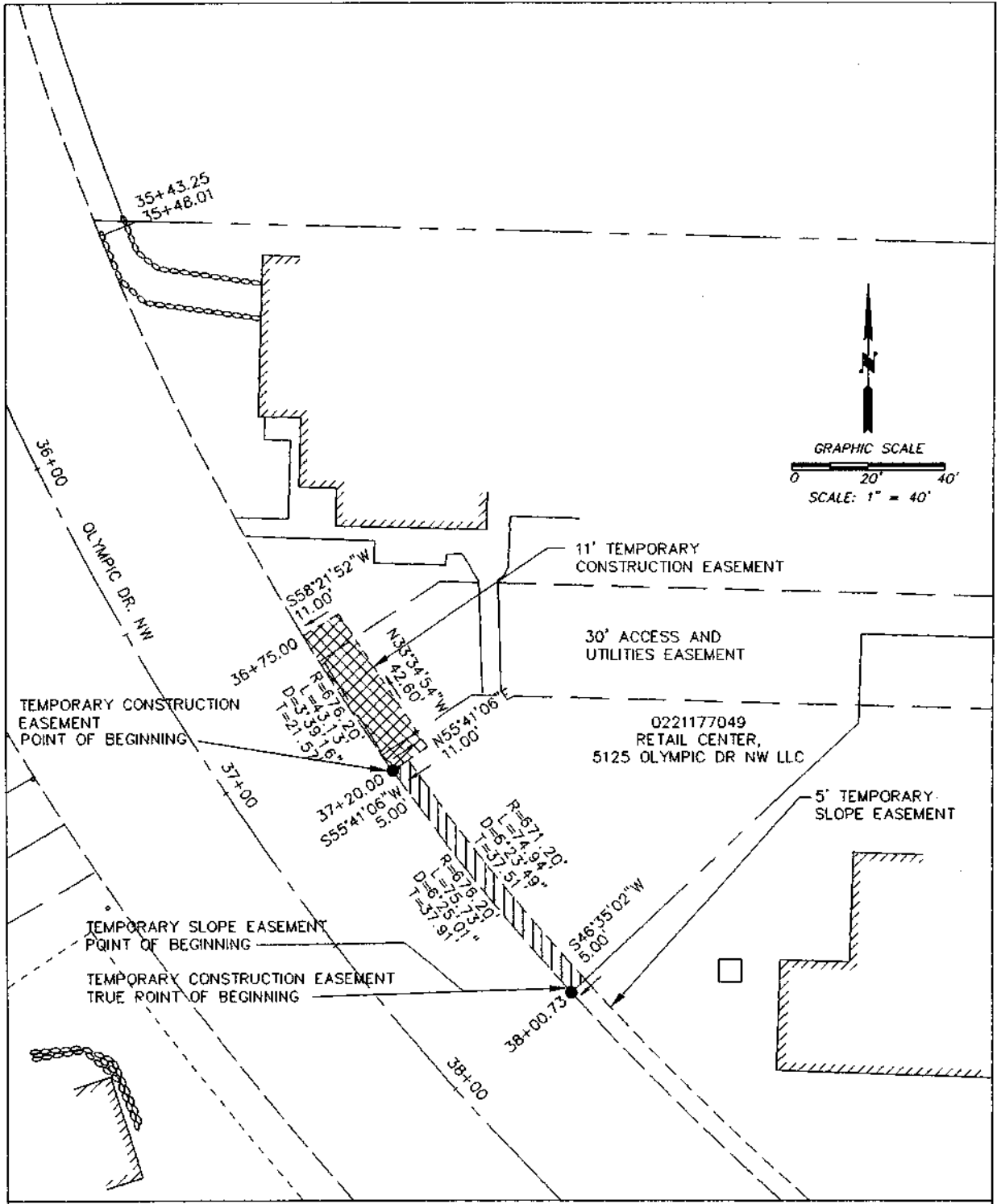
A PORTION OF PARCEL NO. 0221177049 AND DESIGNATED AS A "5' TEMPORARY SLOPE EASEMENT" AND WHOSE SOUTHWEST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE "TEMPORARY SLOPE EASEMENT POINT OF BEGINNING" AT STATION 38+00.73, THENCE ALONG A CURVE WHOSE RADIUS IS 676.20' AND WHOSE LENGTH IS 75.73' AND WHOSE ANGLE IS 6°25'01" AND WHOSE TANGENT IS 37.91', THENCE S55°41'06"W A DISTANCE OF 5.00', THENCE ALONG A CURVE WHOSE RADIUS IS 671.20' AND WHOSE LENGTH IS 74.94' AND WHOSE ANGLE IS 6°23'49" AND WHOSE TANGENT IS 37.51', THENCE S46°35'02"W A DISTANCE OF 5'00' AND RETURNING TO THE "TEMPORARY SLOPE EASEMENT POINT OF BEGINNING" AT STATION 38+00.73.

**AND**

### **TEMPORARY CONSTRUCTION EASEMENT**

A PORTION OF PARCEL NO. 0221177049 AND DESIGNATED AS A "11' TEMPORARY CONSTRUCTION EASEMENT" AND WHOSE SOUTHWEST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE "TEMPORARY CONSTRUCTION EASEMENT TRUE POINT OF BEGINNING" AT STATION 38+00.73, THENCE ALONG A CURVE WHOSE RADIUS IS 676.20' AND WHOSE LENGTH IS 75.73' AND WHOSE ANGLE IS 6°25'01" AND WHOSE TANGENT IS 37.91' TO A POINT DESIGNATED AS THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING" AT STATION 37+20.00, THENCE N55°41'06"E A DISTANCE OF 11.00', THENCE N33°34'54"W A DISTANCE OF 42.60', THENCE S58°21'52"W A DISTANCE OF 11.00', THENCE ALONG A CURVE WHOSE RADIUS IS 676.20' AND WHOSE LENGTH IS 43.13' AND WHOSE ANGLE IS 3°39'16" AND WHOSE TANGENT IS 21.57' AND RETURNING TO THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING" AT STATION 37+20.00.





56TH ST. NW AND OLYMPIC DR. NW ROADWAY IMPORVEMENT PROJECT  
TEMPORARY SLOPE AND CONSTRUCTION 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(s) (or transactions contained therein):**

Agreement for Dedication of Permanent Right-of-Way Easement

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

Charles R. Hogan

**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)**

Southeast Quarter of the Southwest Quarter of Section 17, Township 21 N., Range 2 E. of W. M.

**Assessor's Property Tax Parcel or Account Number:** 0221177033

**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, CHARLES R. HOGAN, A MARRIED MAN, AS HIS SEPARATE ESTATE, (hereinafter the "Owners"), whose mailing address is 5312 Pacific Highway East, Fife, WA 98424..

**RECITALS**

WHEREAS, the Owner is a holder of a fee or substantial beneficial interest in the real property commonly known as the HARBOR PLAZA QFC, 5010 – 30<sup>TH</sup> AVENUE NW, GIG HARBOR, WA (Tax Parcel Number 0221177033) which is legally described in **Exhibit "A"**, (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owner has 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 Owner's dedication of the Right-of-Way, the Owner 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 Owner agrees as follows:

**TERMS**

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

A. Grant of Permanent Right of Way Easement. The Owner hereby conveys and grants to the City, its successors and assigns, a permanent, nonexclusive right-of-way easement over, in, along, across, under and upon the Owner's property for the purpose of a sidewalk 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 Owner's 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 Owner 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 subject to existing Easements as shown on the title report. The Owner 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.

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.

CHARLES R. HOGAN



**ACCEPTANCE:**

CITY OF GIG HARBOR

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

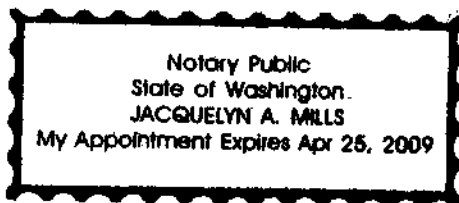
residing at: \_\_\_\_\_

My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Charles R. Hogan is the person who appeared before me, and said person acknowledged that he is authorized to execute the instrument and acknowledged it to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: August 15, 2005



Jacquelyn A. Mills  
(Signature)

\_\_\_\_\_  
Jacquelyn A. Mills

NOTARY PUBLIC, State of Washington,

residing at: Lacey

My appointment expires: April 25, 2009

## EXHIBIT A

### PROPERTY LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 17; THENCE NORTH 89°29'17" WEST ALONG THE SOUTH LINE OF SAID SECTION 17 A DISTANCE OF 729.72 FEET; THENCE NORTH 02°05'50" EAST PARALLEL WITH THE CENTER LINE OF POINT FOSDICK ROAD 237.36 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE CONTINUING NORTH 02°05'50" EAST A DISTANCE OF 662.31 FEET TO THE SOUTHERLY MARGIN OF OLYMPIC DRIVE NORTHWEST; THENCE EASTERLY ALONG SAID MARGIN 337.65 FEET ALONG A NON-TANGENTIAL CONCAVE CURVE TO THE NORTH HAVING A RADIUS OF 756.20 FEET AND A CENTRAL ANGLE OF 25°35'11", THE CORD OF SAID CURVE BEARS SOUTH 75°59'47" EAST; THENCE SOUTH 88°47'17" EAST A DISTANCE OF 206.98 FEET; THENCE LEAVING SAID MARGIN SOUTH 02°05'50" WEST A DISTANCE OF 187.02 FEET; THENCE NORTH 88°47'17" WEST A DISTANCE OF 44.29 FEET; THENCE SOUTH 02°04'18" WEST A DISTANCE OF 347.55 FEET; THENCE NORTH 87°49'47" WEST A DISTANCE OF 209 FEET; THENCE SOUTH 02°04'18" WEST A DISTANCE OF 61.49 FEET; THENCE NORTH 87°53'30" WEST A DISTANCE OF 281.50 FEET TO THE POINT OF BEGINNING.

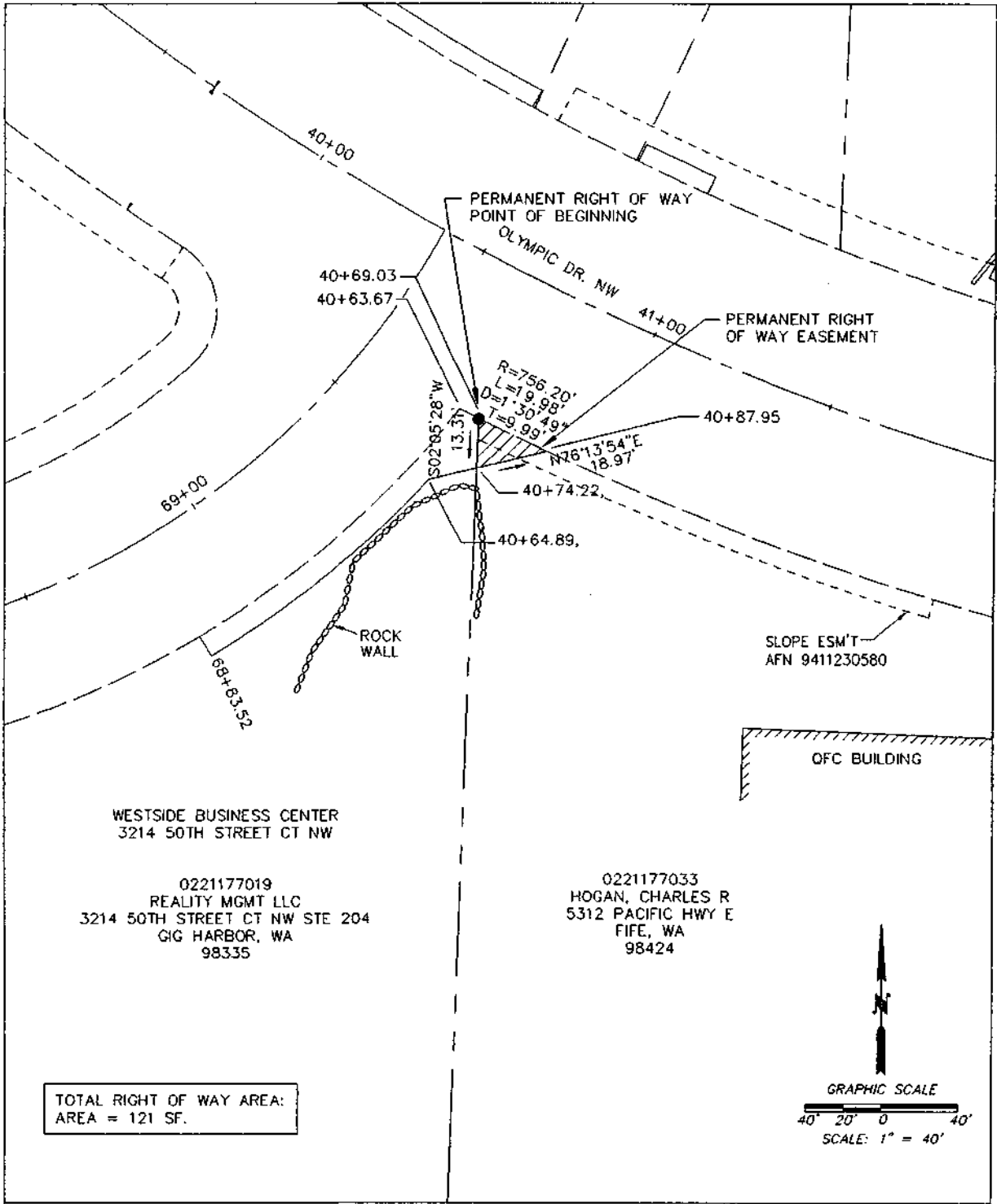
BEING A PORTION OF SHORT PLAT NOS. 79-177 AND AMENDMENT THEREOF RECORDED UNDER SHORT PLAT NO. 8702250573 AND ALSO BEING BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S NO. 86611200437 WHICH IS AN AMENDMENT OF AUDITOR'S NOS. 8610280231 AND 8509240475.

## **EXHIBIT B**

### **PERMANENT RIGHT OF WAY EASEMENT DESCRIPTION**

A PORTION OF PARCEL NO. 0221177033 THAT ABUTTS THE RIGHT OF WAY OF OLYMPIC DRIVE NW AND 50<sup>th</sup> STREET COURT NW AND IS DESCRIBED AS A "PERMANENT RIGHT OF WAY EASEMENT", AND WHOSE NORTHWEST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE "PERMANENT RIGHT OF WAY POINT OF BEGINNING" AT STATION 40+69.03, THENCE S02°05'28"W A DISTANCE OF 13.31', THENCE N76°13'54"E A DISTANCE OF 18.97', THENCE ALONG A CURVE WHOSE RADIUS IS 756.20' AND WHOSE LENGTH IS 19.98' AND WHOSE ANGLE IS 1°30'49" AND WHOSE TANGENT IS 9.99' AND RETURNING TO THE "PERMANENT RIGHT OF WAY POINT OF BEGINNING" AT STATION 40+69.03.





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



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: RENEE CRIST, CHAIR, GIG HARBOR ARTS COMMISSION**  
**SUBJECT: PUBLIC ART CONTRACT AUTHORIZATION – ROTARY PAVILION**  
**AT SKANSIE BROTHERS PARK**  
**DATE: AUGUST 22, 2005**

**INFORMATION/BACKGROUND**

The Gig Harbor Arts Commission (GHAC) advertised for a request for proposals (RFP) for a permanent art installation at the Rotary Pavilion located at the Skansie Brothers Park. The Pavilion is comprised of a 31-ft. x 30-ft. covered structure to be used for year-round outdoor events and public use. The base of the structure is a cement slab. In the center of the slab, a 6-ft diameter circle has been reserved for public art and has been filled with a gravel/sand mixture until the artwork has been chosen and placed. As identified in the RFP, preference would be given to artwork that provided a visual reference to the history of Skansie Brothers Park, made with weather-resistant materials of a non-slick finish and designed in a manner than provides for unobstructed foot-traffic.

The first "call for public art" had a budget of \$2,000.00. It was published in December 2004 in the Peninsula Gateway, posted on the city's website and sent to those artists in the GHAC's database which included those artists that participated in the "call for public art" for the Civic Center. Only three artists responded. The GHAC voted to readvertise and raise the budget to \$5,000.00 in hopes of generating more interest for this project. A second RFP was advertised on March 16, 2005, which generated six proposals. After individually scoring the proposals, the Commission members discussed ranking and design considerations according to the criteria set forth in the RFP guidelines and requirements.

The artwork of local artist Mardie Rees was selected due to her knowledge and unique design of the project. She presented a drawing of a low relief sculpture with a historical reference to both the commercial fishing industry and Andrew Skansie, whose house still stands on the property. As Ms. Rees identified in her proposal, the material will be cast into Portland cement and sealed with a non-slick finish that will protect the piece from stains and wear. The piece will be sculpted very low (similar to what you see on a coin) in order to handle foot-traffic. The piece will face the viewer when entering from the Harborview Drive side. Ms. Rees pointed out that this will enable the viewer to look from the relief and out to the waterfront, once again serving as a reminder of what once passed through the waters of Gig Harbor in the early 1900's.

Exhibit A of the contract is a sketch of what the art piece will look like, however the name "Andrew Skansie Est Circa 1910" will be changed to "Skansie Brothers." The Arts Commission consulted the Fishermen's Club and asked the members what would be the most appropriate name for this piece. The Club discussed this at one of their

regular meetings and recommended that Skansie Brothers would be regarded as most appropriate.

The installation will be completed in full on or before April 15, 2006.

The City Attorney has reviewed and approved this contract.

**FISCAL CONSIDERATION:** This project was anticipated in the adopted 2005 Budget and identified under the Public Art Capital Projects Fund and is within the allocated amount of \$30,000.

**RECOMMENDATION:**

The Arts Commission recommends that Council authorize the execution of the Artist Services Contract with Mardie Rees in the total amount not to exceed Five Thousand Dollars (\$5,000.00).



**ARTIST SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
MARDIE REES**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Mardie Rees, a sole proprietor, organized under the laws of the State of Washington, located and doing business at 515 North 2<sup>nd</sup> Street, #209, Tacoma, Washington, 98403 (hereinafter the "Artist").

**RECITALS**

WHEREAS, the City Desires that the Artist perform services necessary to create and place a piece of artwork in the new Rotary Pavilion at the Skansie Brothers Park; and

WHEREAS, the Artist agrees to perform the services more specifically described in the Scope of Services which is attached hereto as Exhibit A, and to provide the City with a piece of artwork as described therein; and

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

**Section 1. Retention of Artist**

The City hereby retains the Artist to perform the work and services herein described, and the Artist agrees to provide a piece of artwork to the City, as described in Exhibits A and B. Exhibit A is a drawing and description of the proposed artwork to be provided to the City by the Artist under this Agreement. Exhibit B shall set forth the details relating to the payment schedule.

**Section 2. Scope of Work**

A. The Artist shall provide the City with the Artwork by performing all services and work on or before the deadlines established in this Agreement, for the design, fabrication, transportation and installation of the Artwork for the Rotary Pavilion site.

B. The Artist shall determine the artistic expression, scope, design, size, material, texture, color and location of the artwork within the guidelines set forth by the Gig Harbor Arts Commission, approved by the City and as described in Exhibit A.

C. A drawing and description of the proposed artwork is attached to this Agreement as Exhibit A.

D. The City may request revisions to the artwork for practical (non-aesthetic reasons) beyond the scope of the proposal. The City recognizes that additional fees may be charged for additional services provided by the Artist that are not included herein (or in any of the Exhibits).

### **Section 3. Execution of Work**

A. The Artist shall install the Artwork at the specific location designated by the City in Exhibit A.

B. The Artist shall complete the fabrication and installation of the Artwork in substantial conformity with Exhibit A.

C. The Artist reserves the right to make minor changes to the Artwork as deemed aesthetically and structurally necessary. The Artist shall present any significant changes, such as (1) changes in scope, design, color, size, material or texture of the artwork; (2) change of location on the site; or (3) changes in preparation or maintenance of the artwork, to the City for review and approval. Any revisions submitted by the Artist and approved in writing by the City, shall be incorporated in this Agreement.

D. Any revisions proposed by the City or decisions rendered by the City affecting the site or Artwork shall be promptly submitted to the Artist for review.

E. The Artist shall install the completed Artwork in the Rotary Pavilion located at the Skansie Brothers Park located on Harborview Drive, Gig Harbor, Washington.

### **Section 4. Time Schedule**

A. The Artist shall commence work on the Artwork on the date of execution of this Agreement by both parties, and shall complete the Artwork, including all phases on or before April 15, 2006.

B. It shall be the responsibility of the Artist to contact the City during all phases of the work and make any necessary arrangements pertaining to this Agreement, such as transportation, etc.

C. In the event that the Artist is completed in advance of the time provided in the schedule for installation, the Artist shall notify the City and request permission for early installation. The City may or may not agree to early installation, depending upon park activities or other City activities. If the City does not allow early installation, the Artist shall bear all costs relating to storage, transportation to any storage site, and insurance for the Artwork until installation.

D. In the event that the City requests that the Artist delay installation of the Artwork, the City shall pay any additional costs incurred by the Artist relating to storage, transportation and insurance.

### **Section 5. Review of Work in Progress**

The City or its representatives shall have the right, at reasonable times, to view the Artwork during the fabrication and installation. The Artist shall submit written progress reports (if requested by the City) to the City, so that the City can determine the completion of the phases of the Artwork, as set out in Section 7, Payment.

#### **Section 6. Delivery and Installation**

A. The Artist shall notify the City when fabrication of the Artwork is completed and is ready for delivery and installation by the Artist to the Rotary Pavilion site.

B. The Artist shall deliver and install the completed Artwork at the Rotary Pavilion site on or before April 15, 2006.

#### **Section 7. Payment**

A. The City shall pay the Artist Five Thousand Dollars (\$5,000.00) for completed work and/or services related to this Agreement and the Artwork, only as provided hereunder. Such payment shall be full compensation for the Artwork, including all work and services described in this Agreement, and any Exhibits attached hereto. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. This amount includes all applicable sales/use tax, and all other costs contemplated in this Agreement, such as transportation, insurance, etc.

B. The City shall make progress payments to the Artist, after verification of completion of each of the phases of the work, as set forth in Exhibit B. In order to receive payment, the Artist shall notify the City of the completion of a particular phase through the submission of an invoice. The City shall determine whether a particular phase is complete, and if it is complete, the City shall pay the invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Artist of the same within fifteen (15) days for 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.

C. Final payment will be made after the City determines that the Artwork is complete, and following a 30-day lien period, which shall begin on the date of substantial completion of installation of the entire Artwork in the designated location. In order to obtain final payment, the Artist shall provide the City with the Artist's resume, an artist specification sheet, a technical description of the Artwork, and the Artist's maintenance recommendations for the Artwork, together with any other documents required under chapter 60.28 RCW.

D. The Artist shall be responsible to pay all fees, materials, supplies, equipment, labor of assistants, communications between the Artist and the City, studio space, travel, sustenance, transportation, storage, rentals and installation necessary to fulfill the requirements of this Agreement.

#### **Section 8. Warranty as Original, Prohibitions on Copies of Artwork**

The Artist acknowledges that the City has commissioned the Artwork for the purpose of installing an original piece of art in the Rotary Pavilion located at Skansie Brothers Park. The

Artist warrants that the Artwork is solely the result of the artistic effort of the Artist, is unique and original, has not been accepted for sale elsewhere, is free and clear of any liens from any source, and does not infringe upon any copyright. The Artist reserves the rights to remain the owner of drawings, molds, clay maquettes, and models of the sculpture. The Artist gives permission to the City of Gig Harbor to reproduce photographs of the sculpture for brochures, newsletters or other media as produced and distributed by the City. The Artist reserves all rights under copyright laws to the sculpture.

The Artist shall retain copyright, but shall make no exact duplications to full scale of the Artwork.

### **Section 9. 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 or profession that encompasses the specific service or artwork provided to the City hereunder, no agent, employee, representative or sub-consultant of the Artist 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 Artist 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 Artist. The Artist 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 Artist performs hereunder.

### **Section 10. Assignment, Transfer, Subcontracting**

A. Neither the City nor the Artist shall assign or transfer an interest in this Agreement without the prior written consent of the other party.

B. The Artist may subcontract portions of the Artwork at the Artist's expense, provided that said subcontracting shall not affect the design, appearance or visual quality of the Artwork and that such work is carried out under the personal supervision of the Artist.

### **Section 11. Termination**

A. Termination of Agreement. The City may terminate this Agreement with or without cause at any time prior to completion of the work described herein. Termination shall be effective immediately upon the Artist's receipt of the City's written notice or such date stated in the City's notice, whichever is later. Such notice may be delivered to the Artist in person or by certified mail.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Artist 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 7 above. After termination, the City may take possession of the Artwork and all supplies and

materials in the Artist's possession which were paid for by the City pursuant to this Agreement. Upon termination, the City may hire another Artist to take over the work and prosecute the same to completion, by contract or otherwise.

#### **Section 12. Discrimination**

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Artist, its sub-contractors, or any person acting on behalf of such Artist 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.

#### **Section 13. Indemnification**

The Artist shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, 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 Artist's work when completed shall not be grounds to avoid any of these covenants of indemnification. In addition, the Artist shall indemnify and defend the City in any suit or claims for infringements of copyrights and patents rights, and shall hold the City harmless from loss on account thereof.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE ARTIST'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 ARTIST'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE ARTIST'S EMPLOYEES DIRECTLY AGAINST THE ARTIST.

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

#### **Section 14. Artist's Warranties**

The Artist warrants that the installed Artwork shall be depicted in Exhibit A herein, and that the Artwork will be free from defects or other faults in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Artwork. The Artist further warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance recommendations provided by the Artist to the City.

If either party recognizes faults or defects in the Artwork, it shall be brought to the immediate attention of the Artist. The Artist shall be responsible to correct any defects or faults in the Artwork that are brought to the Artist's attention within the warranty period of one (1) year after the date of installation at the Rotary Pavilion site and final payment. This warranty shall apply only to the Artwork or the portion of the Artwork completed and installed by the Artist.



If any defects or faults appear during the warranty period, the Artist shall repair or replace the defect(s) at the Artist's sole cost and expense. The Artist shall not be responsible for any damage to the Artwork which is caused by the City, third parties or acts of God.

### **Section 15. Ownership of the Artwork**

All ownership, rights, title and interest in the Artwork shall pass to the City upon the City's final payment to the Artist, or upon termination, as set forth herein.

### **Section 16. Repairs and Maintenance**

A. The City recognizes that regular maintenance of the Artwork is essential to the integrity of the Artwork. The City shall reasonably assure that the Artwork is properly maintained and protected, taking into account the written instructions and recommendations of the Artist, and shall reasonably protect and maintain the Artwork against deterioration with time and abuse of vandals.

B. The City shall be responsible for making all necessary repairs or restoration of the Artwork, except as provided under the Artist's Warranty herein. However, the City's responsibility for repairs and restoration of the Artwork is, by law, contingent upon receipt of adequate appropriations for this purpose.

C. Where possible, the Artist shall be consulted as to his/her recommendations regarding repairs and restorations of the Artwork, during the lifetime of the Artist. To the extent practical and in accordance with accepted principles of conservation, the Artist may be given the opportunity to accomplish repairs and restorations and shall be paid a reasonable fee for such services, if utilized.

### **Section 17. Insurance**

A. The Artist 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 Artist's own work including the work of the Artist's agents, representatives, employees, sub-consultants or sub-contractors, and including damage to the Artwork until the date the City accepts (in writing) the installed Artwork in the Rotary Pavilion. The responsibility for and risk of damage to or loss of the Artwork during fabrication, transportation, and installation up to the date of the City's written acceptance shall be solely that of the Artist.

B. Before beginning work on the Artwork described in this Agreement, the Artist shall provide evidence, in the form of a Certificate of Insurance, of insurance coverage to satisfy the requirements of this Agreement.

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

D. The City reserves the right to receive a certified and complete copy of all of the Artist's insurance policies.

E. It is the intent of this Agreement for the Artist's insurance to 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 in respect to the City.

F. The Artist shall request from his/her 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 Artist's coverage.

#### **Section 18. City's Right of Inspection**

Even though the Artist 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 Artist 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 Artist's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

#### **Section 19. Work Performed at the Artist's Risk**

The Artist 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 Artist's own risk, and the Artist shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Artist for use in connection with the work.

#### **Section 20. 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.

#### **Section 21. 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's Community Development Director and the City shall determine the term or provision's true intent or meaning. The Community Development Director shall also decide all questions that 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 Artist under any of the provisions of this Agreement which cannot be resolved by the Community Development Director's determination in a reasonable time, or if the Artist 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.

#### **Section 22. 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 stated below:

##### **ARTIST**

Mardie Rees  
515 North 2<sup>nd</sup> Street, #209  
Tacoma, Washington 98403  
(253) 405-6694  
Mardie@MardieRees.com

##### **CITY OF GIG HARBOR**

John P. Vodopich, AICP  
Community Development Director  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170  
[vodopichj@cityofgigharbor.net](mailto:vodopichj@cityofgigharbor.net)

#### **Section 23. 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 Artist.

#### **Section 24. 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.

#### **Section 25. Severability**

If any provision of this Agreement or any provision of the Exhibits to this Agreement are found by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions of this Agreement which can be given effect without the invalid or unconstitutional provision. To this end, the provisions of this Agreement are declared to be severable.

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

By: Mardie Rees  
It's Principal

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

Notices to be sent to:

**ARTIST**  
Mardie Rees  
515 North 2<sup>nd</sup> Street, #209  
Tacoma, Washington 98403  
(253) 405-6694  
Mardie@MardieRees.com

**CITY OF GIG HARBOR**  
John P. Vodopich, AICP  
Community Development Director  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170  
[vodopichj@cityofgigharbor.net](mailto:vodopichj@cityofgigharbor.net)

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: \_\_\_\_\_

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

\_\_\_\_\_  
NOTARY PUBLIC, State of Washington,

residing at: \_\_\_\_\_

My appointment expires: \_\_\_\_\_



Exhibit A



Exhibit A



Mardie Rees  
515 North 2<sup>nd</sup> St #209  
Tacoma WA, 98403  
Mardie@MardieRees.com  
[www.MardieRees.com](http://www.MardieRees.com)  
253.405.6694

April 16, 2005

City of Gig Harbor  
Maureen Whitaker  
3510 Grandview St  
Gig Harbor, WA 98335

Dear City of Gig Harbor Committee,

Upon your request for artists under the new budget of \$5,000, I present a drawing of the piece with historical reference to both Andrew Skansie and commercial fishing. The sketch has been slightly re-worked from the drawing concept I had previously submitted. Adjustments will be made in the final execution to secure a more successful piece.

The budget proposal I have included reflects the true costs of the sculpture; however, if I am selected for the project I am willing to do the piece in Portland Cement at cost to the city of \$5,000. Given the cost does not cover all of my expenses, I have found outside funding to cover my remaining costs.

Thank you for your consideration.

Sincerely,

Mardie Rees





Exhibit **B**

Mardie Rees  
515 North 2<sup>nd</sup> St #209  
Tacoma WA, 98403  
Mardie@MardieRees.com  
[www.MardieRees.com](http://www.MardieRees.com)  
253.405.6694

February 14, 2005

City of Gig Harbor  
Maureen Whitaker  
3510 Grandview St  
Gig Harbor, WA 98335

Dear City of Gig Harbor Committee,

I propose a low relief sculpture for the Rotary Pavilion located at Skansie Brothers Park. I have presented a drawing of the sculpture with historical reference to both the commercial fishing industry and Andrew Skansie, himself, whose house still stands on the property. In the drawing I present Andrew Skansie's purseiner, *The Aeroplane*, which was built in 1912. The hull was built by Martinolich in Quarter Master Harbor. It was then brought to the beachfront on Andrew Skansie's property, and he finished the rest of the boat himself. In the piece we see Andrew Skansie manually hauling the cork line onto the turntable. Behind him lay the impressive mass of nets that were the results of his labor. The background includes the natural shoreline of the Puget Sound. The front of the boat faces away from us representing not just the waters ahead but also his prosperous future as a fisherman and founder of the city of Gig Harbor. At the bottom are the words: *Andrew Skansie Est. Circa 1910*; written to remind the viewer of the roots of Gig Harbor and the Skansie name that brought about the future in commercial fishing and boat building.

The material will be cast into neutral green Portland cement and sealed with a non-slick finish that will protect the piece from stains and wear. The piece will be sculpted very low (similar to what you see on a coin) in order to handle foot-traffic. The piece will face the viewer when entering from the Harborview Dr. side. This will enable the viewer to look from the relief and out to the waterfront, once again serving as a reminder of what once passed through the waters of Gig Harbor in the early 1900s.

Thank you for your consideration in selecting an artist for this project.

Sincerely,

Mardie Rees

Exhibit B



Mardie Rees  
515 North 2<sup>nd</sup> St. #209  
Tacoma, WA 98403  
Mardie@MardieRees.com  
[www.MardieRees.com](http://www.MardieRees.com)  
253.405.6694

**TIMELINE for Skansie Brothers Park Sculpture**  
To be cast in Portland Cement

*Sculpture will be completed in 9 months*

Aug-Sept - 05	Finalize Composition
Sept-Dec - 05	Sculpt
Jan - 06	Finish Sculpture
Feb - 06	Mold
March - 06	Cast/Install
April 15th - 06	Installation

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 8/03/05

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR  
(BY ZIP CODE) FOR EXPIRATION DATE OF 20051130

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 ISEMAN, INC.	HY-IU-HEE-HEE 4309 BURNHAM DR GIG HARBOR WA 98335 0000	367497	SPIRITS/BR/WN REST LOUNGE -
2 M&J FUEL, L.L.C.	OLYMPIC VILLAGE 76 5555 SOUNDVIEW DR NW GIG HARBOR WA 98335 0000	071544	GROCERY STORE - BEER/WINE

RECEIVED  
AUG 5 2005  
EX:



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: ROB WHITE, PLANNING MANAGER *RW***  
**SUBJECT: SECOND READING OF AN ORDINANCE - SHORELINE MASTER PROGRAM PRECEDENCE (ZONE 05-796)**  
**DATE: AUGUST 22, 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 August 8, 2005 City Council meeting, Council approved proposed modifications to the Shoreline Master Program, (to increase the damage threshold from 75 percent to 100 percent), and directed staff to submit them to the Washington State Department of Ecology for their review. The attached Ordinance works in tandem with that Ordinance to specify that nonconforming structures within the shoreline areas of Gig Harbor will be regulated by the Shoreline Master Program and not the Zoning Code.

**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 at this 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.**

---

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 August 8, 2005;

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 \_\_\_\_ 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:

**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: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: PUBLIC HEARING - RESOLUTION ACCEPTING THE WRIGHT**  
**ANNEXATION PETITION (ANX 04-02)**  
**DATE: AUGUST 22, 2005**

**INFORMATION/BACKGROUND**

The City has received a complete Notice of Intention to Commence Annexation Proceedings from James Wright for a proposal to annex approximately 8.62 acres of property located northwest of the intersection of Hunt Street NW and 46<sup>th</sup> Avenue NW (Skansie Avenue) adjacent to the existing City limits. The City Council approved the applicant's request on February 28, 2005 to revise the annexation boundaries to encompass this one parcel. At the June 27, 2005 meeting, the City Council accepted the notice of intention and authorized the circulation of an annexation petition.

The City received a petition for annexation on June 28, 2005, which was subsequently certified by the Pierce County Office of the Assessor-Treasurer on August 1, 2005 as being legally sufficient.

Acceptance of the annexation petition and referral to the Pierce County Boundary Review Board for consideration must be done by resolution.

Notice of this public hearing was posted in three conspicuous places within the area proposed for annexation on August 5, 2005; was mailed to all property owners of record both within the annexation area and within three hundred feet (300') of the area proposed for annexation on August 4, 2005; and published in the Peninsula Gateway on August 10, 2005.

**POLICY CONSIDERATIONS**

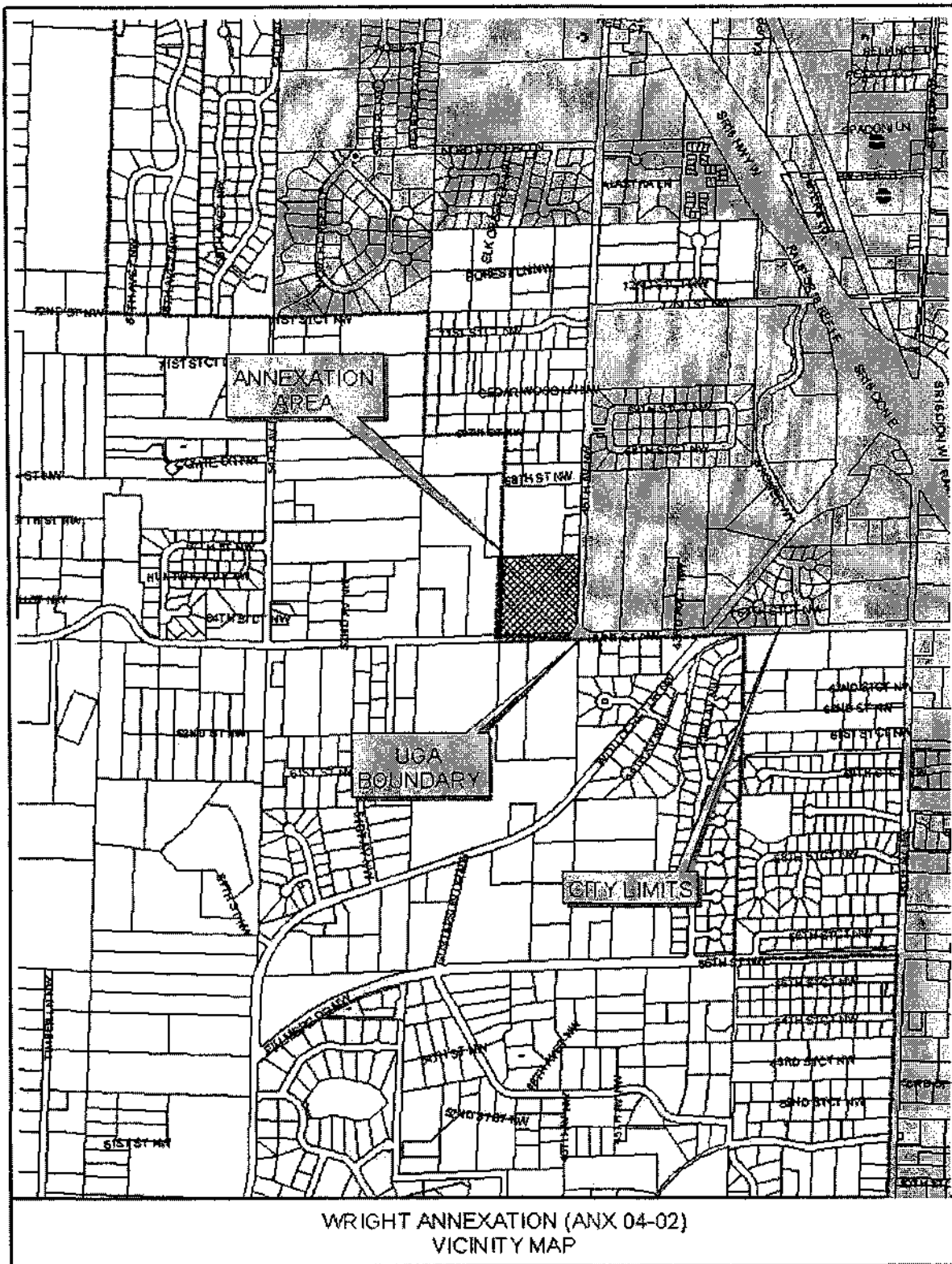
None.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

I recommend that the Council approve the resolution accepting the annexation petition for the Wright Annexation (ANX 04-02) and further refer it to the Pierce County Boundary Review Board for consideration.



**CITY OF GIG HARBOR  
RESOLUTION NO.**

**A RESOLUTION OF THE CITY OF GIG HARBOR, RELATING TO ANNEXATION AND ZONING, PROVIDING THE CITY COUNCIL'S CONDITIONAL ACCEPTANCE OF THE ANNEXATION PETITION FOR APPROXIMATELY 8.62 ACRES OF PROPERTY LOCATED NORTHWEST OF THE INTERSECTION OF HUNT STREET NW AND 46<sup>th</sup> AVENUE NW (SKANSIE AVENUE) (ANX 04-02), LOCATED IN PIERCE COUNTY, DECLARING THE CITY COUNCIL'S INTENT TO ADOPT PROPOSED ZONING REGULATIONS FOR THE ANNEXATION AREA AND REFERRING THE PETITION FOR ANNEXATION TO THE BOUNDARY REVIEW BOARD.**

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WHEREAS, on March 17, 2004, the City of Gig Harbor received a Notice of Intent to Annex approximately 8.62 acres of property located northwest of the intersection of Hunt Street NW and 46<sup>th</sup> Avenue NW (Skansie Avenue), adjacent to the existing City limits and within the City's Urban Growth Area (UGA), located in Pierce County; and

WHEREAS, the Notice of Intent was signed by the owners of not less than ten percent (10%) of the acreage of the property; and

WHEREAS, on June 27, 2005, the City Council met with the initiators of the petition voted to authorize circulation of the annexation petition subject to certain conditions including adoption of pre-annexation Single-Family Residential (R-1) zoning; submission of a wetland analysis report with the petition for annexation pursuant to GHMC Section 18.08.090; and requiring that the property owners assume all of the existing indebtedness of the area being annexed; and

WHEREAS, on June 28, 2005, a petition for annexation of the property described in Exhibit A and graphically depicted on Exhibit B was received by the City; and

WHEREAS, on August 1, 2005, the Pierce County office of the Assessor-Treasurer certified the signatures on the petition for annexation of the property described in Exhibit A and graphically depicted on Exhibit B; and

WHEREAS, the property described in Exhibit A and graphically depicted on Exhibit B and proposed to be annexed is within the Urban Growth Area as established by Pierce County and included in the Comprehensive Plans of both the County and the City of Gig Harbor; and

WHEREAS, the City of Gig Harbor Comprehensive Plan, adopted in December, 2004, established the land use map designation for this area as Residential Low, along with pertinent goals and objectives, to guide the development of the annexation area over the next twenty years; and

WHEREAS, the proposed pre-annexation zoning of Single-Family Residential (R-1) being applied to the property described in Exhibit A and graphically depicted on Exhibit B is consistent with the City of Gig Harbor Comprehensive Land Use Plan designation of Residential Low; and

WHEREAS, on June 27, 2005, the Gig Harbor Council provided its intent to annex approximately 8.62 acres of property located northwest of the intersection of Hunt Street NW and 46<sup>th</sup> Avenue NW (Skansie Avenue), located in Pierce County, contingent upon the following conditions:

- A. Assumption by the property owners of their proportionate share of the City of Gig Harbor's indebtedness; and
- B. Submission of a wetland analysis report with the petition for annexation pursuant to GHMC Section 18.08.090; and

- C. Imposition of Single-Family Residential (R-1) zoning to the property; and

WHEREAS, on August 22, 2005, the City Council, following a public hearing on the annexation petition, the voted to City Council approve the annexation and the proposed pre-annexation Single-Family Residential (R-1) zoning for the area described in Exhibit A and graphically depicted on Exhibit B, subject to Boundary Review Board approval; now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The Gig Harbor City Council hereby declares its intent to authorize and approve the annexation of approximately 8.62 acres of property located northwest of the intersection of Hunt Street NW and 46<sup>th</sup> Avenue NW (Skansie Avenue), located in Pierce County, as described in Exhibit A and graphically depicted on Exhibit B, attached hereto, as part of the City of Gig Harbor, contingent upon compliance with the following conditions:

- A. Pursuant to the terms of the annexation petition, the approximately 8.62 acres of property located northwest of the intersection of Hunt Street NW and 46<sup>th</sup> Avenue NW (Skansie Avenue), located in Pierce County, as described in Exhibit A and graphically depicted on Exhibit B, shall be assessed and taxed at the same rate and on the same basis as property within the City, including assessments for taxes and payment of any bonds issued or debts contracted prior to or existing as of the date of annexation; and

- B. All property within the area described in Exhibit A and graphically depicted on Exhibit B shall be zoned as Single-Family Residential (R-1), in accordance with the Gig Harbor Municipal Code, Title 17.
- C. The City received a Wetland Analysis Report prepared by Wiltermood Associates, Inc., dated June 27, 2005, for the subject property.

Section 2. The Gig Harbor City Clerk hereby declares the property described in Exhibit A and graphically depicted on Exhibit B, which is the subject of the annexation petition, to be contiguous with the boundaries of the City of Gig Harbor.

Section 3. The City Council hereby authorizes the Mayor to submit all necessary documentation to the Pierce County Boundary Review Board in order to gain approval for the annexation provided in this Resolution. The City Council shall not take any further action on the annexation proposal until such time as the Pierce County Boundary Review Board has completed its review of the Notice of Intent to Annex.

RESOLVED by the City Council this 22<sup>nd</sup> day of August 2005.

APPROVED:

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

ATTEST/AUTHENTICATED:

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

APPROVED AS TO FORM;  
OFFICE OF THE CITY ATTORNEY:

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

**Exhibit A  
WRIGHT ANNEXATION (ANX 04-02)  
LEGAL DESCRIPTION**

WRIGHT ANNEXATION  
ANX 04-02

**LEGAL DESCRIPTION**

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON;

EXCEPT THE WEST 8 FEET THEREOF;

EXCEPT 46<sup>TH</sup> AVENUE NORTHWEST;

EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NUMBER 2364858;

INCLUDING HUNT STREET NORTHWEST ABUTTING SAID ANNEXATION IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M.

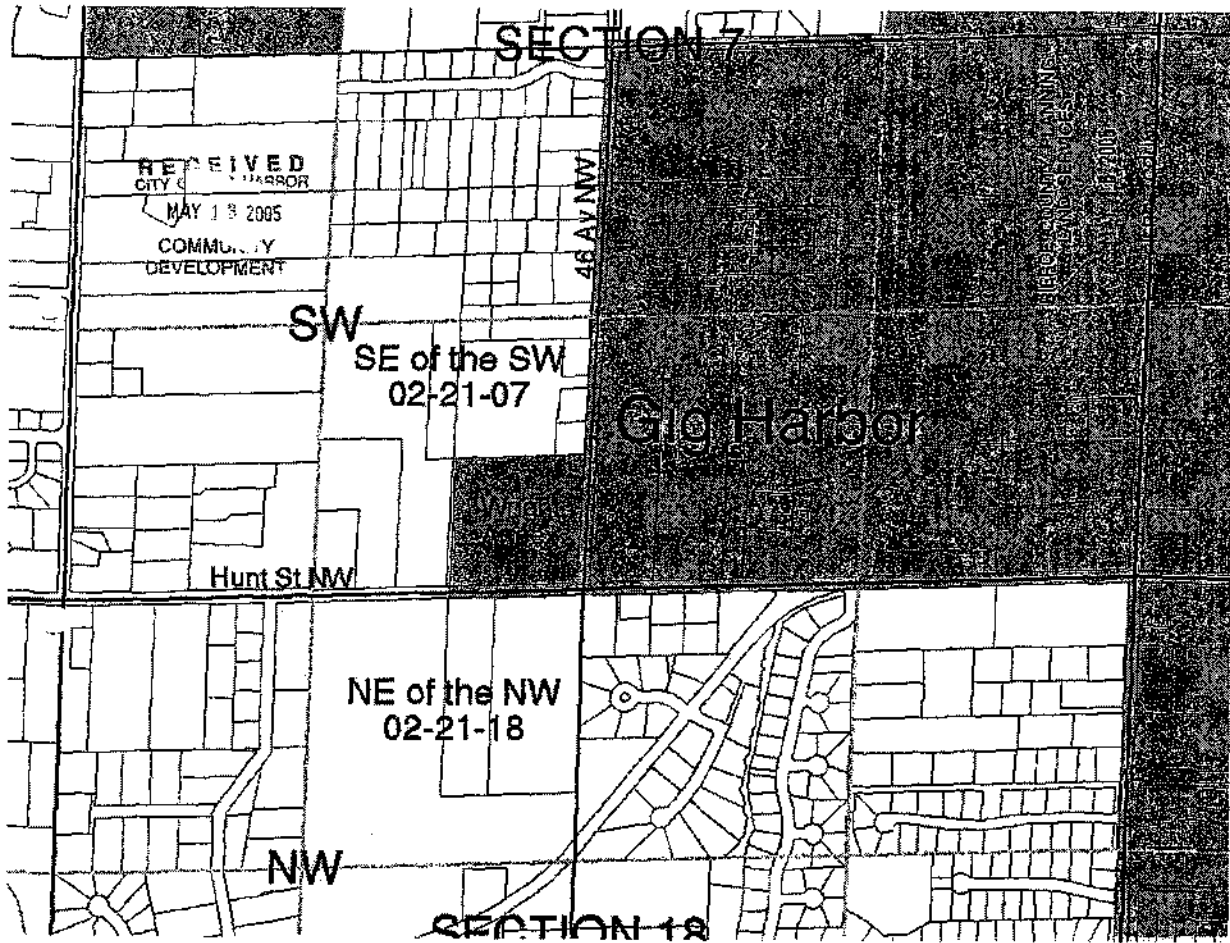
SITUATED IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

PIERCE COUNTY PLANNING  
& LAND SERVICES  
MAY 16 2005  
PIERCE COUNTY

**RECEIVED**  
CITY OF GIG HARBOR  
MAY 13 2005  
COMMUNITY  
DEVELOPMENT



Exhibit B  
WRIGHT ANNEXATION (ANX 04-02)  
ANNEXATION AREA MAP





COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: STEPHEN MISIURAK, P.E. *Stm***  
**CITY ENGINEER**  
**SUBJECT: FIRST READING OF ORDINANCE AMENDING GIG HARBOR MUNICIPAL**  
**CODE 13.32.060 – CHANGING THE EQUIVALENT RESIDENTIAL UNIT**  
**ASSIGNMENT (ERU) FOR LAUNDROMATS**  
**DATE: AUGUST 22, 2005**

**INTRODUCTION/BACKGROUND**

The City received a written request from Jody and Carmen McNamer to amend Section 13.32.060(B)(17) of the City's Municipal Code. Currently, laundromats are assessed one sewer connection (Equivalent Residential Unit) per each laundry machine. Under the proposed Ordinance Amendment, the sewer connection fee would be changed to the sewer connection fee being based upon actual or projected flow calculations with the payment of a minimum of one sewer connection fee. This was based upon supporting documentation supplied by the McNamer's to the City Engineer demonstrating the efficiency of modern commercial laundry machines.

The proposed ordinance has been reviewed and approved by the City Attorney.

**RECOMMENDATION**

Staff recommends that the proposed ordinance be adopted at this second reading.

ORDINANCE NO. 10xx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO SEWER RATES AND CHARGES, CHANGING THE MANNER IN WHICH EQUIVALENT RESIDENTIAL UNITS ARE ASSIGNED TO LAUNDROMATS FOR THE PURPOSE OF DETERMINING THE SEWER CONNECTION FEE, AMENDING GIG HARBOR MUNICIPAL CODE SECTION 13.32.060.

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WHEREAS, the City assigns equivalent residential units (ERUs) to the different classes of sewer service in order to determine the sewer connection fees; and

WHEREAS, the City received a request from **Jody and Carmen McNamer**, (ZONE 05-772) to amend Section 13.32.060(B)(17) of the Gig harbor Municipal Code with regards to the assignment of equivalent residential units for Laundromats; and

WHEREAS, the City Engineer reviewed the McNamer amendment request and concurred that the current method for assignment of equivalent residential units for laundromats should consider the efficiency of modern commercial laundry machines; and

WHEREAS, the City Engineer has determined that allowing for actual or projected flow calculations when calculating the assignment of equivalent residential units for laundromats is a more appropriate method for determining sewer connection fees for laundromats; and

WHEREAS, the City's SEPA Responsible Official has determined that this ordinance is categorically exempt from SEPA under WAC 197-11-800(20); and

WHEREAS, the City Council considered this ordinance during regular meetings on June 13 and 27, 2005, Now, Therefore,

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

Section 1. Section 13.32.060 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**13.32.060. Connection fees.**

\* \* \*

B. The method/formula for determining the basic hook-up charge adjustment shall be: (basic hook-up charge/ERU)(number of ERUs) = total book-up charge. The below assignment of equivalent residential units (ERU) to classes of service shall be used. The ERU assignment shall be applied on a proportionate basis.

<b>Class of Service</b>	<b>ERU Assignment</b>
17. Laundromats	1 ERU per machine <u>or actual or projected flow calculations approved by the city engineer. See subsection D below for more information about actual and projected flows.</u>
18. Commercial <u>(commercial shall include all classes not otherwise included in this table.</u>	1 ERU per 1600 sq. ft. or less of interior floor space. <u>For commercial establishments in excess of 1,600 square feet of interior floor space, the City may use actual or projected flow calculations approved by the City engineer. See subsection D below for more information about actual and projected flows.</u>

~~(Commercial shall include all classes not otherwise included in this table) For commercial establishments in excess of 1,600 square feet of interior floor space, the city may use actual or projected flow calculations approved by the city engineer; provided however, the minimum connection fee shall not be less than one equivalent residential unit. If projected flow calculations are used, the connection fee shall be adjusted after the first year of operation of the establishment to reflect actual flow usage in the event the flows were underestimated.~~

20. Heavy industrial waste ~~Same as Class 17~~  
with more than 1 ERU per machine  
a) 200 lbs of BOD per  
day, or  
b) 200 lbs of S.S. per  
day or  
c) 10,000 gallons or  
more per day

\* \* \*

C. Where seating is on benches or pews, the number of seats shall be computed on the basis of one seat for each 18 inches of bench or pew length.

D. Where actual or projected flows are used, the minimum connection fee shall not be less than one equivalent residential unit. If projected flow calculations are used, the connection fee shall be adjusted after the first year of operation of the establishment to reflect actual flow usage in the event the flows were underestimated. If projected flow calculations are proposed, it shall be the responsibility of the applicant to provide the engineered water consumption or other information necessary to determine the sewer flow, expressed in gallons per day (GPD).

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is 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, 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 Council and approved by the Mayor of the City of Gig Harbor  
this 12<sup>th</sup> day of September, 2005.

CITY OF GIG HARBOR

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

ATTEST/AUTHENTICATED:

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

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

By: \_\_\_\_\_  
CAROL A. MORRIS

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO.

**SUMMARY OF ORDINANCE NO.**

of the City of Gig Harbor, Washington

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On September 12, 2005, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. 10xx, the main points of which are summarized by its title as follows:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO SEWER RATES AND CHARGES, CHANGING THE MANNER IN WHICH EQUIVALENT RESIDENTIAL UNITS ARE ASSIGNED TO LAUNDROMATS FOR THE PURPOSE OF DETERMINING THE SEWER CONNECTION FEE, AMENDING GIG HARBOR MUNICIPAL CODE SECTION 13.32.060.**

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

APPROVED by the City Council at their meeting of September 12, 2005.

---

MOLLY 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 - PRENTICE AVENUE STREET**  
**VACATION REQUEST - BOYD**  
**DATE: AUGUST 22, 2005**

**INTRODUCTION/BACKGROUND**

On April 11, 2005, City Council approved Resolution 644 setting May 9, 2005 as the date to hear public testimony regarding the requested street vacation initiated by Mr. Bill Boyd. The City received a petition on March 21, 2005 from Mr. Boyd, to vacate a portion of Prentice Avenue abutting his property as shown on exhibits A and B on the attached ordinance in accordance with GHMC 12.14.002C. At the May 9<sup>th</sup> meeting, it was determined that there was a sewer line located within a portion of right-of-way abutting Mr. Boyd's property. City staff contacted Mr. Boyd's representative, Thornton Land Surveying on two separate occasions to advise him of the utility line and if he would like to proceed given that he would now need to provide the City with an easement in order to proceed with the street vacation. On August 9, 2005, Mr. Boyd contacted the City and requested that the street vacation move forward and stated that he was willing to provide the necessary easement as shown in Section 4 of the attached resolution. In accordance with GHMC 1.08(3), this ordinance should be reintroduced if not adopted at or prior to the third regular meeting after the introductory meeting (of May 9, 2005).

Specifically, the request is for the vacation of the portion of Prentice Avenue right-of-way currently held by the city, and abutting the northwest property frontage of Lot A of Boundary Line Adjustment No. 200409165003. Prior research on this right-of-way has determined that this portion of Prentice Avenue was platted in Pierce County in 1888 and was not opened or improved by 1905, therefore it automatically was vacated by operation of law in 1896. The city's ability to open this portion of Prentice Avenue is barred by lapse of time and the city has no interest in the street. In order to ensure that this portion of Prentice Avenue is placed on tax rolls and the ownership is formally recorded, the property owner has requested that the city vacate the street under GHMC 12.14.

The right-of-way proposed for vacation along Prentice Avenue is surplus to the city's needs, and the city does not have any plans for improving the right-of-way proposed for vacation. The vacation request will not eliminate public access to any property.

**FISCAL CONSIDERATIONS**

The processing fee has been paid in accordance with GHMC 12.14.004.



**RECOMMENDATIONS**

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

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
GIG HARBOR, WASHINGTON, VACATING A PORTION  
OF PRENTICE AVENUE, BETWEEN PEACOCK HILL  
AVENUE AND WOODWORTH AVENUE.**

---

WHEREAS, the City has the authority to adopt a vacation ordinance to formally remove the cloud on the title of the referenced right-of-way area, but this street vacation ordinance does not affect the rights of anyone, including any rights the public may have acquired in the right-of-way since the street was vacated by operation of law; and

WHEREAS, the portion of Prentice Avenue subject to this vacation request was created in the Plat of the Woodworth's Addition, recorded in the records of Pierce County in 1891; and

WHEREAS, the referenced portion of street right-of-way has never been opened or improved as a public street; and

WHEREAS, the referenced portion of street right-of-way was located in Pierce County during the period of five years prior to 1909, and there is no evidence that it was used as a street during such period; and

WHEREAS, the City Council passed Resolution No. 644 initiating the procedure for the vacation of the referenced street and setting a hearing date; and

WHEREAS, after the required public notice had been given, the City Council conducted a public hearing on the matter on May 9, 2005, and at the conclusion of such

hearing determined that the aforementioned right-of-way vacated by operation of law and lapse of time; Now, Therefore,

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

Section 1. The City Council finds that the unopened portion of the platted Prentice Avenue right-of-way, lying between Peacock Hill Avenue and Woodworth Avenue, abutting the northwest property frontage of Lot A of Boundary Line Adjustment No. 200409165003, attached hereto as legally described in Exhibit A and incorporated by this reference and as shown as depicted on Exhibit B, has vacated by lapse of time and operation of law under the Laws of 1889-90, Chapter 19 (Relating to County Roads), Section 32, p. 603, as Amended By Laws of 1909, Chapter 90, Section 1, p. 189, repealed in 1936 by the Washington State Aid Highway Act (Laws of 1936, Chapter 187, p. 760). .

Section 2. The City has the authority to adopt a vacation ordinance to formally remove the cloud on the title of the referenced right-of-way area, but this street vacation ordinance does not affect the rights of anyone, including any rights the public may have acquired in the right-of-way since the street was vacated by operation of law.

Section 3. The City Clerk is hereby directed to record a certified copy of this ordinance with the office of the Pierce County Auditor.

Section 4. The City has an easement over, under and through the street as generally depicted on Exhibit B. The City shall retain its existing easement in the street

for the purpose of maintaining, operating, repairing and replacing the sewer utilities in place.

Section 5. This ordinance shall take effect five days after passage and publication as required by law.

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

CITY OF GIG HARBOR

By:

\_\_\_\_\_  
Gretchen Wilbert, Mayor

ATTEST/AUTHENTICATED:

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

APPROVED AS TO FORM:  
Office of the City Attorney:

By: \_\_\_\_\_  
Carol A. Morris

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:

SUTHERLAND ST

PROPERTY LOCATION

AREA TO BE VACATED

BEYOND ST

PEACOCK HILL AVENUE

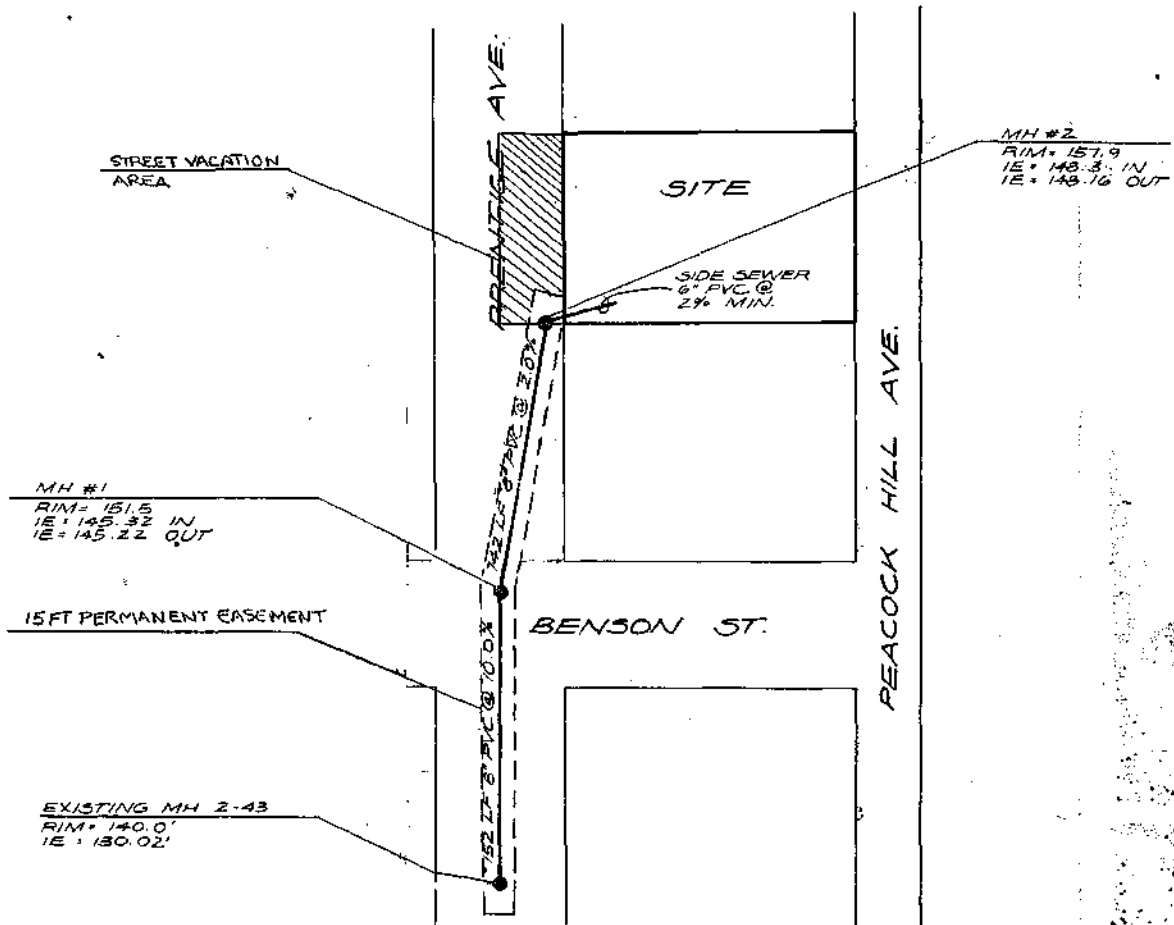
FENNIMORE ST

Exhibit A

LOCATION MAP  
BOYD STREET VACATION

(PROJ - 2005a)

# Exhibit B



**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 COUNCIL OF THE CITY  
GIG HARBOR, WASHINGTON, VACATING A PORTION  
OF PRENTICE AVENUE, LYING WEST OF PEACOCK  
HILL AVENUE AND EAST OF WOODWORTH AVENUE IN  
GIG HARBOR, WASHINGTON.**

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 \_\_\_\_\_,  
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: COMPREHENSIVE PLAN AMENDMENTS SEIS PREPARATION -**  
**CONSULTANT SERVICE CONTRACT**  
**DATE: AUGUST 22, 2005**

**BACKGROUND**

The City has issued a SEPA threshold determination which calls for the development of an integrated supplemental environmental impact statement for 2005 site-specific comprehensive plan amendments. David Evans and Associates, Inc. was selected to prepare the SEIS given their familiarity with the Gig Harbor North Area and previous work history with the City.

David Evans and Associates, Inc. is currently under contract with the City for several tasks related to the Gig Harbor North Area, these include:

- **The North Gig Harbor Traffic Study** that was initially developed to study the overall traffic needs in the north Gig Harbor area. The original agreement amount was \$96,038.00. This contract included a specific task to review traffic information submitted by the applicant for the hospital comprehensive plan amendment (\$14,800.00). An additional task include the 'video' traffic simulation modeling that was presented at the July 25, 2005 council meeting (an additional \$7,000.00) bringing the total contract amount to \$103,038.00.
- **Traffic Engineering and Related Services on an On-Call Basis** to assist the City with meetings involving hospital staff, elected officials, and others and provide the City with traffic engineering services as needed due to the meetings. The agreement amount is \$24,954.00.

This proposed agreement with the City is in an amount of \$153,600.00 for the development of an SEIS related to the three proposed comprehensive plan amendments. The most significant amendment involves the proposal to re-designate and reconfigure existing land uses to allow for the development of a hospital. Additional traffic engineering work would be done to allow development to continue in the Gig Harbor North area. The agreement would study additional construction alternatives, develop feasible road construction alternatives (new road systems), and review development requirements for traffic mitigation. Costs for the construction alternatives and new road segments would also be developed. Mitigation costs could be spread out to new developments with the area as deemed appropriate.



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

### **FISCAL IMPACT**

The Gig Harbor Municipal Code requires that the costs and expenses incurred by the City for the preparation of an EIS for private projects be borne by the applicant (GHMC 18.04.140). David Evans and Associates, Inc. has propositioned out the costs attributable to the privately initiated applications. These costs are estimated to be \$59,670.00 of the total project cost of \$153,600.00

City and David Evans and Associates, Inc. staff recognizes that there is overlap of work tasks between the existing Gig Harbor North area traffic model and capacity analysis and the SEIS scope of work. David Evans and Associates, Inc. will put portions of the work from the prior contracts on hold and will sort out the specific items and tasks that overlap between the two contracts and provide to the City the appropriate financial credit related to each contract.

Preparation of the SEIS for the proposed Comprehensive Plan Amendments was not anticipated in the adoption of the 2005 Annual Budget. At this juncture, it appears that adequate funds exist within the Community Development Department to cover this expenditure.

### **RECOMMENDATION**

I recommend approval of the consultant service contract with David Evans and Associates, Inc. in an amount not to exceed One Hundred Fifty-three Thousand Six Hundred Dollars (\$153,600.00).

**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 development of an integrated supplemental Environmental Impact Statement for 2005 site-specific comprehensive plan amendments 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 15, 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 One Hundred Fifty-three Thousand Six Hundred Dollars and no cents (\$153,600.00) 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**. 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

CITY OF GIG HARBOR

By: Sean Patnett  
Its Principal  
(SEAN PATNETT)

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 \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ 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 \_\_\_\_\_ of \_\_\_\_\_ 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: \_\_\_\_\_

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 the

#### DEVELOPMENT OF

1. A SUPPLEMENTAL EIS,
2. ROAD CONSTRUCTION ALTERNATIVES, and
3. TRANSPORTATION SYSTEM MODIFICATIONS  
FOR THE NORTH GIG HARBOR AREA

David Evans and Associates, Inc. (DEA) is pleased to provide this Scope of Services to the City of Gig Harbor (City). Exhibit A describes the Scope of Services that will be performed by DEA for this project. The project will involve the development of an integrated supplemental environmental impact statement for 2005 site-specific comprehensive plan amendments. Three site-specific comprehensive plan amendments that are subject to State Environmental Policy Act (SEPA) review include:

1. Comprehensive plan proposal 04-01---A land use map amendment redesignating approximately 20 acres of PCD-RLD (residential low density) to PCD-RMD (residential medium density).
2. Comprehensive plan proposal 05-01---A land use map amendment redesignating and reconfiguring 14.8 acres of PCD-RMD (residential medium density) to PCD-BP (business park) creating a total of 34.1 acres of PCD-BP for purposes of accommodating an 80-bed hospital of approximately 230,000 square feet and 100,000 square feet of medical office building.
3. Comprehensive plan proposal 05-03---An amendment to the City of Gig Harbor wastewater plan to reconfigure the design and location of the required future sewer infrastructure to facilitate a proposed single family development.

DEA will retain the services of a subconsultant, Mr. Mark Personius, AICP, Urban Planning and Growth Management Consultant to do the project's environmental work.

DEA will develop and study up to five road construction improvement projects in the North Gig Harbor (NGH) area that would accommodate the proposed hospital or other future development projects within the study area. These alternatives will improve existing transportation facilities in the NGH area. DEA will also review the existing roadway network in the study area and suggest up to five new road systems in the NGH area to alleviate or reduce traffic volumes on Borgen Boulevard and the associated SR-16 on and off-ramps at this location.

DEA will also review existing city codes and development regulations that could be revised to allow development of additional property in the North Gig Harbor area including the proposed hospital project. The intent would be to develop funding mechanisms that allow a development to proceed and pay their pro-rata share of improvement costs to the city in the form of financial guarantees or similar financial instruments.

The proposed hospital project or other similar future development projects in the study area will generate levels of service on existing intersections and roadway segments that are below those acceptable by the city. Roadway improvements to existing traffic facilities or new roadway systems are needed in the study area to meet city development criteria and development standards to allow the proposed hospital or other proposed projects in the area to development.

New roadway improvements or new roadway segments will be developed and studied and cost estimates will be prepared for the new proposed or tentative work. The hospital's generated traffic volumes will be compared to existing and proposed traffic volumes in the study area and pro-rata costs for the proposed improvements due to the hospital will be submitted to the city for their information and use.

DEA will also retain the services of PTV America, Inc. to develop traffic simulation models for three road construction alternatives in the study area. The VISSIM modeling work will be presented to the city at a public hearing.

DEA or its retained consultants will complete the following work tasks:

#### **TASK 1 - PROJECT MANAGEMENT AND ADMINISTRATION**

DEA will provide project management, project administration and QA/QC for the project. It is anticipated that this project will have a duration of approximately six to eight months. DEA will:

- Provide project status reports to the City every two weeks either verbally or in written form documenting key issues and decisions made for the project. When applicable, tasks that must be performed by DEA and/or the City in the future will be documented for project scheduling purposes;
- Prepare and submit monthly invoices to the City and perform project administrative duties as required. The invoices will be broken into subsections that follow the tasks identified in this Scope of Services and will show the hours of work used for each task for the billing period and the individuals who worked on the project. The invoices will show mileage, postage, reprographic, and other expenses associated with the project;
- Provide project management, administration, and professional engineering supervision for the project to assure that the work is being done in conformance with the project's established guidelines and the overall scope of work. Coordinate sub-consultant work as required if applicable;
- Provide monthly Microsoft Project schedule updates to the City; and
- Provide internal QA/QC review throughout the project.

Task Deliverables:

Provide project management and administration, monthly invoices and progress reports, and internal QA/QC. If the project extends beyond an eight-month time limit additional administrative costs to DEA will be considered.

## **TASK 2—PREPARE AN SEIS FOR THE NORTH GIG HARBOR STUDY AREA**

Reference also Attachment A from DEA's subconsultant, Mr. Mark Personius, which outlines his scope of services for the development of the SEIS document. DEA will provide engineering support for the development of the three plan amendment proposals that will be done in the SEIS. DEA will:

- Review three comprehensive plan proposals and provide engineering support to accommodate the writing of the SEIS document;
- Provide graphics for the three comprehensive plan amendments for incorporation into the SEIS document;
- Assist in defining alternatives for the three comprehensive plan amendments;
- Assist in the preparation and development of alternatives for the comprehensive plan amendments;
- Meet with city staff two times to review the draft SEIS document and revise the document two times to accommodate city review comments;
- Meet two times and submit the draft SEIS document to the city planning commission;
- Meet two times and submit the draft SEIS document to the city council;
- Prepare public notices for the city planning commission and city council meetings; and
- Provide the City with 20 copies of the final SEIS document.

### Task Deliverables:

DEA will assist in the development of the SEIS document, prepare graphics for the document, develop alternatives for the report, meet with city staff to review the SEIS document, present the document to the city planning commission and the city council, and prepare public notices for the two proposed public meetings.

## **TASK 3—DEVELOP ROAD CONSTRUCTION ALTERNATIVES AND NEW ROADWAY SEGMENTS FOR THE NORTH GIG HARBOR (NGH) AREA**

DEA will review and consider a number of road construction alternatives in the NGH area that would alleviate anticipated traffic problems in the area based on development projects that are in the pipeline or are being proposed at this time. Additionally DEA will review the areas existing roadway network and develop up to five possible new roadway segments to a feasibility stage that help would spread traffic flows out over wider areas and reduce the concentration of traffic volumes on Borgen Boulevard. DEA will:

- Review construction alternatives that would improve existing traffic facilities in the NGH area and develop up to five alternatives to a feasibility stage of refinement;

- Meet with city staff two times to review and discuss the five possible construction alternatives;
- Revise the construction alternatives one time each to accommodate city review comments;
- Review the areas existing roadway network and develop up to five possible new roadway segments to a feasibility stage that help would spread traffic flows out over wider areas and reduce the concentration of traffic volumes on Borgen Boulevard;
- Meet with city staff two times to review and discuss the five possible new roadway segments for disbursing traffic volumes within the study area;
- Revise the new roadway segments one time each to accommodate city review comments;
- Update traffic modeling work in the NGH area to reflect the proposed construction alternatives and new roadway segments and develop new levels of service for major intersections and road segments within the NGH area.
- Prepare cost estimates for projects at the feasibility stage of development for the five construction alternatives and five new roadway segments;
- Meet with WSDOT staff and discuss the five possible construction alternatives and five possible new road segments with them and consider their comments in the development of the road improvement proposals:
- Pro-rate the volume of hospital traffic to future and pipeline traffic to the construction alternatives; and
- Pro-rate the costs of the proposed construction alternatives and new roadway segments to the proposed hospital project based on generated traffic volumes and submit this information to the city for their consideration and further action.

Task Deliverable:

DEA will review and develop up to five construction alternatives and up to five new roadway segments, meet with the city two times to review the alternatives and new roadway segments and revise them one time each to accommodate city review comments. DEA will update traffic modeling work in the NGH area to reflect the development of the construction alternatives and new roadway segments and assign a pro-rata cost of the proposed improvements to the hospital based on their pro-rata share of generated traffic in the area.

DEA will not be responsible for coordinating any of the proposed construction alternatives with the Washington State Department of Transportation. Additional revisions to the proposed construction alternatives or roadway segments beyond the two meetings with city staff will be considered extra work that will be done by DEA on a time and expense basis.

**TASK 4--REVIEW EXISTING CITY DEVELOPMENT REQUIREMENTS FOR TRAFFIC MITIGATION**

DEA will review existing city codes and development regulations for traffic mitigation that could be revised to allow development of additional property in the NGH area including the proposed hospital project. The intent would be to develop funding mechanisms that allow a development to proceed and pay their pro-rata share of improvement costs to the city in the form of financial

guarantees or similar financial instruments. The method of how the CITY issues "certificates of approval" and their duration for projects will also be reviewed to determine if better or more equitable processes are possible. DEA will:

- Review existing city codes and development regulations for traffic mitigation;
- Suggest alternatives that would allow development to proceed at the immediate time using financial guarantees to assure future traffic mitigation work is accomplished by the project applicant;
- Review how the City issues "certificates of approval" to determine if a better or more equitable process is available; and
- Review how up to four other municipalities handle traffic mitigation and compare then to the City's process; and
- Provide the City with a report in memorandum format that summarizes the findings and suggested alternatives of this work task.

Task deliverable:

DEA will submit a report in memorandum format to the City that summarizes the findings of this work task and provides suggested alternatives to how the City handles the traffic mitigation process.

#### **TASK 5--DEVELOP VISSIM TRAFFIC SIMULATION MODEL**

DEA will retain the services of PTV America, Inc. as a subconsultant to assist in the development of VISSIM traffic simulation models for presentation to the city. A maximum of three models will be developed for road construction alternatives to be selected by the City from the range of alternatives developed in other tasks. If the City requests additional models that effort will be considered extra work that will be done by DEA and PTV America, Inc. on a time and expense basis.

Reference also Attachment B from DEA's subconsultant, PTV America, Inc. which outlines their scope of services for the development of the VISSIM models. DEA will provide the subconsultant with traffic modeling data and layout information for the three alternatives. DEA will:

- Provide the subconsultant with traffic modeling information for three construction alternatives;
- Meet with city staff and PTV America, Inc. two times to review the draft VISSIM presentation;
- Coordinate revisions of the VISSIM presentation with PTV America, Inc. two times to reflect city review comments; and
- Make one presentation to the city council using VISSIM.

Task Deliverable:

DEA and its subconsultant PTV, America, Inc. will prepare traffic modeling simulations for

three construction alternatives, meet with City staff two times to review the draft VISSIM presentation, coordinate revisions to the VISSIM presentation two times to reflect city comments and make one presentation the city council.

#### **TASK 6--UPDATE LEVEL OF SERVICE INFORMATION IN THE NGH AREA**

DEA will update the level of service information based on the incorporation of the construction alternatives developed above in Task 3. DEA will:

- Update level of service information for a maximum of 12 intersections and major roadway segments to reflect in incorporation of the road construction alternatives developed in Task 3 above;
- Meet with the city two times to review the new level of service information;
- Revise the level of service information two times to reflect comments from city staff; and
- Prepare a final report regarding level of service in the NGH area reflecting the incorporation of the proposed construction alternatives and new roadway segments into the city's road system.

Task Deliverable:

Updated level of service information will be developed by DEA and a final level of service report will be prepared that will assume that the proposed construction alternatives have been incorporated into the city's road system for the NGH area.

#### **TASK 7--UPDATE THE CITY'S 6-YEAR TIP**

DEA will update the City's 6-year transportation improvement program using information contained in the existing plan and supplemented with findings derived from the traffic analysis work done in this scope of work and other traffic modeling work that DEA is currently doing for the City. All financial information needed to update the program will be provided by the city. DEA will do the update work in electronic format and submit the updated TIP to the City in electronic format. DEA will:

- Develop tentative projects that result from this overall scope of work and similar work that DEA is doing for the City and review the projects and their costs with the City two times;
- Update the City's current 6-year TIP program in electronic format and submit it to the City for review and approval; and
- Update the transportation element of the City's comprehensive plan to reflect the projects in the proposed 6-year TIP program. It is assumed for this work task that the proposed projects are all consistent with the City's comprehensive land use plan.

#### **LIST OF CITY RESPONSIBILITIES**

The City will:

- Provide DEA with a timely response for all work submitted to the City for review and/or comment;



- Provide a current copy of its comprehensive plan, zoning and other land use mapping to DEA in electronic format;
- Provide DEA with parcel information to include names, addresses, parcel numbers, and similar information for the development of base maps;
- Provide DEA with a copy of their traffic study requirements;
- Handle all transactions and communications with the Washington State Department of Transportation and Pierce County;
- Provide maps and documents showing existing zoning and proposed comprehensive plan amendments, and current proposed developments throughout the study area such as the proposed hospital site, and including any relevant traffic studies and proposed traffic mitigation;
- Provide a map showing existing zoning of the Gig Harbor North area;
- Provide site plan maps showing the proposed driveway accesses of all current development proposals in electronic format;
- Provide a map defining the Gig Harbor North area;
- Provide descriptions of road improvements included in the City's adopted six-year transportation improvement program;
- Provide descriptions of long-range road improvements included in the City's adopted comprehensive plan transportation element;
- Provide existing signal timing information for signalized intersections;

#### **REIMBURSABLES**

The City will reimburse DEA for:

- Fees payable to various agencies for copies of legal documents obtained during the research phase of the project;
- Fees for reprographics, postage, and express mailing;
- The cost of any software programs obtained by DEA at the direction of the City and furnished to the City;
- Mileage;
- Fees for subconsultant services; and
- Traffic count services if needed and authorized by the City.

**EXHIBIT B**  
**SCHEDULE OF RATES AND ESTIMATED HOURS**  
**CITY OF GIG HARBOR**  
**SEIS,**  
**ROAD CONSTRUCTION ALTERNATIVES, and**  
**TRANSPORTATION SYSTEM MODIFICATIONS**  
**COGH0000-00**

	Principal In Charge QA/QC	Project Manager	CADD Technician	Traffic Designer	Sr. Traffic Engineer	Sr. Trans. Planner	Graphics Designer	Accounting Manager	Clerical	Task Costs	Task Sums And Expenses
<b>DAVID EVANS AND ASSOCIATES, INC</b> 3706 PACIFIC AVENUE EAST, SUITE 311 TACOMA, WA. 97624	VIS	RAA		NWC	JPR	MIBI					
<b>TASK 1—PROJECT MANAGEMENT AND ADMINISTRATION</b>											
Provide project status reports to the City		12							4		
Prepare and submit invoices		6							3		
Provide project management, administration, and professional engineering supervision		40									
Provide monthly Microsoft Project schedule updates to the City					12						
Provide internal QA/QC	20										
<b>Task 1 Total</b>	<b>28</b>	<b>60</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>\$ 12,985.00</b>	<b>\$ 12,985.00</b>
<b>TASK 2—PREPARE SEIS FOR NGH STUDY AREA</b>											
(Reference also Attachment A from subconsultant and shown below as subconsultant services)											
Review three comprehensive plan proposals	6	2				8			2		
Provide graphics for three comprehensive plan proposals	2	2				8	16		2		
Assist in defining alternative for the three comprehensive plan amendments	2	1				4			2		
Assist in the preparation and development of alternatives for the comprehensive plan amendments	4	1				4			2		
Meet with city staff two times to review the draft SEIS document and revise document two times	12	4				12			2		
Meet two times and submit the draft SEIS document to the city planning commission	12	4				6			6		
Meet two times and submit the draft SEIS document to the city council	12	4				6			6		
Prepare public notices for the city planning commission and city council meetings	4	2				8			8		
Provide the City with 20 copies of the final SEIS document	2	2				2			16		
<b>Task 2 Total</b>	<b>66</b>	<b>22</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>59</b>	<b>16</b>	<b>0</b>	<b>42</b>	<b>\$ 22,720.00</b>	<b>\$ 22,720.00</b>
<b>TASK 3—DEVELOP FEASIBLE ROAD CONSTRUCTION ALTERNATIVES FOR NGH AREA</b>											
Review construction alternatives in the NGH area and develop up to five draft alternatives to the feasibility stage	8	4	32	8	6	8	8				
Meet with city staff two times to review the five construction alternatives	0	4			6	8	8				
Revise the construction alternatives one time each as per City comments		2	8	8	4	4	8				
Review the areas existing roadway network and develop up to five new segments to a feasibility stage	2	2			4	8					
Meet with city staff two times to review the five possible new roadway segments	4	4			4	4					
Revise the roadway segments one time each as per City comments	1	2	8		4	4	6				
Update traffic modeling work to incorporate construction alternatives and new roadway segments	2	1		40	4	4					
Prepare cost estimates for the five construction alternatives and five new roadway segments	2	1		0	12	2					
Meet with WSDOT staff and discuss five road construction and five new roadway segments with them	4	4		0	4						
Pro-rate hospital traffic to the new alternatives	2	1		6	1	6					
Pro-rate cost of new alternatives to hospital	1	1		2	1	4					
<b>Task 3 Total</b>	<b>25</b>	<b>25</b>	<b>40</b>	<b>64</b>	<b>64</b>	<b>52</b>	<b>50</b>	<b>0</b>	<b>0</b>	<b>\$ 32,206.00</b>	<b>\$ 32,206.00</b>
<b>TASK 4—REVIEW CITY DEVELOPMENT REQUIREMENTS FOR TRAFFIC MITIGATION</b>											
Review existing city codes and development regulation for traffic mitigation	4	1					4				
Suggest alternatives that would allow development to proceed	18	1					16		4		
Review how the City handles "certificates of approval"	2	1					2				
Review how up to four other municipalities handle traffic mitigation and compare them to the City	4	1					6				
Provide the City with a report in memorandum format that summarizes this work task	2	1					8		4		
<b>Task 4 Total</b>	<b>28</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>36</b>	<b>28</b>	<b>0</b>	<b>8</b>	<b>\$ 10,833.00</b>	<b>\$ 10,833.00</b>
<b>TASK 5—DEVELOP VISSIM MODEL FOR A MAXIMUM OF THREE ALTERNATIVES</b>											
(Reference also Attachment B from subconsultant and shown below as subconsultant services)											
Provide subconsultant with traffic modeling information for three alternatives	1	1		2	2	6					
Meet with city staff two times to review draft VISSIM presentation	4	4			4	4					
Coordinate revisions of the VISSIM presentation two times to reflect city review comments	1	1		2		2					
Make one presentation to the city council using VISSIM	4	4				4					

**EXHIBIT B**  
**SCHEDULE OF RATES AND ESTIMATED HOURS**  
**CITY OF GIG HARBOR**  
**SEIS,**  
**ROAD CONSTRUCTION ALTERNATIVES, and**  
**TRANSPORTATION SYSTEM MODIFICATIONS**  
**COGH0000-00**

	Principal In Charge	Project Manager	CADD Technician	Traffic Designer	Sr. Traffic Engineer	Sr. Trans. Planner	Graphics Designer	Accounting Manager	Clerical	Task Costs	Task Sums And Expenses
<b>DAVID EVANS AND ASSOCIATES, INC</b> 3700 PACIFIC AVENUE EAST, SUITE 311 TACOMA, WA. 97624	QA/QC VIS	RAA		NWC	JPR	MIBI					
<b>Task 6 Total</b>	10	10	0	4	6	19	0	0	0	\$ 6,020.00	\$ 6,020.00
<b>TASK 6—UPDATE LEVEL OF SERVICE INFORMATION IN NGH AREA</b>											
Update level of service information for a maximum of 12 intersections within the NGH area	1	1		12	1	4					
Meet with city two times to review new level of service information	4	4		4	1	4					
Revise the level of service information two times to reflect city comments	1	1		12	1	4					
Prepare a final report regarding level of service in the NGH area	2	2		4	2	8					
<b>Task 6 Total</b>	12	12	0	32	5	20	0	0	0	\$ 6,188.00	\$ 6,188.00
<b>TASK 7—UPDATE THE CITY'S 6-YEAR TIP</b>											
Develop tentative project that result from this overall scope of work	12	4			12	12			2		
Update the City's current 6-year TIP program in electronic format	4	2			8	8			6		
Update the transportation element of the City's comprehensive plan	4	2			4	12					
<b>Task 7 Total</b>	20	8	0	0	24	32	0	0	8	\$ 11,656.00	\$ 11,656.00
<b>TASK 8—BLANK</b>											
<b>Task 8 Total</b>	0	0	0	0	0	0	0	0	0	\$	\$
<b>TASK 9—BLANK</b>											
<b>Task 9 Total</b>	0	0	0	0	0	0	0	0	0	\$	\$
<b>TASK 10—BLANK</b>											
<b>Task 10 Total</b>	0	0	0	0	0	0	0	0	0	\$	\$
<b>TASK 11—BLANK</b>											
<b>Task 11 Total</b>	0	0	0	0	0	0	0	0	0	\$	\$
<b>TASK 12—BLANK</b>											
<b>Task 12 Total</b>	0	0	0	0	0	0	0	0	0	\$	\$
<b>Total Hours</b>	169	137	46	100	101	214	46	0	65		
<b>Rate</b>	\$ 156.00	\$ 137.00	\$ 76.00	\$ 85.00	\$ 125.00	\$ 125.00	\$ 75.00	\$ 70.00	\$ 60.00		
<b>Direct Labor</b>	26,208.00	19,769.00	3,648.00	8,500.00	12,625.00	26,750.00	3,450.00	-	3,900.00	103,850.00	\$ 103,850.00

Higher rate has been used for estimating. Actual rate of person doing the work will be used for billing purposes.

EXHIBIT B  
 SCHEDULE OF RATES AND ESTIMATED HOURS  
 CITY OF GIG HARBOR  
 SEIS,  
 ROAD CONSTRUCTION ALTERNATIVES, and  
 TRANSPORTATION SYSTEM MODIFICATIONS  
 COGH0000-00\_

	Principal In Charge QA/QC	Project Manager	CADD Technician	Traffic Designer	Sr. Traffic Engineer	Sr. Trans. Planner	Graphics Designer	Accounting Manager	Clerical	Task Costs	Task Sums And Expenses
DAVID EVANS AND ASSOCIATES, INC 3700 PACIFIC AVENUE EAST, SUITE 311 TACOMA, WA. 97624	VIS	RAA		NWC	JPR	MBI					
<b>SUBCONSULTANT SERVICES</b>											
Attachment A--Subconsultant services by Mark Personius at 1.1 markup										\$ 37,000.00	
CPA #04-01 at \$5,550.00											
CPA #05-01 at \$27,750.00											
CPA #05-03 at \$3,700.00											
Attachment B--Subconsultant services by PTV America, Inc. at 1.1 markup										\$ 7,150.00	
<b>EXPENSES</b>											
Reproduction, Postage, Express Delivery										\$ 500.00	
Mileage at \$ .405 per mile										\$ 100.00	
Contingency Funds--Extra or out of scope work done at the direction of the City										\$ 5,000.00	
<b>TOTAL PROJECT COST</b>										153,600.00	
P/C/COGH23/CON/PROPOSAL/SEIS080805											
<b>COST BREAKDOWN FOR DEVELOPMENT OF COMPREHENSIVE PLAN AMENDMENTS</b>											
The costs will include Task 2 plus the cost of subconsultant Mark Personius	CPA #04-01	CPA #05-01	CPA#05-03								
Task 2 costs associated with applicable plan amendment	\$ 3,408.00	\$ 17,040.00	\$ 2,272.00								
Subconsultant Mark Personius	\$ 5,500.00	\$ 27,750.00	\$ 3,700.00								
Total for applicable plan amendment	\$ 8,908.00	\$ 44,790.00	\$ 5,972.00								
Separate invoices will be sent to the City for these costs											



**ADMINISTRATION**

**MAYOR'S REPORT**  
**August 22, 2005**

**GIG HARBOR COMMUNITY CENTER**

A Gig Harbor Community Center can happen within the next two years as the city continues to partner with Pierce County, the Peninsula School District, and the citizens.

The fund raising campaign kick-off will take place September 27, 2005, at the Tacoma Dome. Many thanks to Gary Yazwa, President/CEO of the Boys & Girls Club of South Puget Sound, the Milgard family, and Brad Cheney, our campaign chairman.

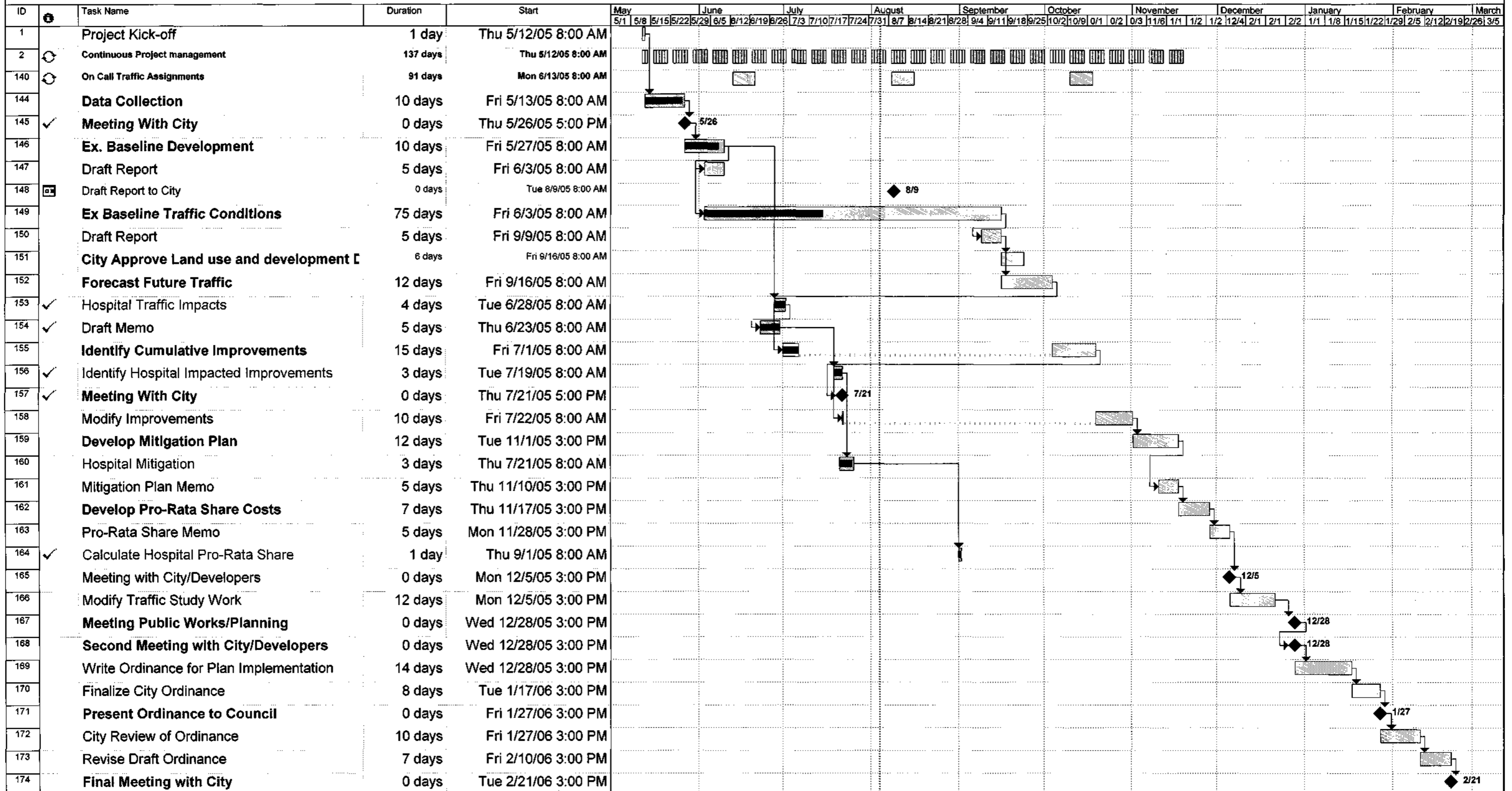
A Gig Harbor Community Center will be one of the first two in the State of Washington to combine the activities of a Senior Center with a Boys & Girls Club along with providing space for community events.

Senior citizens have been meeting with me every Friday following the Senior Meal Site luncheon funded by Pierce County Human Services. Enthusiasm is building. Several are attending the Saturday night *Music on the Bay* events. Sponsored by Altrusa International of Gig Harbor, this event is open to the public and presents an opportunity to make donations that will help fund the kitchen in the new Community Center.

Please consider joining us at the September 27<sup>th</sup>, 11:30am – 1:00pm luncheon event. I am volunteering to be a table captain. Feel free to invite friends. Leave me a message as soon as possible at 253-858-2764 with the names of potential attendees.

This is our one chance to partner in the vision of a Gig Harbor Community Center. Let's do it!

## GIG HARBOR TRAFFIC MITIGATION PLAN FOR THE NORTH GIG HARBOR AREA



Project: Project Schedule\_051205  
Date: Thu 8/4/05 10:38 AM

Task		Milestone		Rolled Up Critical Task		Split		External Milestone	
Critical Task		Summary		Rolled Up Milestone		External Tasks		Deadline	
Progress		Rolled Up Task		Rolled Up Progress		Project Summary			