

# **Gig Harbor City Council Meeting**

**February 23, 2004  
7:00 p.m.**



*"THE MARITIME CITY"*

**AGENDA FOR  
GIG HARBOR CITY COUNCIL MEETING  
February 23, 2004 - 7:00 p.m.**

**CALL TO ORDER:**

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

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

1. Approval of the Minutes of City Council Meeting of January 26, 2004.
2. Correspondence / Proclamations:
  - a. Letter - Franciscan Health System.
  - b. Memo - Franciscan Health System.
  - c. Women's History Month Proclamation.
  - d. Pierce County – Affordable Housing.
  - d. Pierce Transit – Board of Commissioners.
  - e. Tacoma Convention & Visitor Bureau.
3. Virtual Law Library – Westlaw Contract.
4. Sanitary Sewer Easement Agreement – Autumn Crest Development.
5. Water Line Easement Agreement – Autumn Crest Development.
6. Permanent Right-of-Way Easement – Olympic Drive Office Building.
7. Stormwater Facilities Maintenance Agreement – Olympic Drive Office Building.
8. Cushman Trailhead – Tacoma Public Utilities Permit No. 1759.
9. 36<sup>th</sup> Street / Point Fosdick Drive Project – Amendment No. 1 to Contract.
10. Water Vulnerability Assessment.
11. Communications Maintenance Agreement.
12. Approval of Payment of Bills for February 23, 2004.

Checks #42464 through #442604 in the amount of \$373,105.35.

**OLD BUSINESS:**

1. Gig Harbor / Peninsula Community Center Development Proposal – Gary Yazwa.
2. Second Reading of Ordinance – Text Amendment, 17.65 Special Uses.
3. Second Reading of Ordinance – RB-2 Text Amendment to Allow Single Family.
4. Second Reading of Ordinance – B-2 Text Amendment – Hospitals as Conditional Use.
5. Second Reading of Ordinance – Correcting the Legal Description of Ordinance 938.
6. Second Reading of Ordinance – Gig Harbor Arts Commission.

**NEW BUSINESS:**

1. 2004 Skansie Brother Park Grant Application.
2. Annexation Petition – NW Gig Harbor Employment Center (03-04).
3. First Reading of Ordinance – Amend PCD-BP Zone to Conditionally Allow Hospitals.
4. Employment Agreement Request – Judge Michael Dunn.

**STAFF REPORT:**

Department of Community Development - Park Signs for Skansie Brothers Park.

**PUBLIC COMMENT:**

**COUNCIL COMMENTS / MAYOR'S REPORT:**

**ANNOUNCEMENT OF OTHER MEETINGS:**

AWC – Training for Elected Officials: Monday, March 1<sup>st</sup>, 6:00 p.m. at the Gig Harbor Civic Center.

**EXECUTIVE SESSION:** For the purpose of discussing pending litigation per RCW 42.30.110(1)(i).

**ADJOURN:**

## GIG HARBOR CITY COUNCIL MEETING OF FEBRUARY 9, 2004

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

**CALL TO ORDER:** 7:00 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 January 26, 2004.
2. Correspondence / Proclamations: Performing Arts Day.
3. Amendment to the Bylaws: Gig Harbor Arts Commission.
4. Lodging Tax Distribution of Fund Contracts – 2004.
5. Virtual Law Library – Westlaw Contract.
6. Liquor License Assumptions: Fred Meyer Marketplace & QFC #886.
7. Liquor License Renewals: Market Place Gourmet Deli; Fraternal Order of Eagles; Shell Food Mart; Tides Tavern; and Water to Wine.
8. Approval of Payment of Bills for February 9, 2004.  
Checks #42337 through #42463 in the amount of \$892,242.53.
9. Approval of payroll for the month of January.  
Checks #3007 through #3053 and direct deposit entries in the amount of \$242,075.33. Check #3031 was voided.

Councilmember Dick requested that item number five, Virtual Law Library – Westlaw Contract, be removed from the consent agenda, and tabled until the next meeting so that he could discuss the agreement with the Court Administrator.

**MOTION:** Move to approve the consent agenda as amended.  
Ekberg / Picinich – unanimously approved.

**OLD BUSINESS:** None scheduled.

### **NEW BUSINESS:**

1. Rotary Centennial Project. Mark Hoppen, City Administrator, presented information on the proposal by the two local Rotary Clubs to construct a multi-purpose community shelter building on the Jerisich Dock / Skansie Brothers' Park property during 2004 to celebrate the Centennial Year for Rotary. He used a PowerPoint presentation to demonstrate the proposed citing of the structure in relationship to the existing restrooms and to the Skansie House. What is being proposed is an open structure which is about the same height as the existing restrooms, but with smaller footprint. Mr. Hoppen asked for direction from Council to identify the location of the structure in order for the city crew to be able to install irrigation, plant grass and install minor landscaping improvements by

the first week in March. Mr. Hoppen also asked for direction on whether the existing garage and driveway should remain if it is determined that the garage has no historical significance and will be too costly to repair and maintain as a garage. This area too, could be replanted with grass this spring. He added that it would be helpful if the Historical Preservationist, whose contract is on the agenda later in the meeting, could make a determination and present the information to Council to make a decision by March 1<sup>st</sup> on how to proceed.

Mr. Hoppen explained that the agreement in the packet is similar to the one approved with the Lion's Club for construction of the Finholm Viewclimb project. The agreement provides indemnification and insurance provisions to ensure that the project will be built as required and without liability to the city. He continued to explain that the agreement is lacking an exhibit that outlines the scope of work as it has yet to be negotiated and asked for direction from Council for staff to pursue a complete agreement to be presented for approval at a later date. At that point, the project will have gone through the design approval as well as an historical preservationist evaluation.

Mayor Wilbert pointed out that her concerns regarding blocking the view to the water had been addressed by the open design of the structure.

Councilmember Franich said that he thought that the structure would be a great community asset. He asked for clarification on who would determine the location. Mr. Hoppen explained that many factors, including the topography, design review, and the historical context, would determine the exact location.

David Freeman, Snodgrass Freeman Associates Architects. Mr. Freeman, a Rotarian involved with the design of the proposed structure, explained that his interest in this site goes back 12-13 years when he was involved with the design of the Head of the Harbor restroom facilities at Jerisich Dock. He described the restroom as a timber-frame structure with mortise and tenon assembly. He said that the new structure would be similar in construction and would take several months to craft and assemble the pieces. Mr. Freeman explained that the plan cites the structure 15 feet from the bulkhead, which meets shoreline requirements, and that the transparent nature of the design would create a view corridor as you pass by. The open structure will act as a natural amphitheater and stage for social gatherings, as the ground rises as you move toward the Skansie House. The placement would help to preserve and value the historic nature of the site by not competing with the house, and would create a nice community pavilion where it would be most useful.

Councilmember Picinich thanked the Rotary Clubs for all the projects that they have completed around Gig Harbor.

**MOTION:** Move we direct staff to gain Rotary Club signature to the attached agreement, including an appropriate Exhibit 'A' and to return the agreement to Council for approval.  
Picinich / Ekberg – unanimously approved.

2. First Reading of Ordinance – Text Amendment, 17.65 Special Uses. John Vodopich, Community Development Director, presented this ordinance that includes a definition for special uses and intends to clarify the existing regulations. He explained that currently, special uses are defined as an event that occurs less than seven days or less in a calendar year, and two special use permits are allowed per year. If exceeded, a conditional use permit would be required, which conflicts with other sections of the code. Many of the special uses typically involve retail sales in zones which it is already permitted, and therefore, not appropriate to require a conditional use permit. The concern that a traveling vendor might avoid a permanent business license by locating to a different site every few weeks was addressed by adding language to limit special uses to no more than two for any given applicant or site. Mr. Vodopich concluded that these changes have been reviewed and approved by the Planning Commission, and this ordinance will return for a second reading at the next meeting.

Councilmember Dick clarified that this ordinance will not affect the two existing Farmers Markets because one has a binding site plan and the other has a conditional use permit.

3. First Reading of Ordinance – RB-2 Text Amendment to Allow Single Family. Mr. Vodopich presented this ordinance which he described as housekeeping in nature. He explained that this ordinance amends the list of permitted uses in the RB-2 zone to allow for single-family attached and detached dwellings as an allowed use. He said that the Planning Commission reviewed the amendments and voted unanimously to recommend approval. This will return for a second reading at the next meeting.

Councilmember Franich asked for clarification on the density in the RB-2 zone. Mr. Vodopich replied that it is eight dwelling units permitted outright, with twelve allowed as a conditional use.

4. First Reading of Ordinance – B-2 Text Amendment – Hospitals as Conditional Use. John Vodopich presented this ordinance that amends the list of conditional uses in the General Business zone to conditionally allow hospitals. The Planning Commission voted unanimously to recommend approval after holding a public hearing. Mr. Vodopich said that a map delineating all the B-2 zones had been distributed, adding that this will return at the next meeting for a second reading.

5. First Reading of Ordinance – Correcting the Legal Description of Ordinance 938. John Vodopich presented this ordinance correcting a legal description of the annexation of one parcel of property adjacent to the city park on Vernhardson. The correction had been approved by the Washington State Department of Transportation Geographic Services Division.

Councilmember Dick asked if this annexation needed to be presented to the Boundary Review Board. Mr. Vodopich explained that this annexation was exempted from BRB review as it is city-owned and the intended use is for municipal purposes. This will return for a second reading at the next meeting.

6. Historic Preservation Services – Skansie Brothers Park. Mark Hoppen, City Administrator, presented this contract with Mr. Gene Grulich for services at the Skansie Brother's Park. He explained the importance of such a contract to actualize the recommendations from the Ad Hoc Committee, to assist in applying for future federal grant funding, and to aid in the application for IAC funding, of which the city would be eligible for one more year. Mr. Hoppen described the grant options that might allow for the development of the netshed, the house, and perhaps a maritime pier, adding that the city is currently exploring the parameters of such a process. He explained that a master plan would greatly assist in backing up a grant application and to provide a roadmap for the future of the property; a valuable reason to approve the contract.

Councilmember Franich asked for clarification on the \$500,000 in IAC Grant Funds. Mr. Hoppen explained that out of all the entities that applied for the grant money awarded last spring, \$410,000 was anticipated for the city. He said that the award still depends on when the money is appropriated by the state. He explained that another organization is aggressively advocating additional IAC funds, and the prospect looks positive for the city to get the full \$500,000 in funding.

Councilmember Franich then asked if a Request for Proposals had been issued for the historical preservation services. Mr. Hoppen explained that thirteen firms were contacted through the small works roster process, and the most qualified has been determined to be Mr. Grulich's firm.

Councilmember Dick clarified that RCW 35.80, regarding acquiring architectural and engineering services, doesn't contemplate an RFP, only the process to choose from the small works roster. The RFP is a more formal process used for different types of services than is addressed in the statute for selection of these types of services.

Councilmember Franich stressed the interest shown by the Ad Hoc Committee to participate in any project concerning the Skansie Brother's Park. He added that he thought it was supposed to be more of a "community-based" process with assistance from a preservationist on an on-call basis. Mr. Hoppen introduced Mr. Grulich to address this concern.

Gene Grulich, Principal of Grulich Architecture and Planning Services. Mr. Grulich explained that his firm has over 25 years experience in historic preservation and has received numerous awards. The opportunity to meet with representatives from the Ad Hoc Committee on an advisory level led to an invitation to submit information when the time came to choose a firm. Mr. Grulich stressed that he always encourages as much participation as possible from the people who are part of the community. This involvement makes the whole project more meaningful for everyone. He clarified that he doesn't have a vision of an overall project at this time, but he knows the component piece that he would be involved in, specifically the development of the history of the property in terms of how it has evolved, and how that can be built into the information conveyed to the public in whatever form that is chosen. Mr. Grulich said that one component that is being proposed is an historic structures report which would include a

detailed inventory of the building as it has evolved and a brief history of the people and events that have occurred in relationship to this site. Information will be solicited from the general community.

Councilmember Picinich asked Mr. Grulich to clarify who would be responsible for an inventory of the site. Mr. Grulich explained that he did not have a fishing background, and so would look to those in the community who do to assist with the inventory of both the house and the netshed.

Councilmember Dick asked if the proposed Rotary project could be accommodated as far an appropriate location. Mr. Grulich explained that it was his intent to accommodate the rapidly approaching 2004 building season for the structure by proposing the location by the restrooms so that it would not compete with the historic structures.

Councilmember Picinich asked if Mr. Grulich was aware of the intent to construct a maritime pier on the site, as there was nothing mentioned in the proposal. Mr. Grulich said that he had a general awareness and had been shown sketches of the proposed location of the pier.

Councilmember Franich said that he would like see a more detailed description of the functions contained in the Scope of Work, as there were things that the community showed an interest in participating. He said that he would like to see a preservationist working with the Ad Hoc Committee to see that they followed any criteria for obtaining grant funding. Mr. Grulich explained that it was up to the client, the City of Gig Harbor, to determine his Scope of Work.

**MOTION:** Move to take the staff recommendation to approve the contract as presented in an amount not to exceed forty-one thousand, sixty dollars (\$41, 060.00).  
Ekberg / Dick – Three voted in favor. Councilmembers Franich and Picinich voted no. The motion carried three to two.

7. First Reading of Ordinance – Gig Harbor Arts Commission. Mark Hoppen presented this recommendation from the Gig Harbor Arts Commission to amend the ordinance that forms and conducts the Arts Commission's activities. Specifically, they have difficulty in filling vacant positions. The proposed changes are a more liberal approach to the requirements for members to live and or work within the city limits. He introduced Lita Dawn Stanton, Chair of the Arts Commission, to answer questions.

Lita Dawn Stanton – 111 Raft Island. Ms. Stanton addressed the comment from Councilmember Dick in regards to the thrust of the membership requirements to focus on the city's involvement in the arts rather than the entire peninsula. She clarified that the reason for the proposed amendments is that there are dedicated members that wish to serve additional terms if qualified applicants do not come forward. Councilmember Picinich said that he had trouble with Section 'B', which amends the code to eliminate the requirement for seven members to either reside or work in the city. He said that he

would like to see that remain. Lita Dawn responded that this amendment would allow more flexibility. Councilmember Ekberg recommended changing the requirement to "A majority" rather than "seven," to address the concern that the commission may end up comprised of people that have no ties to the city.

Lita Dawn stressed the importance of keeping the nine-member commission. Councilmembers continued to discuss the number and make-up of the group, and it was decided that serving more than two terms was okay, but that Council wished for the majority of the membership to reside or work in the city.

Mark Hoppen explained the purpose of the Gig Harbor Arts Commission to stimulate art projects in the community to Councilmember Franich. Councilmember Ekberg said that in addition, the Commission was formed to help advise the Council with art for the new Civic Center. Mr. Hoppen noted that the City Attorney had defined "working in the city" as someone who has a place of work within the city. Councilmember Ekberg said that if not enough qualifying citizens made application, the seats could remain empty. A motion was made to amend the ordinance to be brought back at the next meeting for a second reading.

**MOTION:** Move to amend the language in subsection 'B' to delete the word "Two" in the second to last sentence, and to delete the word "Seven" and substitute "A majority of the Commissioners shall reside or work within city limits at the time of the appointment ..." in the last sentence.  
Dick / Ekberg – unanimously approved.

**STAFF REPORTS:**

1. GHPD – January Stats. No verbal report given.

**PUBLIC COMMENT:**

Mike Dickson – 5713 41<sup>st</sup> Ave NW. Mr. Dickson asked about the park at the head of town and asked what the future plans were for the property. John Vodopich explained that restrooms were scheduled to be constructed at the Donkey Creek Park, but no further plans for construction of toys or other facilities had been budgeted for at this time. Mr. Dickson then asked about the construction of sidewalks along 38<sup>th</sup> Street. Mr. Vodopich explained that it was a project included in the Six-year Transportation Plan, but due to the cost of the improvements, it was not included in the 2004 Budget.

Councilmember Dick noted that the city had just acquired a five-acre park on the Westside between 38<sup>th</sup> and the shopping area. He added that it would take awhile before the appropriate funds could be accumulated to make improvements to the property.

**COUNCIL COMMENTS / MAYOR'S REPORT:**



Councilmember Ekberg said that the Council had received the report on the finalized Building Size Analysis and suggested that staff put the recommendations into ordinance form for review by the Planning Commission. on the 19<sup>th</sup> of February. He made the following motion.

**MOTION:** To direct staff to place the recommendations received from the Building Size Analysis Report into ordinance form so that the Planning Commission could review and prepare written comments for Council to hold a public hearing at the first meeting in March.  
Ekberg / Dick – unanimously approved.

John Vodopich advised Council that draft ordinances must be sent to the state for a sixty-day review period and that a SEPA analysis would also have to be completed.

Councilmember Franich asked for an update on the progress to update the Design Review Manual. Mr. Vodopich explained that the draft should be back before Council by the end of April. Councilmember Franich asked that the colors on the maps be better delineated to help clarify the zones.

**ANNOUNCEMENT OF OTHER MEETINGS:**

Pierce County Regional Council General Meeting – Thursday, February 19, 2004 at 6:30 p.m. at Bates Technical College South Campus.

**MOTION:** Move to adjourn at 8:40 p.m.  
Ekberg / Picinich - unanimously approved.

CD recorder utilized:  
Disc #1 Tracks 1 – 15.

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Gretchen Wilbert, Mayor

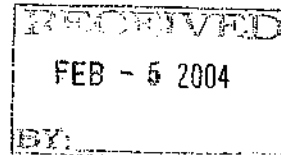
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Molly Towslee, City Clerk

# Franciscan Health System

February 2, 2004

Mayor Gretchen Wilbert  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335



Dear Mayor Wilbert,

Thank you for your participation in the public hearing for the proposed Franciscan Gig Harbor hospital last week. The community support and testimony for the hospital was very powerful. If our efforts are successful, and we believe they will, we know much of the credit will go to area residents who took the time to write letters and turn out at the hearing to let their needs be heard.

We were delighted to hear nearly 50 people testify in favor of the hospital and to see that more than 200 people came to the hearing, packing the room as a show of support. The community's desire for its own local hospital come through loud and clear!

Like you, we are anxious to move forward on planning and construction of the hospital and were gratified to know that the state plans to deliver a decision on the Certificate of Need as early as March 29<sup>th</sup>.

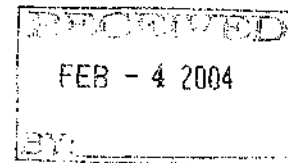
Again, thank you for taking the time to appear at the hearing and publicly support this project.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Wilczek".

Joseph Wilczek  
President and Chief Executive Officer  
Franciscan Health System

# Franciscan Health System



February 2, 2004

**MEMO**

**TO:** Gig Harbor Hospital Community Advisory Council  
**FROM:** Budd Wagner, Vice President of Marketing and Communications  
**RE:** Public Hearing Completed

I am writing to let you know that the public hearing for the proposed Franciscan Gig Harbor hospital on January 29 went very well. More than 200 people poured into Fire District 5's Headquarters building for the opening of the hearing at 10:00 a.m. and the crowd extended well out into the lobby. Approximately 50 people testified, all in favor of the proposal. The format for the hearing included opening statements by Franciscan representatives, open testimony, a question and answer period and then closing remarks by Joe Wilczek, Franciscan's CEO. The hearing concluded shortly after 1:00 p.m. and at 5:00 p.m. on Thursday, the public comment phase of the state's review process officially closed. The state regulators have indicated they will issue a decision by March 29<sup>th</sup>.

In the weeks leading up to the hearing, the state had received more than 600 letters of support from community residents and only 2-3 opposed. Between the hearing and the letters, I can say that the community's desire for its own local hospital come through loud and clear!

As we expected, on Thursday the state received documents from both MultiCare Health System and Harrison Hospital in Bremerton opposing our plan. (You may have seen the article in the January 31 edition of *The News Tribune* in which MultiCare suggests it can address the health care needs of Gig Harbor area residents by expanding on its Tacoma campus.) We will receive our copies early this week and will have until February 13 to refute the claims. This is common practice for the Certificate of Need process and we are confident not only of the quality of our application, but also that the facts are clear that the Peninsula community needs its own hospital. Clearly it is our hope that other organizations will not attempt to deny or delay local residents having access to the potentially life-saving services of a hospital in Gig Harbor.

We have been overwhelmed by the support for this project and I know that each of you has played a significant role in helping us achieve this. Thank you for taking the time to write letters of support and to those of you who appeared at the hearing. We'll continue to keep you informed as the project continues. In the mean time, please feel free to contact me at (253) 426-6602 or via email at [buddwagner@chiwest.com](mailto:buddwagner@chiwest.com) if you have any questions or comments.

Thank you.

# PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, March 2004 has been designated as "National Women's History Month" across the country; and

WHEREAS, March 2004 National Women's History Month will hold a special significance for all women as we recognize the many strides, accomplishments and contributions that women have made in our county's politics, science, arts, education and the space program and the great expectations that women have as we move into the 21<sup>st</sup> century; and

WHEREAS, during this noteworthy event and celebrations for women, we must remember the women veterans, especially those who have paid the ultimate price for the things we take for granted today, and our Washington State women who are serving in the military today, in Afghanistan, Iraq, Korea, Bosnia and other troubled spots around the world; and

WHEREAS, the Washington State Employment Security Department, will honor the month by conducting, job fairs, employment training, and information seminars as part of the celebrations and events that will be taking place here and across the country to pay tributes to Women during Women's History Month; March 2004

*NOW, THEREFORE*, I, Gretchen A. Wilbert, Mayor of the City of Gig Harbor, do proclaim March 2004 as

## ***WOMEN'S HISTORY MONTH FOR THE YEAR 2004***

And invite all citizens of Gig Harbor to join me in observing this noteworthy event, that recognizes the contributions and accomplishments that women have made in the military and every aspect of life in Washington State and across this great country of ours.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 23<sup>rd</sup> day of February 2004.

\_\_\_\_\_  
Gretchen A. Wilbert, Mayor

\_\_\_\_\_  
Date



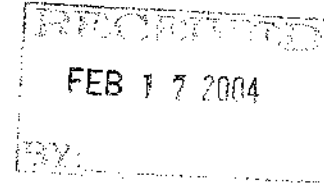
# Pierce County

Department of Community Services

8815 South Tacoma Way, Suite 202  
Lakewood, Washington 98499-4588 ♦ [www.co.pierce.wa.us](http://www.co.pierce.wa.us)  
253.798.7205 ♦ 800.833.6388 ♦ FAX 253.798.6604  
TDD/Voice 800.833.6388 ♦ e-mail: [pccommsvcs@co.pierce.wa.us](mailto:pccommsvcs@co.pierce.wa.us)

**TOM HILYARD**  
Director

February 13, 2004



Mayor Gretchen Wilbert  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, WA 98335

Dear Mayor Wilbert,

I am writing to share with you the annual summary of 2060 activities undertaken to fulfill the purpose and intent of this act addressing 'Affordable Housing'.

You will find attached to this letter a Summary of the 2003 Affordable Housing activities related to Substitute House Bill 2060. The 2060 Steering Committee identified several projects for funding that will, upon completion, increase our community's capacity to provide affordable housing for those in need.

If you have any questions, please contact me at (253)798-7033 or Gary Aden, Housing Division Manager.

Sincerely,

Tom L. Hilyard, Chair  
2060 Steering Committee

Attachment



**PIERCE COUNTY 2060 SUMMARY  
Fall Funding Round 2003**

- A total of 17 applications were received requesting \$2,861,569 for all eligible activities. Two applications were submitted past the submission deadline and were determined not eligible.
- A total of \$2,547,169 in requests from 15 eligible applications prepared by 11 non-profit agencies and one for-profit investor were considered for the Fall-2003 funding round. 7 applications were for operating and maintenance and 8 applications were for capital projects.
- In addition to the competitive applications described above, Associated Ministries met with service providers and allocated \$256,000 in accordance with the formula established in the Interlocal agreement for Emergency Shelter operating and maintenance funding.
- The total dollar amount of eligible applications received from the Tacoma-Lakewood Consortium was \$462,000. The Balance of Pierce County received \$2,085,169 in applications. Based on the formula allocation the Lakewood-Tacoma share of the Fall, 2003-2060 funding round is 48.37% or \$650,092.80. The Pierce County share is 51.63% or 693,907.20.
- The average time for agencies to complete the O & M application was 25 hours and less that 20 dollars in hard cost (copying). The average time to complete the capital application was 40 hours and cost between \$350 and \$15,000 to complete (appraisals, surveys, environmental reviews, etc.).

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Funding Available in 2003 Fall Round:	\$1,600,000.00
Shelter O & M Based on formula (16% of total)	\$ 256,000.00
Balance available based on formula (84% of total)	\$1,344,000.00
Lakewood/Tacoma allocation based on formula (48.37%)	\$ 650,092.80
Balance of Pierce County based on formula (51.63%)	\$ 693,907.20

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**In the first funding round (fall 2003), the Pierce County 2060 Steering Committee:**

1. **Provided funding commitments to 3 non-profit agencies to create 101 units of new affordable housing; and**
2. **Provided operating and maintenance support to 2 agencies supporting 27 units of affordable housing; and**
3. **Provided operation and maintenance funding support to 10 local shelters.**

Pierce County utilized **\$9,385** (.005% of total funds available) of 2060 revenues for administrative costs to implement the program from its inception through the completion of the initial funding round.

**2060 STEERING COMMITTEE**

**Fall-2003 FUNDING ROUND**

The following information summarizes the funding and allocations as determined by the the 2060 Steering Committee on December 16, 2003.

**Emergency Shelter Operating and Maintenance:\***

Associated Ministries	\$	6,000**
Catholic Community Services		15,120
Helping Hand House		24,570
Faith Homes		8,190
MLK Emergency Shelter		0
MLK Overnight Shelter		46,620
Lakewood Area Shelter Association		15,750
Network Tacoma		7,560
New Phoebe House		13,860
Salvation Army		36,540
Tacoma Rescue Mission Family Shelter		34,650
Tacoma Rescue Mission New Life Square		22,680
YWCA		26,460

**SUB-TOTAL** **\$ 256,000**

\* Allocations made by Associated Ministries Formula.

\*\* Request for a Fee for Service to administer funding. (Approved by Steering committee).

**Capital Request:**

Agency/Project	Request	Committed
Network Tacoma	250,000	250,000 (17 units)
Metropolitan Development Council	923,000	633,831 (39 units)
Multi Service Center	400,000	400,000 (45 units) (101 units)

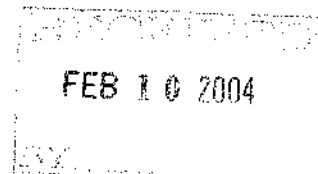
**Operating and Maintenance Request:**

Tacoma Rescue Mission	30,000	30,000 (12 units)
Mi Casa	30,169	30,169 (15 units)
		(27 units)

**SUB-TOTAL** **\$ 1,344,000**

**Total Allocation:** **\$1,600,000**

February 9, 2004



Mayor Gretchen Wilbert  
City of Gig Harbor  
3510 Grandview St.  
Gig Harbor, WA 98335

Dear Mayor Gretchen Wilbert:

The position on the Board of Commissioners for Pierce Transit, elected by the fourteen small cities and towns within the Pierce Transit boundary, will be up for renewal May 1, 2004. Councilmember Dave Enslow, from the City of Sumner, has represented these municipalities since May 2001. The Board of Commissioners is requesting your cooperation in the nomination and selection of one representative to fill this at-large position. Accordingly, we ask that you please present this item at your next Council meeting for action.

As information, the Pierce Transit Board meets the second Monday of each month at 4:00 p.m. at Pierce Transit headquarters, located at 3701 - 96<sup>th</sup> Street S.W., Lakewood. Board members also have committee responsibilities that require additional meeting commitments. All Board members' terms are for a three-year period; this position's term will expire on April 30, 2007.

In accordance with our bylaws, the following election procedure will be followed:

1. If your council wishes to submit a nomination, the enclosed nomination form must be submitted to Sandy Byers, Pierce Transit Clerk of the Board, no later than **5 p.m. on Wednesday, March 24, 2004.**
2. On **March 26, 2004**, a ballot listing the prospective nominees will be mailed to the fourteen town and city councils. Your council will have until **5 p.m. on May 1, 2004**, to return your ballot to the Pierce Transit Clerk of the Board.
3. A certified copy of the council resolution or motion must accompany all ballots. The Clerk of the Board shall count the ballots and announce the results of the balloting to the Board of Commissioners. A plurality of ballots cast will determine the successful candidate.



4. In the event of a tie, the city and town councils will have an additional thirty days to reconsider. The ballot procedure will be repeated until a candidate is selected by a plurality vote.

On behalf of Pierce Transit's Board of Commissioners, I wish to express my appreciation for your cooperation.

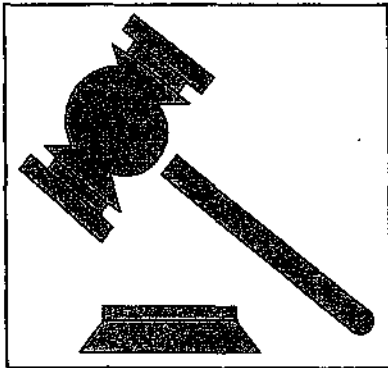
Sincerely,



Kevin Phelps, Chairman  
Pierce Transit Board of Commissioners

Enclosure

cc: Pierce Transit Board of Commissioners  
Don S. Monroe, CEO  
Sandy Byers, Clerk of the Board  
City Clerk



## NOMINATION FORM

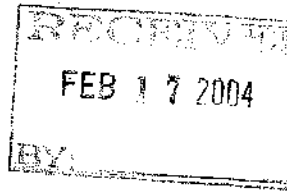
The town/city of \_\_\_\_\_ wishes to nominate  
Councilmember/Mayor \_\_\_\_\_ to serve as a member of  
the Board of Commissioners for Pierce Transit for a three-year term, May 1, 2004, to April 30,  
2007, representing the following towns and cities within the Pierce Transit boundary:

Auburn	Gig Harbor
Bonney Lake	Milton
Buckley	Orting
DuPont	Pacific
Edgewood	Ruston
Fife	Steilacoom
Fircrest	Sumner

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

**This form must be received by Pierce Transit's Clerk of the Board by 5 p.m., Wednesday, March 24, 2004.**

February 13, 2004



Gretchen Wilbert, Mayor  
 City of Gig Harbor  
 3510 Grandview Street  
 Gig Harbor, WA 98335



Dear Mayor Wilbert,

Looking ahead, the Tacoma Regional Convention & Visitor Bureau Board foresees that a new funding model will be essential for the bureau to continue to function effectively as the region's primary destination marketing organization. Our mission to promote individual, group and convention tourism to Pierce County benefits all the communities directly and indirectly. We must stay competitive with other destination marketing organizations to retain and increase Pierce County's share of the tourism pie.

The CVB's Board of Directors has reviewed the situation thoroughly and discussed the following funding model for 2005. We now ask for your input and consideration of this plan.

Beginning in 2005, the CVB would be funded by a fixed percentage of each community's hotel & motel tax collected. Fife, Gig Harbor, Lakewood, Puyallup and Pierce County would contribute 19 percent of their total hotel tax collected. Tacoma, would contribute 24 percent. Other Counties & Cities automatically fund their CVB's with a fixed percentage and eliminating private memberships' altogether; Snohomish County, for example, allocates 33% of the bed tax for their CVB.

We have arrived at these percentages as the "fair share" that would add up to a total amount which the CVB needs to function effectively in today's increasingly competitive environment of destination marketing.

The proposed funding formula is as follows:

A NEW FUNDING MODEL			
	Room Tax Collection (2003 Est.)	% Formula	\$ Formula for 2005
Fife	\$539,904	19%	\$102,580
Gig Harbor	\$198,815	19%	\$37,580
Lakewood	\$236,442	19%	\$44,920
Pierce County	\$480,329	19%	\$91,262
Puyallup	\$463,362	19%	\$88,030
Tacoma	\$1,983,010	24%	\$475,920
<b>Totals</b>	<b>\$3,901,862</b>	<b>21.4% (avg.)</b>	<b>\$840,292</b>

*The Art of Northwest Living*  
 www.TravelTacoma.com

This new funding model also would create a public partnership between the CVB and the lodging community. All hotels, motels and B&Bs would automatically receive the benefits provided by the CVB. For example, when a community contributes its fair share of 19 percent of the hotel tax, every lodging facility in that community would be represented and supported by the CVB's marketing and sales programs throughout the year. Conversely, no lodging property in a non-partner community could purchase membership or otherwise be represented by the CVB.

We request your feedback by May 31, 2004. The funding model will be voted on at the June meeting of CVB's Board of Directors. If approved, it will be implemented on January 1, 2005. We hope you agree the CVB's efforts to market your community and all of Pierce County should be sustained fairly, so increased tourism will benefit us all economically.

Sincerely,



Ruthie Reinert, CTP  
Executive Director

CC:  
Mark Hoppen, Gig Harbor City Manager  
Gig Harbor Lodging Facilities



**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR** *MH*  
**SUBJECT: VIRTUAL LAW LIBRARY - WESTLAW CONTRACT**  
**DATE: FEBRUARY 18, 2004**

**INFORMATION/BACKGROUND**

The attached Westlaw Contract, minus a \$600 budgeted cost, is necessary for the operation of the Virtual Law Library installed adjacent to the Municipal Court service window at the entrance to the Civic Center. The agreement is for a one-year period at the same yearly cost as presented at the last meeting.

**RECOMMENDATION**

Staff recommends that the City Council motion to approve this contract as presented.

**Virtual Law Library**  
**Preliminary Budget (excluding hardware, staff)**

<u>Product</u>	<u>Monthly</u>	<u>Discount</u>	<u>First Year</u>
Library Catalog Software (Lasercat)	no charge		n/a
Trillian Pro Instant Messenger Software	n/a		\$ 25.00 (one time charge)
Premise Software (Washington CD Rom research software)			
Washington Practice (legal encyclopedia)	\$ 84.00	20%	\$ 806.40
Revised Code of WA Annotated (RCWA)	\$ 80.00	20%	\$ 768.00
Washington Administrative Code (WAC)	\$ 21.50	20%	\$ 206.40
Washington Cases (supreme court & cts of appeal) includes: RCW, Jury Verdicts, Court Rules	\$ 89.50	20%	\$ 859.20
KeyCite Citator	\$ 75.00		\$ 859.20
Legal+Plus, Support-Gale-Software <i>ELIMINATED</i> includes calculator, electronic worksheets law enforcement form and confidential statement			\$ <del>399.95</del> (purchase price)
Forms provided by N.W. Justice Project, WA-Probate.com; Linx	no charge		n/a
Internet connection (Gig Harbor LAN?)	no charge		n/a
<i>Subtotal</i>	\$ 266.00		\$ 4,124.15
<i>Tax (8.8)</i>	\$ 23.41		\$ 362.93
<b>TOTAL</b>	<u>\$ 289.41</u>		<u>\$4,487.08</u>

**WEST ORDER FORM**  
610 Opperman Drive, P.O. Box 64833  
St. Paul, MN, 55164-1803  
Tel: 651/687-8000

**THOMSON**  
★  
**WEST**

Account # _____	PO# _____	Date <b>Feb 4</b> , 20 <b>04</b>
Name/Subscriber <b>CITY OF GIG HARBOR</b>		
Address <b>3510 GRANDVIEW ST</b>	Telephone # ( <b>253</b> ) <b>851-8136</b>	
City <b>GIG HARBOR</b>	State <b>WA</b>	Zip <b>98335</b>
Order Confirmation Contact _____	Order Confirmation E-Mail _____	
Bill To Address (if different) _____	City _____	State _____ Zip _____
Bill To Account # (if different) <b>JOHN A SMITH, 571994</b>		
Submitting Rep Name and Number _____	New Account	Yes _____ No _____

Westlaw Password Contact: \_\_\_\_\_ E-mail (for Westlaw password delivery): \_\_\_\_\_

WestlawPRO™ Products						
Full Svc #	WestlawPRO Products	Total # of Passwords	Mo. Banded/ Base Rate	Per User Rate	Other	Total Monthly WestlawPRO Charges
	<b>Keycite Public Access</b>	<b>1</b>				<b>75.00</b>
	<i>(on the internet)</i>					

Notes (including KeyCodes):  
\_\_\_\_\_

Total Monthly Charges \$ **75.00**

Monthly WestlawPRO Charges are billed on the date West processes Subscriber's order and for 12 months thereafter. If Subscriber elects below to commit to a longer term the Monthly WestlawPRO Charges will be billed as set forth herein. Thereafter, Monthly WestlawPRO Charges are billed at then-current rates.

Subscriber's Initials for 24 Month Agreement Notwithstanding anything in the "Subscriber Agreement" (as defined herein), Subscriber agrees to commit to a total of 24 months and the Monthly WestlawPRO Charges for the second 12 month period shall be up to 5% more than the Monthly WestlawPRO Charges for the initial 12 months.

Subscriber's Initials for 36 Month Agreement Notwithstanding anything contained in the "Subscriber Agreement", Subscriber agrees to commit to a total of 36 months and the Monthly WestlawPRO Charges for the second 12 month period shall be up to 3% more than the Monthly WestlawPRO Charges for the initial 12 months and the third 12 month period shall be up to 3% more than the Monthly WestlawPRO Charges for the second 12 months.

QuickView+  X

Authorized QuickView+ Password Holder \_\_\_\_\_ Password \_\_\_\_\_ Authorized Acct. # \_\_\_\_\_  
Subscriber shall authorize which Westlaw password(s) shall have access to QuickView+. Actual charges billed by West may vary from charges reported on QuickView+. Subscriber shall pay charges as billed. West does not warrant and has no liability with respect to the accuracy of charges or other information on QuickView+.

Issue Westlaw Passwords to:

NAME (last, first, middle initial)	Jds	Clrk	Atty	Lib	Para	Other	Product(s)

Westlaw passwords may only be used by the person to whom the password is issued and sharing of Westlaw passwords is STRICTLY PROHIBITED. Subscriber is responsible for all excluded/ancillary charges as incurred.

X- Subscriber's Initials **1** attorneys or corporate users are employed by Subscriber at the location identified above.

Internal Corporate Use Only  BND

**CD-ROM Libraries**

Attorneys are employed by Subscriber at the location on page 1 (caselaw libraries only)

Full Svc #	CD-ROM Products	Total # of Concurrent Users	Monthly CD-ROM Base Rate	Fee Concurrent User Rate	Other	Total Monthly CD-ROM Charges:
	Washington Practice	1				84.00
	Washington Caselaw	1				89.50
	Revised Code of Washington Annotated	1				80.00
	Washington Administrative Code *less 20% SOD	1				21.50 (55.00)

CD-ROM Charges are billed on the date West processes Subscriber's order and continue for a minimum of 12 months. Total Charges \$ 220.00  
 Thereafter, CD-ROM Charges will be billed at then-current rates.

**Print Products/Other Products**

Full Svc #	Quantity	Print Products and Other Products	Other	Charges

Total Charges

Terms : \$ \_\_\_\_\_ plus tax, per month for approximately \_\_\_\_\_ months, beginning the month following any applicable incentive. For terms of 12 or 24 months, without interest on principal while installments are paid as agreed.

1. **Subscription Service.** Subscription services may consist of updates and supplements to the service, as follows: (a) CD-ROM Libraries: updated, replacement or supplemental CD-ROMs and online updates, and other related supplemental material; (b) Print Products: pocket parts, pamphlets, replacement or ancillary volumes; loose-leaf pages and other related supplemental materials; all of which may be billed separately at then-current rates.

2. **General Provisions.** This Order Form is subject to approval by West in St. Paul, Minnesota, and will be governed by the laws of the state of Minnesota. The state and federal courts sitting in Minnesota will have jurisdiction over any claim and the parties consent to the jurisdiction of such courts. Sales, use, personal property, value added tax (VAT) or equivalent, ad valorem and other taxes are the responsibility of the Subscriber. Subscriber may be charged interest for overdue installments and subscriptions and for other open account charges. Interest charged may be adjusted to the then-highest current rate allowable on Minnesota contracts. Transfer or assignment of rights or obligations by Subscriber constitutes a material breach of this Order Form. The Subscriber Agreement and/or the West Software License Agreement. If any installments, subscriptions or open account charges remain unpaid 90 days after maturity, all unmaturing installments become due and payable at the option of West. All collection fees, including but not limited to attorneys fees, are payable by Subscriber. Transportation and handling charges will be added for print products. West may make credit investigations it deems appropriate including the request of a consumer credit report from a credit reporting agency on any individual identified in this Order Form. If Subscriber inquires whether a credit report was requested, West will provide information of such and if a report was received. West will provide to Subscriber the name, address and telephone number of the agency that supplied the report.

3. **Returns.** If you are not completely satisfied with any product you receive from West, you may return it within 45 days of the invoice date for a full refund or credit, in accordance with West's then-current returns policies. Westlaw Charges are not refundable.

The Subscriber Agreement for Westlaw and CD-ROM Libraries, the applicable Schedule A price plan ("Subscriber Agreement"), for packaged Westlaw products and/or CD-ROM Libraries orders is hereby incorporated by reference and made part of this Order Form. Subscriber, by his/her signature below, acknowledges his/her understanding and acceptance of the terms and conditions of the Subscriber Agreement.

X \_\_\_\_\_ Signature X \_\_\_\_\_ Date 2- -04

**AUTHORIZED REPRESENTATIVE FOR ORDER FORM**

Printed Name Gretchen A. Wilbert, Mayor

Date 2- -04

X \_\_\_\_\_ Signature X \_\_\_\_\_

If Subscriber is incorporated or a limited liability entity, the following must be completed by an owner/principal personally: I agree to these terms and personally guarantee payment of this agreement and subscription service furnished thereunder.  
 Signature X

**For Credit Card Transactions only:**

Visa \_\_\_\_\_ Master Card \_\_\_\_\_ American Express \_\_\_\_\_ Card# \_\_\_\_\_ Exp. Date \_\_\_\_\_



**THOMSON**

**WEST**

**West, a Thomson business**  
**New Account Application**

**Organization Profile**

Organization/Account Name: City of Gig Harbor  
 Street Address: 3510 Standview Street  
 City: Gig Harbor State: WA Zip: 98335 County: Pierce  
 If Appropriate, Department: \_\_\_\_\_  
 Tax Exempt:  Yes  No (If yes, attach copy of tax exempt certificate)  
 WEB Address: (Optional) \_\_\_\_\_  
 D-U-N-S Number: \_\_\_\_\_

**Type of Organization (Select Single Best Option):**

- |  |  |
|--|--|
| <input type="checkbox"/> Academic                                | <input type="checkbox"/> Government (Specify)            |
| <input type="checkbox"/> Corporation                             | <input checked="" type="checkbox"/> Municipal Government |
| <input type="checkbox"/> Sole proprietor/Commercial              | <input type="checkbox"/> County Government               |
| <input type="checkbox"/> Solo Attorney                           | <input type="checkbox"/> State Government                |
| <input type="checkbox"/> Law Firm (Specify Number of Attorneys)= | <input type="checkbox"/> Federal Government              |
| <input type="checkbox"/> Reseller                                |  |
| <input type="checkbox"/> Other (Specify) _____                   |  |

**If Appropriate: List Primary Practice Areas:** \_\_\_\_\_

**Names of Owners/Principals:**

Name: <u>Mark Hoppen</u>	Title: <u>City Administrator</u>
Name: <u>David Rodenbach</u>	Title: <u>Finance Director</u>
Name: _____	Title: _____
Name: _____	Title: _____

Contact Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Are you an attorney?  Yes  No If yes, list bar designation(s): \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Telephone: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ Fax: \_\_\_\_\_

Check to receive important e-mail notifications and special promotions from West. We will not sell, rent or share you information with others.

**References**

Name: <u>Ace Hardware</u>	Name: <u>Lumbermans</u>
Address: <u>3104 Judson St. Gig Harbor WA</u>	Address: <u>5519 20th St E Tacoma WA</u>
Phone: <u>253-858-5950</u>	Phone: <u>253-858-6169</u>
Contact: _____	Contact: _____

**Authorization**

The undersigned hereby consents to and authorizes West, A Thomson business, to contact any source listed above and/or use a consumer credit report on any individual identified in this document to determine creditworthiness.

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Should credit be granted by West, all decisions with respect to the extension or continuation shall be at the sole discretion of West. West does not discriminate against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age provided the applicant has the capacity to enter into a binding contract. West may terminate any credit availability within its sole discretion.

West : 610 Opperman Drive : Eagan, MN 55123 : 1-800-328-WEST

Westlaw.

## WestDoc Subscriber Agreement

Subscriber Agreement entered into between \_\_\_\_\_ ("Subscriber") and WEST GROUP ("West") regarding WestDoc, the document retrieval service from Westlaw on the Internet, computer-assisted legal research service, as follows:

### 1. Subscriber Agreement

By signing this Agreement, and agreeing to the terms of this Subscriber Agreement, you, either as an individual or contracting on behalf of your organization, become a subscriber ("Subscriber") to WestDoc, the document retrieval service for Westlaw. This Subscriber Agreement governs all access to WestDoc and use of the Westlaw data retrieved through WestDoc ("Westlaw Data" including "Downloaded Westlaw Data" as defined below). This is the entire agreement between Subscriber and West relating to WestDoc and the Westlaw Data.

### 2. Modifications

West may, at any time, amend the Subscriber Agreement and modify, enhance or delete databases, features, services and functions (defined below as "Features") available to Subscriber. The amended Subscriber Agreement will be made available in written form or online and will be effective immediately. If at any time you and/or your organization disagree with the terms and conditions of the Subscriber Agreement, WestDoc access may be terminated as provided in Section 9 below.

### 3. Charges

The current charge for WestDoc is \$10 for each document retrieved. West will bill and Subscriber will pay all WestDoc charges incurred through use of Subscriber's user name and password. Charges do not include any applicable sales, use, ad valorem, personal property or other taxes for which Subscriber is responsible. If full payment is not made within the time period specified on West's invoice, the maximum legal interest on any unpaid balance will be charged.

### 4. License

a. Grant. West grants Subscriber a non-exclusive, non-transferable, limited license to access Westlaw Data retrieved through WestDoc. Westlaw consists of various West-owned and third party databases, services and functions (all of which may be referred to as "Features") which may change from time to time. Access to certain Features and Westlaw Data may be restricted. Subscriber is licensed to use Westlaw Data made available solely in the regular course of Subscriber's legal and other research and related work. Public Records Databases and Services are licensed subject to section 5 and along with other Features may be subject to Additional Terms (as defined below), all of which take precedence over the license granted in this paragraph. Except as otherwise provided with respect to certain Westlaw Data, the license includes the right to download and temporarily store insubstantial portions of Westlaw Data ("Downloaded Westlaw Data") to a storage device under Subscriber's exclusive control solely (i) to display internally such Downloaded Westlaw Data and (ii) to quote and excerpt from such Downloaded Westlaw Data (appropriately cited and credited) by electronic cutting and pasting or other means in memoranda, briefs and similar work product created by Subscriber in the regular course of its research and work. Subscriber may also create printouts of Westlaw Data for internal use and for distribution to third parties if such third parties agree not to further distribute the printouts.

b. Limitations. Subscriber may not copy, download, store, publish, transmit, transfer, sell or otherwise use the Westlaw Data, or any portion of the Westlaw Data, in any form or by any means, except (i) as expressly permitted by this Agreement, (ii) with West's prior written permission, or (iii) if not expressly prohibited by this Agreement or by the Additional Terms, as allowed under the fair use provision of the Copyright Act (17 U.S.C.A. §107). Downloaded Westlaw Data will not be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement or as quoted in Subscriber's work product. Subscriber will not sell, license or distribute Westlaw Data (including printouts and Downloaded Westlaw Data) to third parties or use Westlaw Data as a component of or as a basis for any material offered for sale, license or distribution.

c. Rights in Data. Except for the license granted in this Agreement, all right, title and interest in Westlaw Data, in all languages, formats and media throughout the world, including all copyrights, are and will continue to be the exclusive property of West and other contributors ("Contributors") of Data.

d. Additional Terms and Conditions. Certain Features are governed by terms and conditions which are different than those set forth in this Agreement ("Additional Terms"). Subscriber will be given an opportunity to review Additional Terms by receiving notice of such Additional Terms in writing or online or by such other means as West may determine. Additional Terms may be modified effective upon West giving Subscriber notice (in writing, online or otherwise) of the modification. By using Features governed by Additional Terms, Subscriber agrees to, and will be obligated to comply with, all such Additional Terms as well as the terms and conditions in this Agreement. All Additional Terms will be considered part of this Agreement.

### 5. Public Records Databases

Public records databases consist of third party public records databases and filings as identified in the Westlaw Directory ("Public Records Databases"). Subscriber will not use Public Records Databases Data in a manner contrary to or in violation of any applicable federal, state, or local law, rule or regulation, including without limitation the Fair Credit Reporting Act (15 U.S.C.A. §1681 et seq.). Subscriber certifies that it will not use any credit information obtained by it from Public Records Databases as a factor in establishing a consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, for employment purposes or for governmental licenses.

### 6. Disclaimer of Warranties and Limitation of Liability

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, WESTLAW, WESTDOC, FEATURES AND WESTLAW DATA ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS. SUBSCRIBER'S EXCLUSIVE REMEDY AND WEST'S, ITS AFFILIATES AND/OR CONTRIBUTORS' ENTIRE

LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO WESTLAW, WESTDOC, FEATURES OR WESTLAW DATA WHICH ARE MADE AGAINST THEM, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR NEGLIGENCE, WILL BE LIMITED TO THE AGGREGATE AMOUNT OF CHARGES PAID BY SUBSCRIBER WHICH IS THE BASIS OF THE CLAIM(S) DURING THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT WILL WEST, ITS AFFILIATES AND/OR CONTRIBUTORS BE LIABLE TO SUBSCRIBER FOR ANY CLAIM(S) RELATING IN ANY WAY TO (i) SUBSCRIBER'S INABILITY OR FAILURE TO PERFORM LEGAL OR OTHER RESEARCH OR RELATED WORK OR TO PERFORM SUCH LEGAL OR OTHER RESEARCH OR WORK PROPERLY OR COMPLETELY, EVEN IF ASSISTED BY WEST, ITS AFFILIATES OR CONTRIBUTORS, OR ANY DECISION MADE OR ACTION TAKEN BY SUBSCRIBER IN RELIANCE UPON WESTLAW DATA, (ii) ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S RIGHTS UNDER THIS AGREEMENT OR USE OF, OR INABILITY TO USE, WESTDOC, FEATURES OR WESTLAW DATA, EVEN IF WEST, ITS AFFILIATES AND/OR CONTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (iii) THE PROCURING, COMPILING, INTERPRETING, EDITING, WRITING, REPORTING, OR DELIVERING WESTLAW DATA. FURTHER, WEST WILL HAVE NO LIABILITY WHATSOEVER TO SUBSCRIBER FOR ANY CLAIM(S) RELATING IN ANY WAY TO ANY THIRD PARTY FEATURE. AS USED IN THIS AGREEMENT, "AFFILIATES" MEANS ENTITIES WHICH CONTROL, ARE CONTROLLED BY OR ARE UNDER COMMON CONTROL WITH THE NAMED ENTITY.

7. Limitation of Claims

Except for claims relating to improper use of Westlaw, WestDoc, Westlaw Data or Features no claim, regardless of form, which in any way arises out of this Agreement or the use of, or inability to use, Westlaw, WestDoc, Westlaw Data or Features may be made, nor action based upon such claim brought, by either party to this Agreement more than one year after the basis for the claim becomes known to the party desiring to assert it.

8. No Assignment

This Agreement nor any part of it may be assigned, sublicensed or otherwise transferred to a third party without West's prior written consent. Subscriber is responsible for all access to and use of WestDoc by means of Subscriber's user name and password, even if Subscriber did not know of or authorize such access and use.

9. Termination

This Subscriber Agreement is subject to approval by West in St. Paul, Minnesota. Subscriber may terminate this Subscriber Agreement and access to WestDoc at any time by providing notice of termination to West by e-mail at

webmaster.westdoc@westgroup.com or by United States mail at 610 Opperman Drive, P.O. Box 64833, St. Paul, Minnesota 55164-1803, Attention: Customer Service. West may terminate the Subscriber Agreement and access to WestDoc (i) immediately upon giving you written or online notice of termination if Subscriber commits a material breach of this Agreement or if West determines Subscriber is ineligible to use WestDoc, or (ii) upon 30 days prior written notice of termination or online notice of termination posted on WestDoc. Sections 3 and 6 survive any termination of this Agreement.

10. Force Majeure

West's performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like.

11. General Provisions

This Subscriber Agreement will be governed by the laws of the State of Minnesota. If any provision of the Agreement is determined by a court to be void, invalid, unenforceable or illegal, the enforceability of the other provisions of the Subscriber Agreement will not be affected. Failure to enforce any provision of this Subscriber Agreement will not constitute a waiver of the right to later enforce it. The headings and captions contained in this Subscriber Agreement are inserted for convenience only and do not constitute a part of this Subscriber Agreement.

SUBSCRIBER

Signature \_\_\_\_\_

Name (please print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Firm Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contact \_\_\_\_\_

Telephone \_\_\_\_\_

Sales Representative \_\_\_\_\_

## Subscriber Agreement for Westlaw® and CD-ROM Libraries

Westlaw.

AGREEMENT entered into between "Subscriber" as set forth on the West order form ("Order Form") and West, a Thomson business ("West"), regarding Westlaw and/or CD-ROM Libraries, as follows:

**1. Westlaw and CD-ROM Libraries.** Subscriber may subscribe to Westlaw, West's computer assisted legal research service, via certain packaged Westlaw Schedule A price plans, and/or CD-ROM Libraries ("Libraries") by submitting a then-current Order Form. All Library subscriptions shall include access to Westlaw. Westlaw and CD-ROM Libraries are licensed to Subscriber subject to the terms and conditions of this Agreement, the Order Form, the applicable Schedule A or as otherwise agreed by the parties in writing. This Agreement supplements but does not supersede any Westlaw Subscriber Agreement in effect between Subscriber and West as of the effective date of this Agreement ("Existing Westlaw Agreement").

### 2. License.

(a) **Grant.** Subscriber is granted a non-exclusive, non-transferable, limited license to access Westlaw and the CD-ROM Library(ies) to which Subscriber subscribes. Such license includes the right to access data made available on Westlaw ("Westlaw Data") and data contained in the CD-ROM Library(ies) ("CD-ROM Data," collectively "Data" which includes "Downloaded Data" as defined below). Subscriber may use the Data internally solely in the regular course of legal and other research and related work. Except as otherwise provided with respect to certain Westlaw Data, the license includes the right to download and temporarily store insubstantial portions of Data ("Downloaded Data") to a storage device under Subscriber's exclusive control solely (i) to display internally such Downloaded Data and (ii) to quote and excerpt such Downloaded Data (appropriately cited and credited) by electronic cutting and pasting or other means in memoranda, briefs and similar work product created by Subscriber in the regular course of its research and work. Subscriber may also create printouts of Data for internal use and for distribution to third parties if such third parties agree not to further distribute the printouts.

(b) **Limitations.** Subscriber may not copy, download, store, publish, transmit, transfer, sell or otherwise use the Data or any portion of the Data, in any form or by any means, except (i) as expressly permitted by this Agreement, (ii) with West's prior written permission, or (iii) if not otherwise expressly prohibited by this Agreement or by the "Additional Terms" (as defined below), as allowed under the fair use provision of the Copyright Act (17 U.S.C.A. § 107). Downloaded Data shall not be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement or as quoted in Subscriber's work product. Subscriber shall not sell, license or distribute Data (including printouts or Downloaded Data) to third parties or use Data as a component of or as a basis for any material offered for sale, license or distribution.

(c) **Westlaw.** Westlaw consists of various West-owned and third party databases, services, functions and remotely-accessed gateways (collectively "Features") which may change from time to time. Access to certain Features may be restricted. Certain Features are licensed subject to paragraphs 3, 6, 7 and 8 which take precedence over the license granted in this paragraph or additional terms ("Additional Terms"), which are different from those set forth in this Agreement. Subscriber will be given an opportunity to review Additional Terms by receiving notice of such Additional Terms in writing or online or by such other means as West may determine. Additional Terms may be modified effective upon West giving Subscriber notice (in writing, online or otherwise) of the modification. By using Features governed by Additional Terms, Subscriber agrees to, and will be obligated to comply with, all such Additional Terms as well as the terms and conditions in this Agreement. All Additional Terms will be considered part of this Agreement. Subscriber may, on an occasional and infrequent basis and via Westlaw functionality, direct West to transmit individual documents in electronic format to internal user(s) or to a third party who is an individual if such third party agrees not to further disseminate such documents. Subscriber acknowledges its responsibility in assuring compliance with the foregoing by any third party to whom Subscriber transmits documents pursuant to the preceding sentence. Direct transmission of electronic copies by Subscriber is prohibited, except as provided in the electronic brief terms of paragraph 3 herein.

(d) **CD-ROM Libraries.** Each Library is licensed for use at a single Subscriber office location ("Site"). In addition, Subscriber's personnel who work at or are assigned to a licensed Site may access the Libraries by remote dial-in access to the Site or off-Site on stand-alone PCs. Each Library is licensed for use on stand-alone PCs or on a single local area network ("LAN") installed at a licensed Site that is electronically linked and capable of sharing the use of one or more CD-ROMs. The Order Form will indicate the number of concurrent users authorized to access each Library licensed for use on a LAN. Each such Library will be licensed with a proprietary control file which Subscriber may install only on the single LAN. Subscriber may transfer the CD-ROM Data contained in the Library to a single storage drive under Subscriber's exclusive control and to maintain such CD-ROM Data as a searchable CD-ROM Software (as defined herein) compatible database subject to the terms and conditions of this Agreement. Subscriber may also use, only at the Site, West-proprietary Data available as part of a Library as set forth in paragraph 3. Access to Data through wide area networks, multiple LANs, multiple sites or similar arrangements is strictly prohibited.

(e) **Rights in Data.** Except for the license granted in this Agreement, all right, title and interest in the Data, in all languages, formats and media throughout the world, including all copyrights, are and will continue to be the exclusive property of West and other contributors ("Contributors"). The CD-ROM Data architecture, including the format, layout and data structures, are proprietary. Subscriber may not reverse engineer or otherwise attempt to discern such proprietary architecture. The CD-ROMs and West Software, as defined herein, are and will remain the exclusive property of West, its affiliates and software owners.

**3. West Proprietary Data.** West grants a non-exclusive, non-transferable, limited license to individual users within Subscriber entities to store and use West-proprietary Downloaded Westlaw Data and CD-ROM Data (i.e., documents not licensed by West from third parties) in a searchable database maintained in connection with an ongoing project of the user ("Project Database"). Such database must consist preponderantly of users' work product with access limited to those internal users actively working on the project. The West-proprietary Downloaded Data may be maintained in the Project Database so long as the project remains active or until any termination of the Subscriber Agreement, whichever occurs first. Retention of Downloaded Data in a Project Database after the project ends, in an archival database as used as a research tool or in a database accessible to external users is prohibited. West further grants to Subscriber a limited, non-exclusive, non-transferable license to include West-proprietary Downloaded Data in briefs prepared for a specific cause of action for a specific court in an electronic format. Distribution or dissemination of such West-proprietary Downloaded Data in connection with or as part of a brief is limited to the court before which the cause of action is to be heard, the parties to the cause of action, or their representatives. Any further distribution is prohibited without written permission of West. West-proprietary Downloaded Data included in such briefs must retain West copyright notices and indicate that use of, distribution and dissemination to the permitted parties is with the permission of West.

### 4. West Software and westlaw.com™.

(a) **West Software.** West may make available to Subscriber, on a subscription basis, software for use in connection with Westlaw ("Westlaw Software") or to access third party gateway services and certain Westlaw Features not available when accessing Westlaw with CD-ROM software ("CD-ROM Software" including, but not limited to PREMISE®, LawDesk and Folio® used to access the Libraries). Subscriber hereby subscribes to Westlaw Software and CD-ROM Software (collectively "West Software") and updates and accompanying documentation as indicated on the Order Form. West Software will be licensed under a license agreement which will accompany the West Software. By using the West Software (including each update) and taking such other action as may be referenced in the agreement as constituting acceptance, Subscriber agrees to be bound by the terms and conditions of the accompanying license agreement. If Subscriber does not so agree, Subscriber must return any tangible copies of the West Software in its possession or control.

(b) **westlaw.com.** westlaw.com is an Internet-based service that provides access to Westlaw. West grants Subscriber a non-exclusive, non-transferable, limited license to use westlaw.com (including all versions and updates). Subscriber may not reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the components of westlaw.com, nor may Subscriber reproduce all or any portion of the components of westlaw.com. Subscriber may use Westlaw Data cached in Subscriber's local disk drive solely in support of its use of westlaw.com. Certain software used by Subscriber may not be capable of supporting westlaw.com. The performance of westlaw.com varies with the manufacturers' equipment with which it is used.

**5. Charges and Modification of Charges.** Charges payable for access to Westlaw ("Westlaw Charges") will be as stated on the Order Form, the applicable Schedule A or as otherwise agreed upon in writing by the parties. Westlaw Charges shall commence on the date Subscriber first accesses Westlaw or any Feature or as otherwise stated on the Schedule A or Order Form. Westlaw Charges may be modified upon at least 30 days prior notice to Subscriber in writing or online or as stated on the Order Form. The charges currently payable by Subscriber for each Library are as set forth on the Order Form ("CD-ROM Charges"). CD-ROM Charges also include, without limitation, charges for Library additions and Features introduced after the effective date of this Agreement. CD-ROM Charges will be determined by West and may be modified at any time without notice. All charges are exclusive of sales, use, value added tax (VAT) or equivalent, ad valorem, personal property and other taxes, which are the responsibility of Subscriber. Subscriber will pay all invoices in full within 30 days of receipt. If full payment is not made, Subscriber may be charged up to the maximum legal interest on the unpaid balance.

**6. Public Records Databases.** Public records databases consist of third party public records databases and filings as identified in the Westlaw Directory ("Public Records Databases"). Subscriber shall not use Public Records Databases in a manner contrary to or in violation of any applicable federal, state, or local law, rule or regulation, including without limitation the Fair Credit Reporting Act (15 U.S.C.A. § 1681 et seq.). Subscriber certifies that it will not use any credit information obtained by it from Public Records Databases as a factor in establishing a consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, for employment purposes or for governmental licenses.

### 7. Factiva® on Westlaw.

(a) **License.** Factiva on Westlaw is the property of Dow Jones Reuters Business Interactive LLC ("Factiva") and its licensors. Subscriber's access and use of Factiva on Westlaw is governed by the terms and conditions of the Subscriber Agreement including this paragraph. Factiva on Westlaw Databases are subject to Additional Terms (as defined above) as set forth in the Scope screen for each Factiva on Westlaw Database. Data and information made available

on Factiva on Westlaw ("Factiva Data") may be accessed and used solely by Subscriber's employees who are members of the "Legal Market" as defined below ("Permitted Users") for their individual use. Factiva Data may be manipulated, analyzed, reformatted, printed and displayed by a Permitted User on his or her terminal solely in the course of Subscriber's legal, tax, accounting, compliance and related research and work. Subscriber may not, and may not allow any Permitted User to edit, store, reproduce, retransmit, disseminate, sell, distribute, publish, broadcast or circulate Factiva Data, except that Permitted Users may, on an occasional and infrequent basis, store or include an individual article or part thereof in internal reports and in reports, specifically including briefs, court opinions and related legal documents, to customers or in response to their inquiries, provided that such Factiva Data is attributed, where applicable, to the original publisher of the Factiva Data and includes all copyright or other proprietary rights notices, and provided that such dissemination is limited and not intended as a substitute for paying for additional Permitted Users. In no event may the Factiva Data be stored by Permitted Users in order to create their own Factiva Data research application or as an alternative to licensing and paying for the Factiva Data through Westlaw.

(b) **Legal Market.** "Legal Market" means (i) all lawyers, paralegals and support personnel in law firms, legal research firms and in legal departments of enterprises and entities, including but not limited to corporations, businesses, universities, foundations and associations; (ii) all persons who support, enforce, administer, study, create or counsel with regard to the law in executive, legislative and judicial branches of federal, state and local governments of any country or international authority; (iii) tax and accounting professionals and related support staff in accounting, employee benefits, actuarial and tax consulting firms and tax and accounting departments of corporations (but not including those employees who engage in the buying and selling of negotiable financial instruments for such firms or corporations or their customers' accounts); (iv) all faculty, students and support staff in a law, tax and accounting schools; (v) compliance professionals within an enterprise with legal, regulatory, compliance, audit or similar responsibilities who need, in addition to legal research information, general business news and information, including information on particular topical market niche such as insurance, bankruptcy, environment and the like; and (vi) bar associations or other associations of legal providers. Subscriber may not permit access, use or redistribution of Factiva Data by or to any person or entity which is not a member of the Legal Market (including third parties and employees of Subscriber who are not members of the Legal Market).

8. **West Legal Directory™.** Subscriber may use Westlaw Data and CD-ROM Data contained in West Legal Directory ("WLD") internally in the regular course of Subscriber's business. Subscriber may also create printouts of insubstantial portions of Data consisting of individual WLD listings or selected names and addresses for its own use. Use of WLD to create mailing or marketing lists for commercial purposes or for distribution to third parties is prohibited.

9. **Responsibility for Certain Matters.** Subscriber may access Westlaw from additional Subscriber locations upon prior notice of such location. Subscriber is responsible for notifying West in writing of persons to whom Westlaw passwords are to be issued or from whom passwords are to be revoked. Subscriber is solely responsible for maintaining security of Westlaw passwords. Subscriber is also responsible for all access to and use of Libraries, CD-ROM Data, CD-ROM Software, Westlaw, Westlaw Data, Factiva Data, West Software and westlaw.com (collectively the "Deliverables") by Subscriber's personnel or Westlaw passwords, whether or not Subscriber has knowledge of or authorizes such access and use.

10. **Disclaimer of Warranties and Limitation of Liability.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE DELIVERABLES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS. SUBSCRIBER'S EXCLUSIVE REMEDY AND WEST'S AND/OR CONTRIBUTORS' ENTIRE LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THE DELIVERABLES WHICH ARE MADE AGAINST THEM, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR NEGLIGENCE, SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF CHARGES PAID BY SUBSCRIBER RELATIVE TO THE LIBRARY, WESTLAW FEATURE OR THE WEST SOFTWARE, AS APPLICABLE, WHICH IS THE BASIS OF THE CLAIM(S) DURING THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL WEST OR CONTRIBUTORS BE LIABLE TO SUBSCRIBER FOR ANY CLAIM(S) RELATING IN ANY WAY TO (i) SUBSCRIBER'S INABILITY OR FAILURE TO PERFORM LEGAL OR OTHER RESEARCH OR RELATED WORK OR TO PERFORM SUCH LEGAL OR OTHER RESEARCH OR WORK PROPERLY OR COMPLETELY, EVEN IF ASSISTED BY WEST, OR ITS CONTRIBUTORS, OR ANY DECISION MADE OR ACTION TAKEN BY SUBSCRIBER IN RELIANCE UPON WESTLAW DATA, INCLUDING FACTIVA DATA, AND CD-ROM DATA; (ii) ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S RIGHTS HEREUNDER OR USE OF, OR INABILITY TO USE, THE DELIVERABLES, EVEN IF

WEST OR CONTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (iii) THE PROCURING, COMPILING, INTERPRETING, EDITING, WRITING, REPORTING OR DELIVERING WESTLAW DATA, INCLUDING FACTIVA DATA, AND CD-ROM DATA. FURTHER, WEST SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIM(S) RELATING IN ANY WAY TO ANY THIRD PARTY FEATURE. SUBSCRIBER ALSO ACKNOWLEDGES THAT FACTIVA DATA MAY INCLUDE VIEWS, OPINIONS AND RECOMMENDATIONS OF INDIVIDUALS OR ORGANIZATIONS WHOSE THOUGHTS ARE DEEMED OF INTEREST, AND THAT WEST AND FACTIVA DO NOT ENDORSE SUCH VIEWS, GIVE INVESTMENT, TAX OR LEGAL ADVICE, OR ADVOCATE THE PURCHASE OR SALE OF ANY SECURITY. NEITHER WEST NOR CONTRIBUTORS MAKE ANY WARRANTY THAT ACCESS TO WESTLAW WILL BE UNINTERRUPTED, SECURE, COMPLETE OR ERROR FREE. NOR DOES WEST MAKE ANY WARRANTY AS TO THE LIFE OF ANY URL. SUBSCRIBER ACKNOWLEDGES THAT PROVISION OF WESTLAW.COM ENTAILS THE LIKELIHOOD OF SOME HUMAN AND MACHINE ERRORS, DELAYS, INTERRUPTIONS AND LOSSES, INCLUDING THE INADVERTENT LOSS OF WESTLAW DATA OR DAMAGE TO MEDIA.

11. **Limitation of Claims.** Except for claims relating to Westlaw Charges or CD-ROM Charges, or improper use of the Deliverables, no claim, regardless of form, which in any way arises out of this Agreement may be made, nor action based upon such claim brought under this Agreement more than one year after the basis for the claim becomes known to the party desiring to assert it.

12. **Effect of Agreement.** This Agreement (which includes all applicable Order Forms, any Existing Westlaw Agreement, current and future Schedules and Additional Terms, license agreements and the like) embodies the entire understanding between the parties with respect to the subject matter of this Agreement and except as otherwise provided herein supersedes any and all prior understandings and agreements, oral or written, relating to the subject matter. Except as otherwise provided in this Agreement, West may amend the terms and conditions of this Agreement by giving Subscriber at least 30 days prior written or online notice. Any other amendment must be in writing and signed by both parties.

13. **Term and Termination.** This Agreement and each Order Form will become effective upon approval and acceptance by West in St. Paul, Minnesota and will continue in effect until terminated by either party upon at least 30 days prior written notice of termination to the other party; provided, however, this Agreement and each Order Form may not be terminated prior to one year after the first day of the month following the date West processes this Agreement and the Order Form and any subsequent Order Form(s), unless otherwise agreed in the Order Form. West may terminate a Library subscription upon 30 days prior written notice if such Library is no longer commercially available. Subscriber may terminate this Agreement immediately by giving written notice of termination after receiving notice of any amendment (as permitted under paragraphs 2(c) and 12), which contains new terms that materially alter the terms of this Agreement and are unacceptable to Subscriber. West may terminate this Agreement immediately upon giving written notice of termination to Subscriber if Subscriber commits a material breach of this Agreement or of any obligation to West under any other agreement between the parties. Subscriber may terminate this Agreement or any one or more of Subscriber's Library subscriptions immediately upon giving written notice of termination to West if West commits a material breach hereof. Upon termination of any Library subscription by either party, Subscriber shall immediately destroy the terminated Library(ies) and destroy all CD-ROM Data maintained on a permanent storage drive. Upon any termination of this Agreement, the West Software licenses shall also terminate.

14. **Force Majeure.** West's performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like.

15. **Notices.** Except as otherwise provided in this Agreement, all notices must be given in writing to West at 610 Opperman Drive, P.O. Box 64833, St. Paul, Minnesota 55164-0833, Attention: Customer Service, and to Subscriber at the address on the Order Form.

16. **General Provisions.** This Agreement will be governed by and construed under the law of the state of Minnesota, U.S.A. without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Minnesota will have exclusive jurisdiction over any claim arising out of this Agreement and each party consents to the exclusive jurisdiction of such courts. Neither this Agreement nor any part or portion hereof may be assigned, sublicensed or otherwise transferred by Subscriber without West's prior written consent. Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions will not be affected. Failure of either party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings and captions contained in this Agreement are inserted for convenience only and do not constitute a part hereof. West, as used herein, applies to West Publishing Corporation, West Services, Inc., West Applications, Inc. and their affiliates.



## Subscriber Agreement for Internet - Based Services

AGREEMENT entered into between \_\_\_\_\_ ("Subscriber") and West Group ("West"), regarding West's Internet - based services ("Services"), as follows:

### 1. Subscription

Subscriber may subscribe to the Services by agreeing to the terms and conditions of this Agreement and by submitting a then-current West Group order form ("Order Form") and identifying the Internet-based product requested by Subscriber.

### 2. License

(a) **Grant.** Subscriber is hereby granted a non-exclusive, non-transferable, limited license to access the Services. The Services may consist of various West-owned and third party databases, services, functions and remotely-accessed gateways (all of which may be referred to as "Features") which may change from time to time. Access to certain Features may be restricted. Subscriber is licensed to use data made available to Subscriber on the Services ("Service Data," which includes "Downloaded Service Data" as defined below) solely for Subscriber's internal business purposes and in the regular course of Subscriber's legal (associated with the practice of law) and other research and related work. Certain Features are licensed subject to paragraph 3 or subject to Additional Terms (as defined below), all of which take precedence over the license granted in this paragraph. Except as otherwise provided with respect to certain Service Data, the license includes the right to download and temporarily store insubstantial portions of Service Data ("Downloaded Service Data") to a storage device under Subscriber's exclusive control solely (i) to display internally such Downloaded Service Data and (ii) to quote and excerpt such Downloaded Service Data (appropriately cited and credited) by electronic cutting and pasting or other means in memoranda, briefs and similar work product created by Subscriber in the regular course of its research and work. Subscriber may also create printouts of Service Data for internal use and for distribution to third parties if such third parties agree not to further distribute the printouts. Subscriber may use any Service Data or any other information cached in Subscriber's local disk drive solely in support of its use of the Services and for no other purpose. The Services are licensed for use at a single Subscriber office location ("Site"), unless otherwise agreed by the parties. The Order Form will indicate the number of concurrent users authorized to access each product.

(b) **Limitations.** Subscriber may not reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the components of the Services. Further, Subscriber may not reproduce all or any portion of the components of the Services. Subscriber may not copy, download, store, publish, transmit, transfer, sell or otherwise use the Service Data or any portion of the Service Data, in any form or by any means, except (i) as expressly permitted in this Agreement, (ii) with West's prior written permission, or (iii) if not otherwise expressly prohibited by this Agreement or by the Additional Terms, as allowed under the fair use provision of the Copyright Act (17 U.S.C.A. § 107). Downloaded Service Data shall not be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement or as quoted in Subscriber's work product. Subscriber shall not sell, license or distribute the Service Data (including printouts or Downloaded Service Data) to third parties or use the Service Data as a component of or as a basis for any material offered for sale, license or distribution.

(c) **Rights in the Service Data.** Except for the license granted in this Agreement, all right, title and interest in the Service Data, in all languages, formats and media throughout the world, including all copyrights, are and will continue to be the exclusive property of West and other contributors ("Contributors") of the Service Data.

(d) **Additional Terms and Conditions.** Certain Features are governed by terms and conditions, including charges, which are different than those set forth in this Agreement ("Additional Terms").

Subscriber will be given an opportunity to review Additional Terms by receiving notice of such Additional Terms in writing or online or by such other means as West may determine. Additional Terms may be modified effective upon West giving Subscriber notice (in writing, online or otherwise) of the modification. By using Features governed by Additional Terms, Subscriber agrees to, and will be obligated to comply with, all such Additional Terms as well as the terms and conditions in this Agreement. All Additional Terms will be considered part of this Agreement.

### 3. Charges and Billing

The charges (the "Charges") currently payable by Subscriber for each product are as set forth on the Order Form. The Charges may be modified at any time without notice. Charges for additions and for Features introduced after the effective date of this Agreement will be determined by West. All charges are exclusive of sales, use, ad valorem, value added tax (VAT) or equivalent, personal property and other taxes, which are the responsibility of Subscriber. Subscriber will pay all invoices in full within 30 days of receipt. If full payment is not made, Subscriber may be charged up to the maximum legal interest on the unpaid balance.

### 4. West-Proprietary Data

West grants a non-exclusive, non-transferable, limited license to individual users within Subscriber entities to store and use West-proprietary Downloaded Service Data (as defined above) in a searchable database maintained in connection with an ongoing project of the user ("Project Database"). Such database must consist preponderantly of users' work product with access limited to those internal users actively working on the project. The West-proprietary Downloaded Service Data may be maintained in the Project Database so long as the project remains active or until any termination of this Agreement, whichever occurs first. Retention of Downloaded Service Data in a Project Database after the project ends, in an archival database used as a research tool or in a database accessible to external users is prohibited.

### 5. Responsibility for Certain Matters

Subscriber is responsible for notifying West in writing of persons to whom Services passwords are to be issued or from whom passwords are to be revoked. Subscriber is solely responsible for maintaining security of Services passwords. Subscriber is also responsible for all access to and use of the Service Data by Subscriber's personnel or by means of Subscriber's equipment or Services passwords, whether or not Subscriber has knowledge of or authorizes such access and use.

### 6. Disclaimer of Warranties and Limitation of Liability

Subscriber acknowledges that provision of the Services entails the likelihood of some human and machine errors, delays, interruptions and losses, including the inadvertent loss of Service Data or damage to media which may give right to loss or damage. The performance of the Services varies with the manufacturers' equipment with which it is used. West does not warrant the level of performance of the Services or that the Features contained in the Services will achieve Subscriber's desired results. Certain software used by Subscriber may not be capable of supporting certain Features. West shall have no liability whatsoever for any claim(s) relating to any user's inability to access the Services property or completely. NEITHER WEST, ITS AFFILIATES OR CONTRIBUTORS MAKE ANY WARRANTY THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED, SECURE, COMPLETE OR ERROR FREE. NOR DOES WEST MAKE ANY WARRANTY AS TO THE LIFE OF ANY URL GENERATED OR PUBLISHED BY WEST. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE SERVICES AND THE SERVICE DATA ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS. SUBSCRIBER'S EXCLUSIVE REMEDY AND WEST'S, ITS AFFILIATES AND/OR CONTRIBUTORS' ENTIRE LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THE SERVICES OR THE SERVICE DATA WHICH ARE MADE AGAINST THEM, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR NEGLIGENCE, SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF CHARGES PAID BY SUBSCRIBER RELATIVE TO THE SPECIFIC SERVICE, PRODUCT OR FEATURE (i.e., DATABASE, SERVICE OR FEATURE), AS APPLICABLE, WHICH IS THE BASIS OF THE CLAIM(S) DURING THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL WEST, ITS AFFILIATES AND/OR CONTRIBUTORS BE LIABLE TO SUBSCRIBER FOR ANY CLAIM(S) RELATING IN ANY WAY TO (i) SUBSCRIBER'S INABILITY OR FAILURE TO PERFORM ANY RESEARCH OR RELATED WORK OR TO PERFORM SUCH RESEARCH OR WORK PROPERLY OR COMPLETELY, EVEN IF ASSISTED BY WEST, ITS AFFILIATES OR CONTRIBUTORS, OR ANY DECISION MADE OR ACTION TAKEN BY SUBSCRIBER IN RELIANCE UPON SERVICE DATA, OR (ii) ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S RIGHTS HEREUNDER OR USE OF, OR INABILITY TO USE THE SERVICE DATA EVEN IF WEST, ITS AFFILIATES AND/OR CONTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (iii) THE PROCURING, COMPILING, INTERPRETING, EDITING, WRITING, REPORTING OR DELIVERING SERVICE DATA. FURTHER, WEST SHALL HAVE NO LIABILITY WHATSOEVER TO SUBSCRIBER FOR ANY CLAIM(S) RELATING IN ANY WAY TO ANY THIRD PARTY FEATURE.

#### 7. Limitation of Claims

Except for claims relating to Charges or improper use of the Service Data, no claim, regardless of form, which in any way arises out of this Agreement or the use of, or inability to use, the Services, Service Data or Features may be made, nor action based upon such claim brought under this Agreement more than one year after the basis for the claim becomes known to the party desiring to assert it.

#### 8. Effect of Agreement

This Agreement (which includes all applicable Order Forms, Additional Terms and the like) embodies the entire understanding between the parties with respect to the subject matter of this Agreement and except as otherwise provided herein supersedes any and all prior understandings and agreements, oral or written, relating to the subject matter. Except as otherwise provided in this Agreement, West may amend the terms and conditions of this Agreement by giving Subscriber at least 30 days prior written or online notice. Any other amendment must be in writing and signed by both parties.

#### 9. Term and Termination

This Agreement and each Order Form incorporated herein will become effective upon approval by West in St. Paul, Minnesota and will continue for a minimum of 12 months. Thereafter, Subscriber may terminate any one or more product subscriptions by giving written notice of termination. West may terminate a product subscription upon 30 days prior written notice, if such Service is no longer commercially available. Subscriber may terminate immediately by giving written notice of termination after receiving notice of any amendment (as permitted under paragraph 8) containing new terms that materially alter the terms of this Agreement and are unacceptable to Subscriber. West may terminate this Agreement, including all product subscriptions immediately upon giving written notice of termination to Subscriber if Subscriber commits a material breach of this Agreement or of any obligation to West under any other agreement between the parties. Subscriber may terminate this Agreement or any one or more of Subscriber's product subscriptions immediately upon giving written notice of termination if West commits a material breach hereof.

#### 10. Force Majeure

West's performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like.

#### 11. Notices

Except as otherwise provided in this Agreement, all notices must be given in writing to West at 610 Opperman Drive, P.O. Box 64833, St. Paul, Minnesota 55164-0833, Attention: Customer Service, and to Subscriber at the address set forth below.

#### 12. General Provisions

This Agreement will be governed by and construed under the law of the state of Minnesota, U.S.A. without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Minnesota will have exclusive jurisdiction over any claim arising out of this Agreement and each party consents to the exclusive jurisdiction of such courts. Neither this Agreement nor any part or portion hereof may be assigned, sublicensed or otherwise transferred by Subscriber without West's prior written consent. Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions will not be affected thereby. Failure of either party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings and captions contained in this Agreement are inserted for convenience only and do not constitute a part hereof.

#### 13. Export Laws

The Services, the Services technology and its related documentation may be subject to and may not be exported or reexported in violation of the U.S. Export Administration Act and its implementing regulations.



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**RE: FREDRICK M. AND JANE G. PAULSON, AUTUMN CREST**  
**RESIDENTIAL DEVELOPMENT**  
**- SANITARY SEWER EASEMENT AGREEMENT**  
**DATE: FEBRUARY 23, 2004**

**INTRODUCTION/BACKGROUND**

As part of the Autumn Crest Residential Development, a private development project, a new gravity sewer main is to be installed on a private road. In order for the city to have access and the ability to maintain this City utility, an easement has been granted for the utility crossing and access for maintenance purposes. The easement shall be approximately 45.5 feet wide and 609.98 feet long (see attached exhibits).

The city's standard easement agreement has been drafted and approved by Carol Morris, City Attorney.

City Council approval of the easement agreement is being requested.

**FISCAL CONSIDERATIONS**

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

**RECOMMENDATION**

I recommend that City Council approve this agreement.



**AFTER RECORDING, RETURN TO:**

**The City of Gig Harbor  
Attn: City Clerk  
3510 Grandview Street  
Gig Harbor, WA 98335**

Document Title: **EASEMENT AGREEMENT**

Grantor: Paulson, Frederick M. and Jane G., husband and wife

Grantee: City of Gig Harbor

Legal Description: *[insert abbreviated legal description here]*  
Sect: 8, Twp. 21 N, Rge. 2 E, W.M., Gig Harbor, WA  
The complete legal description may be found on page 7 of the document.

Property Tax Parcel No.: 022108-3-058, -093, and -094

Reference No. of Documents Assigned or Released: N/A

## EASEMENT AGREEMENT

THIS INSTRUMENT, executed this date by and between the City of Gig Harbor, a Washington municipal corporation (the "City" herein), and Frederick M. and Jane G. Paulson, ~~for an~~ husband and wife ~~organized under the laws of the State of Washington~~, as the owners of the within-described property (the "Owners" herein):

### WITNESSETH:

WHEREAS, Owners own a fee simple and/or have a substantial beneficial interest in the following real property, commonly known as Autumn Crest, Gig Harbor, Washington 98335, and legally described as follows (the "Property" herein):

See attached Exhibit A

WHEREAS, the City desires an easement for the purpose of monitoring, inspecting, maintaining, operating, improving, repairing, constructing, and reconstructing a \_\_\_\_\_;  
sewer system

NOW, THEREFORE, the parties hereto agree as follows:

In consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, Owners hereby convey and warrant to the City, a perpetual, nonexclusive easement, under, over, through and across the Property, for the purposes of monitoring, inspecting, maintaining, improving, repairing, constructing, and reconstructing a \_\_\_\_\_;  
sewer system

which easement (the "Easement" herein) is legally described as follows:

See attached Exhibit B

This Easement is subject to and conditioned upon the following terms and covenants, which both parties promise to faithfully and fully observe and perform:

1. **Responsibility to Repair Damage.** The City shall, upon completion of any work within the Property covered by the easement, restore the surface of the Easement, and any improvements on the Property not owned by the City, disturbed, damaged or destroyed during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. However, the City shall not be required to restore any such improvements installed and/or constructed on the Easement by the Owners subsequent to execution of this Easement Agreement, and as otherwise provided in paragraph "2" below.

2. **Limitations on Owners.** The Owners shall retain the right to use the surface of the Easement. However, the Owners shall not directly or indirectly have the right to:

- A. Erect or install, or cause to be erected or installed, any buildings, structures, pavement, or facilities within the Easement; or

- B. Plant, or cause to be planted, any additional trees, shrubs, or vegetation with deep root patterns which may cause damage to or interfere with the drainage system located within the Easement; or
- C. Develop, landscape, or beautify, or cause to be developed, landscaped, or beautified, the Easement area in any way that would unreasonably increase the costs to the City of restoring the Easement or restoring any Owner-caused or Owner authorized improvements therein; or
- D. Grant any additional or subsequent easement inconsistent with the rights of the City as granted herein. The City shall make the final determination whether any proposed subsequent easement is inconsistent with the City's Easement.

3. **Notice of Entry.** The Owners, their successors and assigns, shall allow access to the Easement by the City, without the City having to give prior notice of its intent to access the Easement.

4. **Indemnification, Hold Harmless.** The Owners hereby release, covenant not to bring suit and agree to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person arising out of or in connection with this Easement, except for injuries or damages caused by the sole negligence of the City.

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 Owners and the City, its officers, officials, employees, agents and representatives, the Owners' liability hereunder shall be only to the extent of the Owners' negligence.

The provisions of this section shall survive the termination of this Easement.

5. **Dispute Resolution and Attorneys Fees.** If any dispute arises between the Owners and the City under any of the provisions of this Easement which cannot be resolved by agreement of the parties, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party of any such litigation shall be entitled to recover its reasonable attorneys' fees and costs, including any expert witness fees.

6. **Waiver.** No waiver by either party of any term or condition of this Easement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Easement.

7. **Merger.** This Easement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Easement and no prior agreements shall be effective for any purpose.

8. **Severability.** If any of the provisions contained in this Easement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

9. **Easement Binding on Successors and Assigns.** This instrument shall be recorded in the records of the Pierce County Auditor at the expense of the Owners and shall inure to the benefit of and be binding upon the Owners, its legal representatives, assigns, heirs and all owners of an after-acquired interest in the Property, and their successors and assigns.


Dated this 26 day of December, 2003.

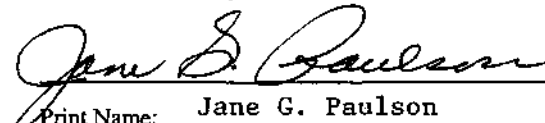
CITY OF GIG HARBOR

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


Its City Engineer

OWNERS:

  
\_\_\_\_\_  
Print Name: Frederick M. Paulson

  
\_\_\_\_\_  
Print Name: Jane G. Paulson

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

ATTEST:

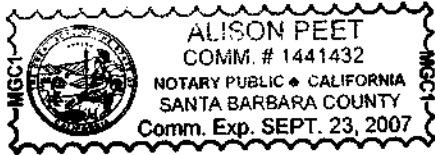
\_\_\_\_\_  
City Clerk

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Santa Barbara } ss.

On December 26, 2003 before me, Alison Peet, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Frederick M. Paulson  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Alison Peet  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Easement Agreement

Document Date: December 26, 2003 Number of Pages: 6

Signer(s) Other Than Named Above: Gloria Jane Paulson

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

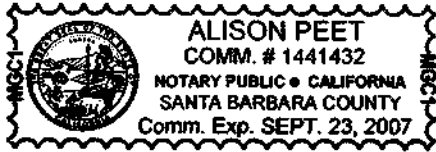


**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Santa Barbara } ss.

On December 26, 2003 before me, Alison Peet, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Gloria Jane Paulson  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hers/their authorized capacity(ies); and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Alison Peet  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Easement Agreement

Document Date: December 26, 2003 Number of Pages: 6

Signer(s) Other Than Named Above: Frederick M. Paulson

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**LEGAL DESCRIPTION**  
**SANITARY SEWER EASEMENT**

All that portion of the following described parcel:

The South half of the South half of Lot 6 and the South half of the South half of Lot 5A, Section 8, Township 21 North, Range 2 East of the W.M., in Pierce County, Washington, the same being the South half of the South half of the North half of the Southeast quarter of the Southwest quarter of Section 8, Township 21 North, Range 2 East of the W.M., in Pierce County, Washington.

EXCEPT the East 30 feet thereof;

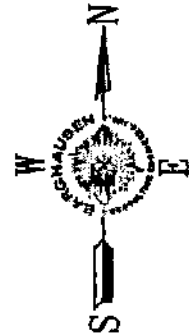
More particularly described as follows:

BEGINNING at the Southeast corner of said parcel, said point lying on the West margin of Soundview Drive;  
THENCE North  $00^{\circ} 43' 33''$  East along said West margin, 45.51 feet;  
THENCE South  $89^{\circ} 31' 19''$  West, 609.98 feet to the beginning of 168.00-foot-radius curve to the left;  
THENCE along the arc of said curve, passing through a central angle of  $10^{\circ} 28' 31''$ , an arc distance of 30.72 feet to a point of reverse curvature with a 132.00-foot-radius curve to the right;  
THENCE along the arc of said curve, passing through a central angle of  $10^{\circ} 28' 31''$ , an arc distance of 24.13 feet;  
THENCE South  $89^{\circ} 31' 19''$  West, 602.12 feet to the East line of the West 30 feet of said parcel;  
THENCE South  $00^{\circ} 34' 58''$  West along said East line, 40.51 feet to the South line of said parcel;  
THENCE North  $89^{\circ} 31' 19''$  East along said South line, 1266.43 feet to the POINT OF BEGINNING.

Project Name: Autumn Crest  
December 23, 2003

RWG/jss  
7838L.003.doc

Page 7 of 8



**SANITARY SEWER  
EASEMENT EXHIBIT**

**MCDONALD AV.**



**SUBJECT PROPERTY**

**SOUNDVIEW DR.  
(WICKERSHAM RD.)**

Designed \_\_\_\_\_  
 Drawn BCM  
 Checked RWG  
 Approved RWG  
 Date 12/23/03

Scale:  
 Horizontal  
 1"=200'  
 Vertical  
 N/A



18215 72ND AVENUE SOUTH  
 KENT, WA 98032  
 (425)251-6222  
 (425)251-8782 FAX  
 CIVIL ENGINEERING, LAND PLANNING,  
 SURVEYING, ENVIRONMENTAL SERVICES

Job Number  
**7838**  
 Sheet  
**1 of 1**





COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**RE: FREDERICK M. AND JANE G. PAULSON, AUTUMN CREST**  
**RESIDENTIAL DEVELOPMENT**  
**- WATER LINE EASEMENT AGREEMENT**  
**DATE: FEBRUARY 23, 2004**

**INTRODUCTION/BACKGROUND**

As part of the Autumn Crest Residential Development, a private development project, a new water main is to be installed on private property. In order for the city to have access and the ability to maintain this City utility, an easement has been granted for utility crossing and access for maintenance purposes. The easement shall be approximately 45.5 feet wide and 609.98 feet long. (see attached exhibits).

The city's standard easement agreement has been drafted and approved by Carol Morris, City Attorney.

City Council approval of the easement agreement is being requested.

**FISCAL CONSIDERATIONS**

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

**RECOMMENDATION**

I recommend that City Council approve this agreement.

**AFTER RECORDING, RETURN TO:**

**The City of Gig Harbor  
Attn: City Clerk  
3510 Grandview Street  
Gig Harbor, WA 98335**

Document Title: **EASEMENT AGREEMENT**

Grantor: Paulson, Frederick M. and Jane G., husband and wife

Grantee: City of Gig Harbor

Legal Description: *[insert abbreviated legal description here]*  
Sect. 8, Twp. 21 N, Rge. 2 E, W.M., Gig Harbor, WA  
The complete legal description may be found on page 7 of the document.

Property Tax Parcel No.: 022108-3-058, -093, and -094

Reference No. of Documents Assigned or Released: N/A

## EASEMENT AGREEMENT

THIS INSTRUMENT, executed this date by and between the City of Gig Harbor, a Washington municipal corporation (the "City" herein), and Frederick M. and Jane G. Paulson, \_\_\_\_\_ ~~for an~~ husband and wife ~~organized under the laws of the State of Washington~~, as the owners of the within-described property (the "Owners" herein):

### WITNESSETH:

WHEREAS, Owners own a fee simple and/or have a substantial beneficial interest in the following real property, commonly known as Autumn Crest, Gig Harbor, Washington 98335, and legally described as follows (the "Property" herein):

See attached Exhibit A

WHEREAS, the City desires an easement for the purpose of monitoring, inspecting, maintaining, operating, improving, repairing, constructing, and reconstructing a water system:

NOW, THEREFORE, the parties hereto agree as follows:

In consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, Owners hereby convey and warrant to the City, a perpetual, nonexclusive easement, under, over, through and across the Property, for the purposes of monitoring, inspecting, maintaining, improving, repairing, constructing, and reconstructing a water system, which easement (the "Easement" herein) is legally described as follows:

See attached Exhibit B

This Easement is subject to and conditioned upon the following terms and covenants, which both parties promise to faithfully and fully observe and perform:

1. **Responsibility to Repair Damage.** The City shall, upon completion of any work within the Property covered by the easement, restore the surface of the Easement, and any improvements on the Property not owned by the City, disturbed, damaged or destroyed during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. However, the City shall not be required to restore any such improvements installed and/or constructed on the Easement by the Owners subsequent to execution of this Easement Agreement, and as otherwise provided in paragraph "2" below.

2. **Limitations on Owners.** The Owners shall retain the right to use the surface of the Easement. However, the Owners shall not directly or indirectly have the right to:

- A. Erect or install, or cause to be erected or installed, any buildings, structures, pavement, or facilities within the Easement; or

- B. Plant, or cause to be planted, any additional trees, shrubs, or vegetation with deep root patterns which may cause damage to or interfere with the drainage system located within the Easement; or
- C. Develop, landscape, or beautify, or cause to be developed, landscaped, or beautified, the Easement area in any way that would unreasonably increase the costs to the City of restoring the Easement or restoring any Owner-caused or Owner authorized improvements therein; or
- D. Grant any additional or subsequent easement inconsistent with the rights of the City as granted herein. The City shall make the final determination whether any proposed subsequent easement is inconsistent with the City's Easement.

3. **Notice of Entry.** The Owners, their successors and assigns, shall allow access to the Easement by the City, without the City having to give prior notice of its intent to access the Easement.

4. **Indemnification, Hold Harmless.** The Owners hereby release, covenant not to bring suit and agree to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person arising out of or in connection with this Easement, except for injuries or damages caused by the sole negligence of the City.

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 Owners and the City, its officers, officials, employees, agents and representatives, the Owners' liability hereunder shall be only to the extent of the Owners' negligence.

The provisions of this section shall survive the termination of this Easement.

5. **Dispute Resolution and Attorneys Fees.** If any dispute arises between the Owners and the City under any of the provisions of this Easement which cannot be resolved by agreement of the parties, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party of any such litigation shall be entitled to recover its reasonable attorneys' fees and costs, including any expert witness fees.

6. **Waiver.** No waiver by either party of any term or condition of this Easement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Easement.

7. **Merger.** This Easement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Easement and no prior agreements shall be effective for any purpose.

8. **Severability.** If any of the provisions contained in this Easement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

9. **Easement Binding on Successors and Assigns.** This instrument shall be recorded in the records of the Pierce County Auditor at the expense of the Owners and shall inure to the benefit of and be binding upon the Owners, its legal representatives, assigns, heirs and all owners of an after-acquired interest in the Property, and their successors and assigns.

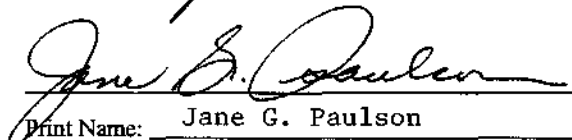
Dated this 26 day of December, 2003.

CITY OF GIG HARBOR

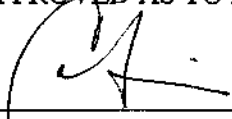
By: \_\_\_\_\_  
Its City Engineer

OWNERS:

  
\_\_\_\_\_  
Print Name: Frederick M. Paulson

  
\_\_\_\_\_  
Print Name: Jane G. Paulson

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

ATTEST:

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

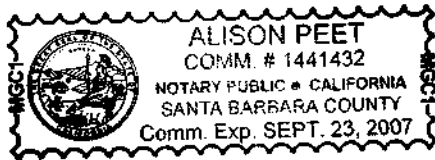
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
County of Santa Barbara } ss.

On December 26, 2003 before me, Alison Peet, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Frederick M. Paulson  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~they executed the same in his/~~her~~their authorized capacity(ies), and that by his/~~her~~their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Alison Peet  
Signature of Notary Public

**OPTIONAL**

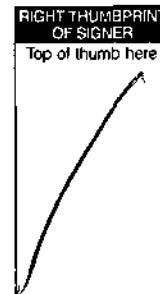
Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Easement Agreement  
Document Date: December 26, 2003 Number of Pages: 6  
Signer(s) Other Than Named Above: Gloria Jane Paulson

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney-in-Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_



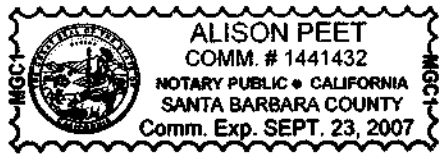
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Santa Barbara } ss.

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Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Gloria Jane Paulson  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Alison Peet  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Easement Agreement

Document Date: December 26, 2003 Number of Pages: 4

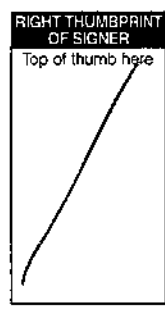
Signer(s) Other Than Named Above: Frederick M. Paulson

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**LEGAL DESCRIPTION**

**WATERLINE EASEMENT**

That portion of the following described parcel:

The South half of the South half of Lot 6 and the South half of the South half of Lot 5A, Section 8, Township 21 North, Range 2 East of the W.M., in Pierce County, Washington, the same being the South half of the South half of the North half of the Southeast quarter of the Southwest quarter of Section 8, Township 21 North, Range 2 East of the W.M., in Pierce County, Washington.

**EXCEPT** the East 30 feet thereof;

More particularly described as follows:

**BEGINNING** at the Southeast corner of said parcel, said point lying on the West margin of Soundview Drive;

**THENCE** North  $00^{\circ} 43' 33''$  East along said West margin, 47.51 feet;

**THENCE** South  $89^{\circ} 31' 19''$  West, 610.02 feet to the beginning of 170.00-foot-radius curve to the left;

**THENCE** along the arc of said curve, passing through a central angle of  $10^{\circ} 28' 31''$ , an arc distance of 31.08 feet to a point of reverse curvature with a 130.00-foot-radius curve to the right;

**THENCE** along the arc of said curve, passing through a central angle of  $10^{\circ} 28' 31''$ , an arc distance of 23.77 feet;

**THENCE** South  $89^{\circ} 31' 19''$  West, 602.08 feet to the East line of the West 30 feet of said parcel;

**THENCE** South  $00^{\circ} 34' 58''$  West along said East line, 42.51 feet to the South line of said parcel;

**THENCE** North  $89^{\circ} 31' 19''$  East along said South line, 1266.43 feet to the **POINT OF BEGINNING**.

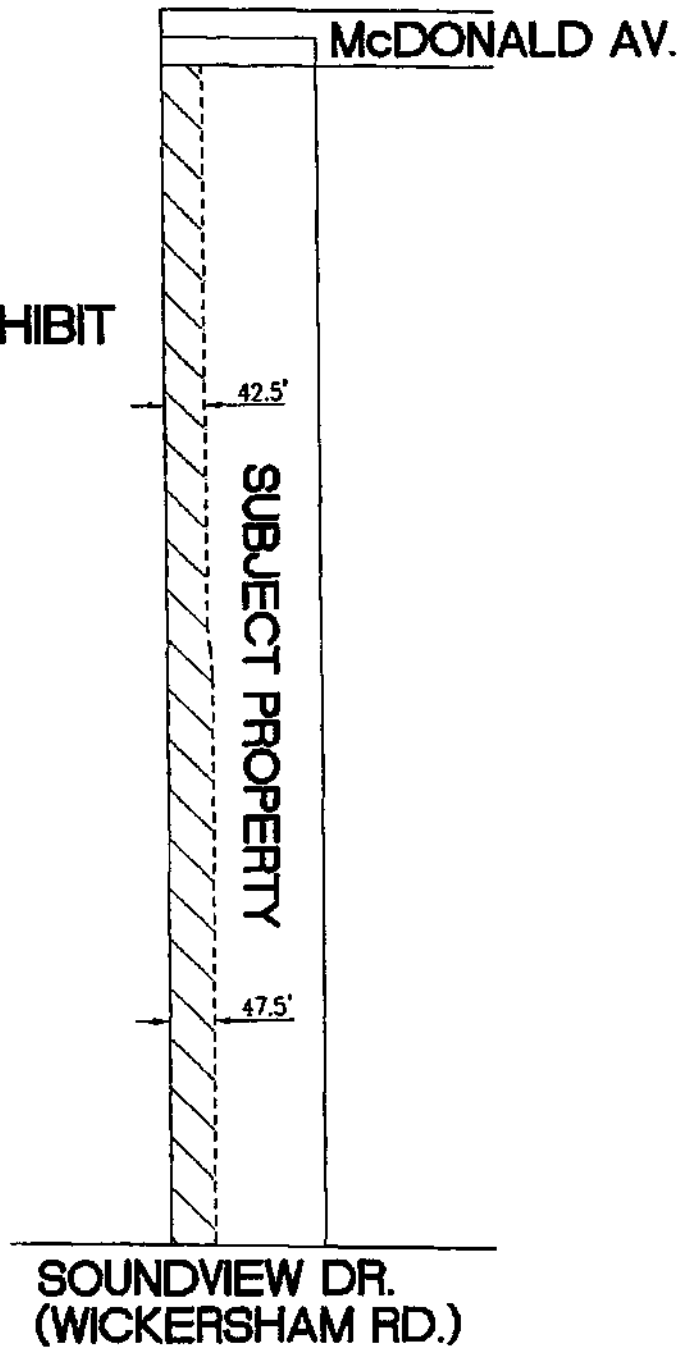
Project Name: Autumn Crest  
December 23, 2003

RWG/ss  
7838L.004.doc






**WATERLINE  
EASEMENT EXHIBIT**



P:\1070005\7838\survey\7838ESWT.dwg Dec 23 2003 - 13:36 Plotted by: amason Scale: 1"=200' Layout Name: Water Esmt

Designed _____ Drawn <u>BGM</u> Checked <u>RWC</u> Approved <u>RWC</u> Date <u>12/23/03</u>	Scale: Horizontal 1"=200' Vertical N/A	 18215 72ND AVENUE SOUTH KENT, WA 98032 (425)251-6222 (425)251-8782 FAX CIVIL ENGINEERING, LAND PLANNING, SURVEYING, ENVIRONMENTAL SERVICES Page 8 of 8	Job Number <b>7838</b> Sheet <b>1 of 1</b>
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COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: 56<sup>TH</sup> STREET/OLYMPIC DRIVE PROJECT CSP-0133 - PERMANENT**  
**EASEMENT AGREEMENT - RUSH DEVELOPMENT COMPANY, INC.**  
**DATE: FEBRUARY 23, 2004**

**INTRODUCTION/BACKGROUND**

A 2004 Street capital budget objective provides for the right-of-way acquisition for the 56<sup>th</sup>/Olympic Drive future widening construction project. The property owner agrees to grant a 7.5 foot wide permanent right-of-way easement to the City. This easement is necessary to accommodate the future street-widening project along Olympic Drive.

Rush Development Company, Inc. is the current property owner and has agreed to the conditions of the easement agreement to the City of Gig Harbor.

The City Attorney and staff have reviewed the agreement for City conformance and completeness.

Council approval of this easement is requested.

**FISCAL CONSIDERATIONS**

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

**RECOMMENDATION**

I recommend that the Council accept the attached easement agreement.

**AFTER RECORDING, RETURN TO:**

**The City of Gig Harbor  
Attn: City Clerk  
3510 Grandview Street  
Gig Harbor, WA 98335**

Document Title: **EASEMENT AGREEMENT**

Grantor: **RUSH DEVELOPMENT COMPANY, INC.**

Grantee: **City of Gig Harbor**

Legal Description: *Lot 4 of boundary line adjustment recorded under recording number 20010418594, in Pierce County, Washington.*

The complete legal description may be found on page 7 of the document.

Property Tax Parcel No.: 022117-704-6

Reference No. of Documents Assigned or Released: \_\_\_\_\_

## EASEMENT AGREEMENT

THIS INSTRUMENT, executed this date by and between the City of Gig Harbor, a Washington municipal corporation (the "City" herein), and Rush Development Company, Inc. a Corporation organized under the laws of the State of Washington], as the owners of the within-described property (the "Owners" herein):

### WITNESSETH:

WHEREAS, Owners own a fee simple and/or have a substantial beneficial interest in the following real property, commonly known as the Olympic Drive Office Building, located at 5401 Olympic Drive, Gig Harbor, Washington 98\_\_\_\_\_, and legally described in Exhibit A (the "Property" herein):

WHEREAS, Rush Development Company, Inc. has received the necessary approvals from the City for construction of the Olympic Drive Office Building, which ordinarily would have included conditions requiring Rush Development Company, Inc. to construct certain street improvements associated with the project, identified below:

- A. Providing the designed 3" asphalt overlay from the new curb line to the centerline of Olympic Drive along the entire property frontage length. (To be provided by the City at time of the Olympic Drive widening project).
- B. Providing and installing the four (4) illuminations light standards along the property frontage as shown on the construction drawings. (To be provided by the City); and

WHEREAS, in lieu of the imposition of these conditions, Rush Development Company, Inc has agreed to grant a 7.5 foot permanent easement to the City for the construction of the City's "56<sup>th</sup> Street NW and Olympic Drive NW Street Improvements" project: and

WHEREAS, the City desires this easement for the purpose of monitoring, inspecting, maintaining, operating, improving, repairing, constructing, and reconstructing street improvements along Olympic Drive NW:

NOW, THEREFORE, the parties hereto agree as follows:

In consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, Owners hereby convey and warrant to the City, a perpetual, nonexclusive easement, under, over, through and across the Property, for the purposes of monitoring, inspecting, maintaining, improving, repairing, constructing, and reconstructing the "56<sup>th</sup> Street NW and Olympic Drive NW Street Improvements" project, which easement is legally described on Exhibit "A" (the "Easement" herein) and shown on Exhibit "B", which are attached hereto and by this reference incorporated herein.

This Easement is subject to and conditioned upon the following terms and covenants, which both parties promise to faithfully and fully observe and perform:

1. **Responsibility to Repair Damage.** The City shall, upon completion of any work within the Property covered by the easement, restore the surface of the Easement, and any improvements on the Property not owned by the City, disturbed, damaged or destroyed during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. However, the City shall not be required to restore any such improvements installed and/or constructed on the Easement by the Owners subsequent to execution of this Easement Agreement, and as otherwise provided in paragraph "2" below.

2. **Limitations on Owners.** The Owners shall retain the right to use the surface of the Easement. However, the Owners shall not directly or indirectly have the right to:

- A. Erect or install, or cause to be erected or installed, any buildings, structures, pavement, or facilities within the Easement; or
- B. Plant, or cause to be planted, any additional trees, shrubs, or vegetation with deep root patterns which may cause damage to or interfere with the drainage system located within the Easement; or
- C. Develop, landscape, or beautify, or cause to be developed, landscaped, or beautified, the Easement area in any way that would unreasonably increase the costs to the City of restoring the Easement or restoring any Owner-caused or Owner authorized improvements therein; or
- D. Grant any additional or subsequent easement inconsistent with the rights of the City as granted herein. The City shall make the final determination whether any proposed subsequent easement is inconsistent with the City's Easement.

3. **Notice of Entry.** The Owners, their successors and assigns, shall allow access to the Easement by the City, without the City having to give prior notice of its intent to access the Easement.

4. **Indemnification, Hold Harmless.** The Owners hereby release, covenant not to bring suit and agree to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person arising out of or in connection with this Easement, except for injuries or damages caused by the sole negligence of the City.

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 Owners and the City, its officers, officials, employees, agents and representatives, the Owners' liability hereunder shall be only to the extent of the Owners' negligence.

The provisions of this section shall survive the termination of this Easement.

5. **Dispute Resolution and Attorneys Fees.** If any dispute arises between the Owners and the City under any of the provisions of this Easement which cannot be resolved by agreement of the parties,

jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party of any such litigation shall be entitled to recover its reasonable attorneys' fees and costs, including any expert witness fees.

6. **Waiver.** No waiver by either party of any term or condition of this Easement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Easement.

7. **Merger.** This Easement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Easement and no prior agreements shall be effective for any purpose.


8. **Severability.** If any of the provisions contained in this Easement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

9. **Easement Binding on Successors and Assigns.** This instrument shall be recorded in the records of the Pierce County Auditor at the expense of the Owners and shall inure to the benefit of and be binding upon the Owners, its legal representatives, assigns, heirs and all owners of an after-acquired interest in the Property, and their successors and assigns.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CITY OF GIG HARBOR

By: \_\_\_\_\_  
Its City Engineer

OWNER:   
\_\_\_\_\_  
Print Name: E. D. RUSH

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

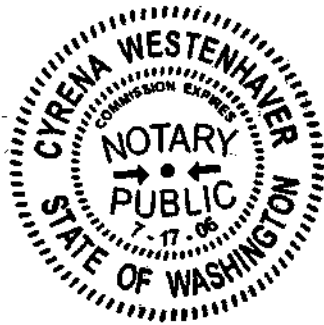
ATTEST:

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

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF )

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

Dated: 2/18/04



Cyrena Westenhaver  
NOTARY PUBLIC, State of Washington,  
residing at: 519 Harbor  
My Commission expires: 7/17/06

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF PIERCE            )

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 the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

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



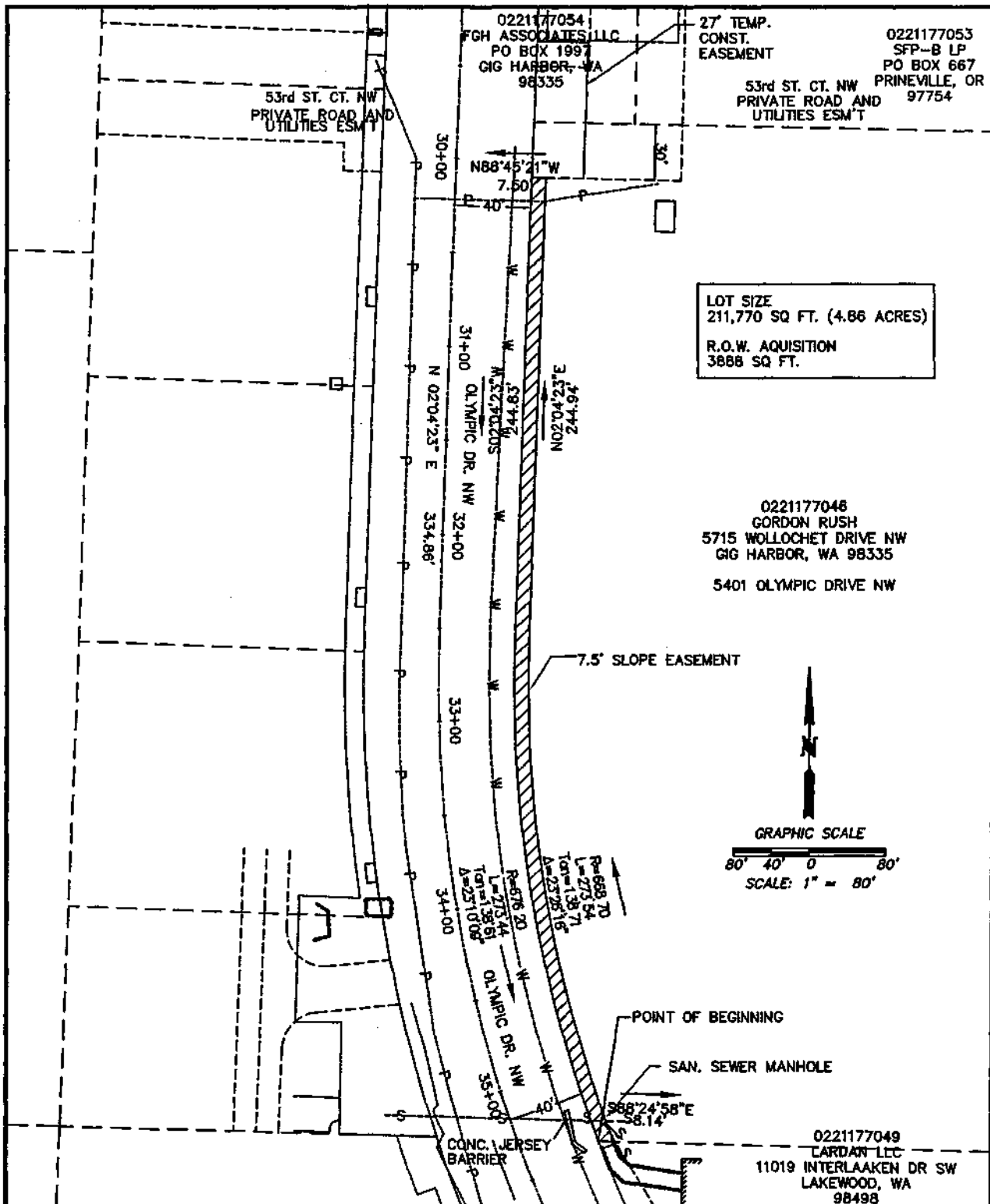
## **EXHIBIT A**

### **PROPERTY LEGAL DESCRIPTION**

SECTION 17 TOWNSHIP 21 RANGE 02 QUARTER 31 : PARCEL B DBLR 2001-04-18-0594  
DESC AS L 4 OF S P 94-08-09-0381 EXC POR LY N & W OF FOLL DESC LI COM AT NE  
COR SD L 4 TH N 88 DEG 45 MIN 15 SEC W ALG N LI SD L 4 321.18 FT TO TRUE POB TH  
S 01 DEG 18 MIN 58 SEC W 30 FT TH N 88 DEG 45 MIN 15 SEC W 78.56 FT TO ELY RW  
MARG OF OLYMPIC DR NW & TERMINUS OF SD LI TOG/W EASE & RESTRICTIONS OF  
REC OUT OF 3-088 SEG G-0239 SG 09-12-94 SG DC/BL04-12-02BL

### **RIGHT OF WAY ACQUISITION DESCRIPTION**

A 7.5 FOOT WIDE PORTION OF PARCEL NO. 0221177046 THAT ABUTTS THE RIGHT OF  
WAY OF OLYMPIC DRIVE NW AND DESIGNATED AS "SLOPE EASEMENT", WHOSE  
SOUTH WEST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE POINT OF  
BEGINNING, THENCE S88°24'58"E A DISTANCE OF 8.14', THENCE ALONG A CURVE  
WHOSE RADIUS IS 668.70° WITH A TANGENT OF 138.71' AND DELTA OF 23°26'16" AND  
WHOSE LENGTH IS 273.54', THENCE N02°04'23"E A DISTANCE OF 244.94', THENCE  
N88°45'21"W A DISTANCE OF 7.5', THENCE S02°04'23"W A DISTANCE OF 244.83',  
THENCE ALONG A CURVE WHOSE RADIUS IS 676.20' WITH A TANGENT OF 138.71' AND  
DELTA OF 23°10'09" AND WHOSE LENGTH IS 273.54' RETURNING TO THE POINT OF  
BEGINNING.



56TH ST. NW AND OLYMPIC DR. NW STREET IMPORVEMENT PROJECT

RIGHT OF WAY AQUISION

EXHIBIT B



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: STORMWATER FACILITIES MAINTENANCE AGREEMENT AND**  
**RESTRICTIVE COVENANT - OLYMPIC DRIVE OFFICE BUILDING**  
**DATE: FEBRUARY 23, 2004**

**INTRODUCTION/BACKGROUND**

The city has required private an on-site storm water detention facility to be constructed in conjunction with the Rush Development Company project commonly known as the Olympic Drive Office Building. As specified in Section 14.20.530, Gig Harbor Municipal Code (GHMC), a maintenance covenant is required for all privately maintained drainage facilities as well as a requirement that the covenant be recorded with the property. This allows the city a nonexclusive right-of-entry onto those portions of the property immediately adjacent to the storm water facilities for the purpose of inspection of the facilities, and further requires that the property owner perform their own regular inspection and maintenance of the facilities at the property owner's expense.

The city's standard Storm Water Facilities Maintenance Agreement and Restrictive Covenant has been drafted and approved by City Attorney Carol Morris.

Council approval of the agreement is requested.

**FISCAL CONSIDERATIONS**

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

**RECOMMENDATION**

I recommend that the Council approve this agreement as presented.

## STORM WATER FACILITIES MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANT

This Storm Water Facilities Maintenance Agreement and Restrictive Covenant is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Rush Development Company, residing at 5715 Wollehot BR NW, Gig Harbor, WA (hereinafter "Owner").

### RECITALS

WHEREAS, Owner is the owner of fee title or a substantial beneficial interest in certain real property located in Gig Harbor, Washington, commonly described as Olympic Drive Office Building, (hereinafter the "Property") and legally described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

WHEREAS, in connection with the Owner's proposed development of the Property, the City has required and the Owner has agreed to construct a storm water collection and detention system; and

WHEREAS, such drainage system is described and shown on a construction drawing prepared by the engineering firm of North Pacific Design on December 8, 2003 (hereinafter the "Drainage System Drawing"), for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, as a condition of project approval and/or as a condition of the City's utilization of the Owner's storm drainage system, the parties have entered into this Maintenance Agreement and Restrictive Covenant, in order to ensure that the drainage system will be constructed and maintained in accordance with the approved plans and the City's development standards;

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

## TERMS

Section 1. Construction and Maintenance. Owner agrees to construct and maintain a drainage system on its Property, as shown on the Drainage System Drawing, **Exhibit B**. The drainage system shall be maintained and preserved by the Owner until such time as the City, its successors or assigns, agree that the system should be altered in some manner or eliminated.

Section 2. No Removal. No part of the drainage system shall be dismantled, revised, altered or removed, except as necessary for maintenance, repair or replacement.

Section 3. Access. The City shall have the right to ingress and egress over those portions of the Property described in **Exhibit A** in order to access the drainage system for inspection and to reasonably monitor the system for performance, operational flows or defects.

Section 4. Repairs, Failure of Owner to Maintain. If the City determines that maintenance or repair work is required to be performed on the system, the City Engineer or his/her designee shall give notice to the Owner of the noted deficiency. The Engineer shall also set a reasonable time in which the Owner shall perform such work. If the repair or maintenance required by the Engineer is not completed within the time set by the Engineer, the City may perform the required maintenance and/or repair. Written notice will be sent to the Owner, stating the City's intention to perform such repair or maintenance, and such work will not commence until at least 15 days after such notice is mailed, except in situations of emergency. If, within the sole discretion of the Engineer, there exists an imminent or present danger to the system, the City's facilities or the public health and safety, such 15 day period will be waived and maintenance and/or repair work will begin immediately.

Section 5. Cost of Repairs and/or Maintenance. The Owner shall assume all responsibility for the cost of any maintenance and for repairs to the drainage system. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Owner for any work performed by the City. Overdue payments will require payment of interest by the Owner at the current legal rate as liquidated damages.

Section 6. Notice to City of Repairs and/or Maintenance. The Owner is hereby required to obtain written approval from the City Engineer prior to filling, piping, cutting or removing vegetation (except in routine landscape maintenance) in open vegetated drainage facilities (such as swales, channels, ditches, ponds, etc.), or performing any alterations or modifications to the drainage system.

Section 7. Rights Subject to Permits and Approvals. The rights granted herein are subject to permits and approvals granted by the City affecting the Property subject to this Maintenance Agreement and Covenant.

Section 8. Terms Run with the Property. The terms of this Maintenance Agreement and Covenant are intended to be and shall constitute a covenant running with the Property and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

Section 9. Notice. All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified U.S. Mail, return-receipt requested, and shall be deemed delivered on the sooner of actual receipt of three (3) days after deposit in the mail, postage prepaid, addressed to the City or the Owner at the addresses set forth below:

To the City:  
City Engineer  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

To the Owner:  
Mr. Gordon Rush  
Rush Development Co.  
5715 WOLLOCHET DR NW  
Gig Harbor, WA 98335

Section 10. Severability. Any invalidity, in whole or in part, of any provision of this Maintenance Agreement and Covenant shall not affect the validity of any other provision.

Section 11. Waiver. 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.

Section 12. Governing Law, Disputes. Jurisdiction of any dispute over this Maintenance Agreement and Covenant shall be solely with Pierce County Superior Court, Pierce County, Washington. This Maintenance Agreement and Covenant shall be interpreted under the laws of the State of Washington. The prevailing party in any litigation arising out of this Maintenance Agreement and Covenant shall be entitled to its reasonable attorneys' fees, costs, expenses and expert witness fees.

Section 13. Integration. This Maintenance Agreement and Covenant constitutes the entire agreement between the parties on this subject matter, and supersedes all prior discussions, negotiations, and all other agreements on the same subject matter, whether oral or written.

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement and Covenant to be executed this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

**THE CITY OF GIG HARBOR**

**OWNER**

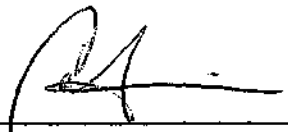
By: \_\_\_\_\_  
Its Mayor

By:   
Print Name: GORDON RUSH

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that GORDON RUSH 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 PRESIDENT of RUSH DEVELOPMENT, INC., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

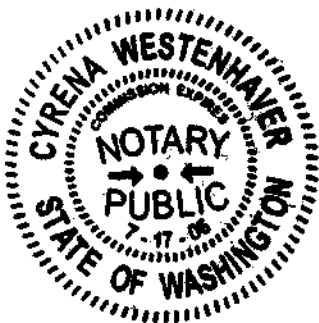
DATED: 1/22/04

Cyrena Westenhaver

Notary Public in and for the  
State of Washington,

Title: NOTARY PUBLIC

My appointment expires: 7/17/06





STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF P I E R C E        )

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: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the  
State of Washington,

Title: \_\_\_\_\_

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

EXHIBIT A

LEGAL DESCRIPTION

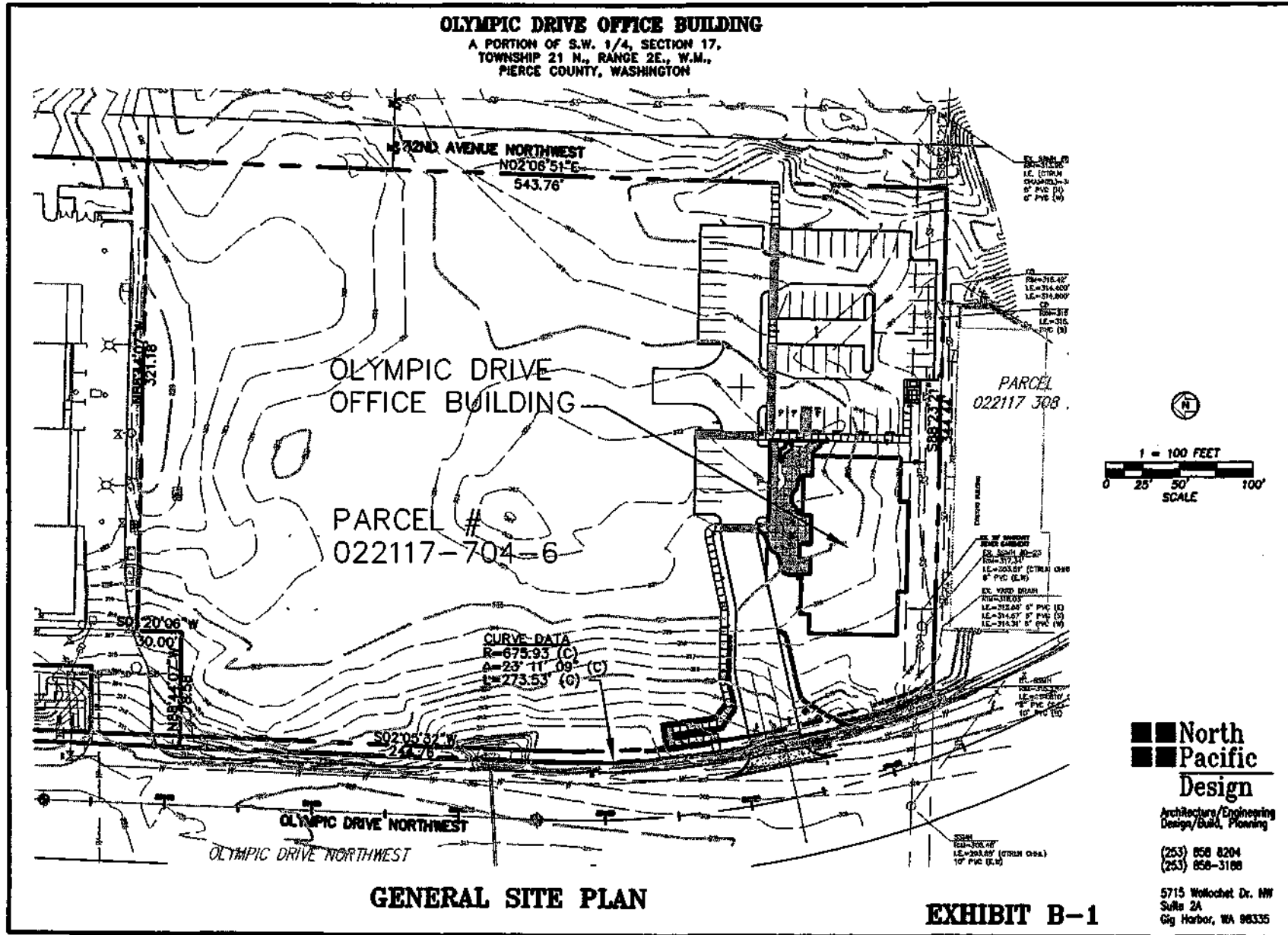
LOT 4 OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER RECORDING NUMBER 20010418594, IN PIERCE COUNTY, WASHINGTON, EXCEPT THEREFROM THAT PORTION LYING NORTH AND WEST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 4 OF SAID SHORT PLAT; THENCE NORTH 88°45'45" WEST, ALONG THE NORTH LINE OF SAID LOT 4, A DISTANCE OF 321.18 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED LINE;

THENCE SOUTH 01°18'58" WEST A DISTANCE OF 30.00 FEET; THENCE NORTH 88°45'515" WEST A DISTANCE OF 78.56 FEET TO THE EASTERLY RIGHT OF WAY MARGIN OF OLYMPIC DRIVE NW AND THE TERMINUS OF THE HEREIN DESCRIBED LINE.

**OLYMPIC DRIVE OFFICE BUILDING**

A PORTION OF S.W. 1/4, SECTION 17,  
TOWNSHIP 21 N., RANGE 2E., W.M.,  
PIERCE COUNTY, WASHINGTON



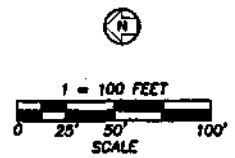
PC=318.40'  
 LE=318.400'  
 LC=318.800'  
 PT=318.800'  
 PVI=318.400'  
 PVI (D)

PARCEL  
 022117 308

OLYMPIC DRIVE  
OFFICE BUILDING

PARCEL #  
022117-704-6

CURVE DATA  
 R=675.93 (C)  
 A=23° 11' 09" (C)  
 L=273.53' (C)



PC=318.40'  
 LE=318.400'  
 LC=318.800'  
 PT=318.800'  
 PVI=318.400'  
 PVI (D)

**North Pacific Design**

Architecture/Engineering  
Design/Build, Planning

(253) 858-8204  
 (253) 858-3188

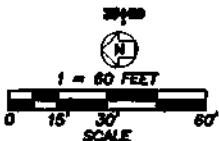
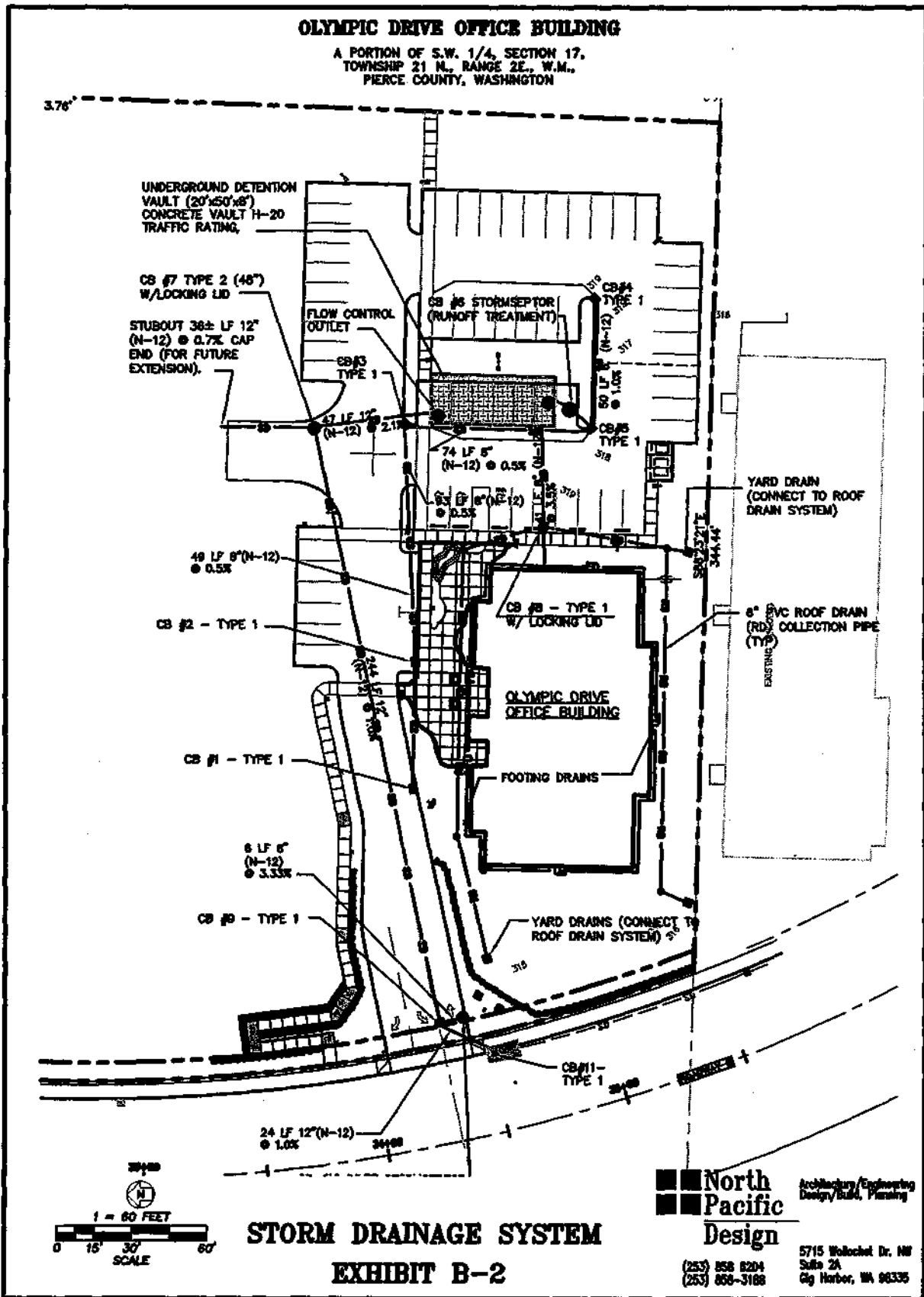
5715 Wolkechet Dr. NW  
 Suite 2A  
 Gig Harbor, WA 98335

**GENERAL SITE PLAN**

**EXHIBIT B-1**

**OLYMPIC DRIVE OFFICE BUILDING**

A PORTION OF S.W. 1/4, SECTION 17,  
TOWNSHIP 21 N., RANGE 2E., W.M.,  
PIERCE COUNTY, WASHINGTON



**STORM DRAINAGE SYSTEM**  
**EXHIBIT B-2**

**North Pacific**  
Design  
Architectural/Engineering  
Design/Build, Planning  
5715 Wollochel Dr. NW  
Suite 2A  
Gig Harbor, WA 98335  
(253) 858-8204  
(253) 858-3168



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: CUSHMAN TRAILHEAD**  
**TACOMA PUBLIC UTILITIES PERMIT NO. 1759**  
**DATE: FEBRUARY 23, 2004**

**INTRODUCTION/BACKGROUND**

Identified in our 2003 Parks budget is to construct a park at the intersection of Olympic Drive and Hollycroft Street. A portion of this park is going to be constructed on property owned by Tacoma Public Utilities requiring a permit to develop, operate and maintain the landscaped park.

City Council approval of the Permit is being requested.

**POLICY CONSIDERATIONS**

Some of the terms included in this Permit are not recommended by the City Attorney Carol Morris. Attached are her issues of concerns.

**FISCAL CONSIDERATIONS**

No funds will be expended for the described Permit.

**RECOMMENDATION**

I recommend that City Council authorize the execution of Tacoma Public Utilities, Permit No. 1759.

## **Background.**

[Maureen, I don't know what the background is regarding the park – I'm not sure why we chose to have a park in this location.]

### **Permit from City of Tacoma Department of Public Utilities**

In order to have the park on City of Tacoma Public Utilities right-of-way/property, Tacoma required Gig Harbor to obtain a permit. Gig Harbor Staff negotiated the terms of the permit with Tacoma, and Tacoma has agreed to issue the permit under the terms in the attached Permit No. 1759.

Some of the terms included in Permit No. 1759 were not those recommended by the City Attorney, even though the cover letter from Tacoma Power states their "hope" that the terms were mutually acceptable. Tacoma Power rejected the City Attorney's proposed language, and told her that it had to be modified to address the concerns set forth below. The City Council should carefully review the following terms and decide whether acceptance of the permit is worth the possible risks involved. Here are a few of the issues raised by the City Attorney:

1. The permit requires the City to indemnify Tacoma Power for Tacoma Power's own negligence if a court finds that the permit is not subject to RCW 4.24.115 and also finds both the City and Tacoma Power are concurrently negligent. (RCW 4.24.115 can be summarized as addressing contracts that relate to the construction, alteration or repair of structures, projects, developments or improvements attached to real estate.) This permit is for Gig Harbor's construction of improvements on the property owned by Tacoma Power, so it is arguably subject to RCW 4.24.115. If a court reaches a different conclusion, the City's indemnification of Tacoma Power under these circumstances would likely not be covered by AWC-RMSA (the City's insurance pool).
2. Gig Harbor explained to Tacoma Power that their standard indemnification clause was not required because as long as they complied with RCW 4.24.210, they would have immunity for any lawsuit brought by a member of the public using the park. (RCW 4.24.210 is the Recreational Immunity statute and provides immunity of a landowner or others in lawful possession of land for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been posted.) Apparently, Tacoma Power and/or its affiliates have not complied with RCW 4.24.210 in the past (by not posting warning signs), and paid a substantial amount of money in damages for injuries to members of the public using its facilities for recreational purposes. Therefore Tacoma Power wanted Gig Harbor to indemnify Tacoma Power for

any claim brought by a member of the public using the planned park, if RCW 4.24.210 does not provide immunity to Tacoma Power.

We explained to Tacoma Power that Gig Harbor did not know enough about Tacoma Power's facilities on the property to know whether such facilities posed any harm to the public. In other words, Gig Harbor wouldn't know whether any signs needed to be posted, and this should be Tacoma Power's responsibility. Tacoma Power refused, and required that the City indemnify Tacoma Power if RCW 4.24.210 did not provide it with immunity.

Also, in Section 10(b), Tacoma Power requires the City to post the property with signs visible to park users stating: "Caution, High Voltage Lines Overhead." This may be all that is needed to comply with RCW 4.24.210 (the City Attorney does not know enough about their operations to know whether this would cover the hazard). In addition, the following language has been included in Section 12(c): "Permittee or its agents, employees, visitors, invitees and/or property may be subject to hazards of utility operation which risk Permittee hereby expressly acknowledges." In Section 15, Tacoma Power has added a section warning about electromagnetic fields on the property. The City Attorney doesn't know enough about the hazards of utility operation to know whether the City's posting of a sign "Caution, High Voltage Lines Overhead" covers all of these "hazards of utility operation," or whether it will satisfy the requirements of RCW 4.24.210.

**[Maureen, did you run Section 8 on insurance by AWC?]**

3. Tacoma Power has added language which states that it "shall not be liable for to the Permittee or any third parties entering on the Premises," when it performs construction, operation or maintenance. It would be a good idea to close the park to public use whenever Tacoma Power is working on the property.

**Recommended Action:**

City staff recommends that the Council consider the risks involved with the improvement of Tacoma Power's property into a park, and decide whether to accept the permit under the terms proposed by Tacoma Power.

**WHEN RECORDED RETURN TO:**

**Tacoma Public Utilities**

Asset Management

P.O. Box 11007 • Tacoma, WA 98411

**DO NOT MARK OUTSIDE THE BORDER LINES OF THIS DOCUMENT**

**CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
PERMIT NO. 1759**

Reference No.           2003-187rfp  
Grantor:                City of Tacoma, Department of Public Utilities, Light  
                              Division (d.b.a. Tacoma Power)  
Grantee:                City of Gig Harbor  
Legal Description(s):   Ptn. Northwest Quarter (NW¼) of the Southeast Quarter  
                              (SE¼), Section 17, Township 21 North, Range 02 East,  
                              W.M., City of Gig Harbor, Pierce County  
Tax Parcel No(s):       022117-407-4

***DIVISION: LIGHT***

This Permit made and entered into this \_\_\_\_\_ day of \_\_\_\_\_,  
2004, by and between the CITY OF TACOMA, DEPARTMENT OF PUBLIC  
UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), a municipal corporation,  
hereinafter referred to as "Tacoma Power" and The CITY OF GIG HARBOR,  
WASHINGTON, hereinafter referred to as "Permittee."

***WITNESSETH:***



## **PREMISES**

Tacoma Power, for and in consideration of the mutual benefits and covenants herein contained, does hereby grant to the Permittee limited, revocable permission to use the following described real property:

A parcel of land comprising a portion of the City of Tacoma's Cushman Transmission Line Right of Way. Said parcel is located Northerly of the Northerly line of Olympic Drive, Southerly of the South line of Hollycroft Street, Northwesterly of the Westerly margin of the FR2 Line as shown on that certain right of way plan entitled "SR 16 Narrows Bridge to Olympic Drive, Sheet 7 of 52, dated March 19, 1970; said parcel being a portion of that certain tract conveyed to the City of Tacoma by Quit Claim Deed dated March 23, 1982 and recorded under Pierce County Auditor File Number 8205070163; situate in the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section 17, Township 21 North, Range 02 East, W.M., in Pierce County, Washington;

And as further shown on Exhibit "A" attached hereto and by this reference incorporated herein.

## **PURPOSE**

Tacoma Power permits the above described real property (the "Premises") to the Permittee for the express purpose of: developing, operating and maintaining a landscaped mini park. Permittee agrees to make no other use of the subject Premises or alter its use thereof without the prior written consent of Tacoma Power.

## **TERMS AND CONDITIONS**

This permission is further granted to the Permittee under the following terms and conditions:

### **1. PERMIT PERIOD**

Tacoma Power hereby grants to Permittee limited, revocable permission to use the above-described Premises for the purposes stated herein, beginning upon approval and ending when revoked. Permission to use the subject Premises is granted conditionally upon the terms set forth herein.

## **2. PROCESSING FEE**

Permittee shall pay the following:

- a. The sum of FIVE HUNDRED DOLLARS (\$500.00) for processing this Permit.
- b. The Permittee also shall pay, if applicable, any and all taxes and assessments arising from this Permit, including, if applicable, the Leasehold Excise Tax levied by the State of Washington pursuant to Chapter 82.29A, Revised Code of Washington, as hereafter may be amended, in addition to any payments above required.
- c. All Fees shall be made payable to City of Tacoma Treasurer and delivered to Tacoma Power, Department of Public Utilities, 3628 South 35<sup>th</sup> Street, Tacoma, Washington 98409, or such other address as the Department of Public Utilities may hereafter designate.

## **3. CONSIDERATION**

- a. Permittee will provide vegetation on the Premises as shown on the plans approved in conjunction with this Permit. After installation, the Permittee shall be responsible for maintaining the vegetation, eliminating noxious weeds, trimming vegetation, cutting the grass and for litter and garbage removal.
- b. Permittee further covenants to allow the general public free access to, and enjoyment of, the permitted Premises and to indemnify Tacoma Power for Permittee's facilities as required elsewhere in Permit.
- c. Permittee shall also install and maintain a plaque or sign acknowledging Tacoma Power's cooperation in Permittee's project. Such sign or plaque shall be approved in advance by Tacoma Power for size, material and content.
- d. No use fees are contemplated under this permit. However, Tacoma Power may impose a use fee for unauthorized use of the Premises.

**4. CHARGE FOR LATE PAYMENT**

- a. If use fees are later imposed for unauthorized use, Permittee hereby acknowledges that the late payment of any other fee or other sums due hereunder, will cause Tacoma Power to incur costs not contemplated by this Permit, the exact amount of which may be difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting, and loss of interest income. Accordingly, if any payment of fees due hereunder is not paid when due, or is not received by Tacoma Power or postmarked, within thirty (30) days thereafter, a Late Charge of five percent (5%) of each such payment, in addition to the past due amount itself, shall become immediately due and payable to Tacoma Power.
- b. Acceptance by Tacoma Power of such late charges and/or any portion of the overdue payment shall in no event constitute a waiver of Permittee's default with respect to such overdue payment, nor prevent Tacoma Power from exercising any of the other rights and remedies granted hereunder or by any provision of law.

**5. OWNERSHIP**

- a. Tacoma Power owns and controls the above-described Premises. The permission granted herein is subordinate to and subject to the paramount right of Tacoma Power to use said Premises.
- b. Permittee shall not impede or interfere with Tacoma Power's use of its Premises, or damage its structures, or facilities located thereon.
- c. In the event that Tacoma Power must terminate this Permit for any reason, and if replacement of Permittee's project thereon is required under any law, regulation or ordinance or for any other reason, the City of Gig Harbor shall be responsible for such replacement and hold Tacoma Power harmless from any and all replacement costs.

**6. AUTHORIZED USE AND IMPROVEMENTS**

Permittee's use and/or improvement of the Premises shall be limited as follows:

- a. Authorized Improvements. Permittee is hereby allowed to construct and maintain hard surfaced walkways, benches, decks and other improvements as may be approved by Tacoma Power for public use, and plant low growing shrubs and trees. Permittee shall secure Tacoma Power's prior written approval of its construction plans for the permitted Premises. Public restrooms or drain fields are not permitted.

- b. Construction Requirements. Permittee shall design and construct facilities to minimize use of the permitted lands and ensure safe conditions. Permittee agrees to the construction requirements in "Attachment A", attached hereto and incorporated herein.
- c. Ownership and Maintenance of Permittee's Improvements. The Permittee agrees and covenants that any existing and future structures that Tacoma Power permits to be installed by the Permittee or its agents on the permitted Premises shall not become the property of Tacoma Power upon the termination (or expiration) of this Permit. The Permittee covenants and agrees, during the Permit period, to maintain in good condition all of its structures existing and/or built on the permitted Premises.

## **7. INDEMNIFICATION**

The Permittee shall defend, indemnify and hold Tacoma Power harmless from any and all claims, injuries, damages and lawsuits arising out of or in connection with the activities of Permittee, its contractors, agents, employees, and/or invitees under this Permit, except for injuries caused by the sole negligence of Tacoma Power. Should a court of competent jurisdiction determine that this Permit is subject to RCW 4.24.115, then in the even of liability or damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Permittee and Tacoma Power, the Permittee's liability and indemnification obligations hereunder shall be only to the extent of the Permittee's negligence. Should a court of competent jurisdiction determine that any claim made by a person not a party to this Permit against Tacoma Power is within the scope of this indemnification provision, but Tacoma Power does not have immunity for such claim under RCW 4.24.210, the Permittee shall defend, indemnify and hold Tacoma Power harmless from any and all claims, injuries, damages and lawsuits. Under no circumstances shall the Permittee defend, indemnify and hold Tacoma Power harmless from any claims, injuries, damage, or lawsuits brought by any officer, official, employee, and/or volunteer of Tacoma if such claim results from injury or death while conduction their official duties.

## **8. LIABILITY INSURANCE**

Permittee, its agents and contractors, shall procure and keep effective during the term of this Permit a comprehensive general liability insurance policy which, at a minimum:

- a. Names the City of Tacoma as an "Additional Insured," protecting the City of Tacoma, its officers and employees with coverage of not less than \$1,000,000 combined single limit for each occurrence of property damage and/or personal injury including death;

b. Includes contractual type coverage obligating Permittee's insurance carrier to satisfy Permittee's potential liability responsibilities and obligations under the terms of this Permit;

c. Provides that Permittee's insurance (and/or that of its agents and contractors) is primary over any insurance or self-insurance program the City of Tacoma maintains for its own protection;

d. Provides that Tacoma Power will be provided 30 days' prior written notice in the event of cancellation of policy.

A Certificate of Insurance including an endorsement naming the City of Tacoma as an "Additional Insured," shall be provided to Tacoma Power for approval and filing. Upon request Permittee shall provide a copy of the required insurance policy to Tacoma Power within thirty (30) days of the request.

This Permit is conditioned upon Permittee's maintaining the above-stated minimal insurance requirements, and Permittee shall not occupy or enter upon the Premises until Tacoma Power has received the Permittee's Certificate of Insurance. The Permittee agrees to maintain the required insurance coverage and provide Tacoma Power a current Certificate of Insurance (as required herein). Any lapse or termination of either condition constitutes a material breach of this Permit. As a courtesy Tacoma Power will endeavor to inform (but is not responsible for informing) the Permittee of such a breach. Tacoma Power (at its option) may grant an appropriate grace period in order that the Permittee may expeditiously cure the said default(s).

Tacoma Power may charge an administrative fee reflecting its costs arising from attempting to obtain a current Certificate of Insurance. If the required insurance coverage is still not reinstated within the stated grace period, or if Tacoma Power is not provided the required Certificate of Insurance, Tacoma Power may terminate this Permit. Note: The notice provisions set forth in the Termination Section of this Permit do not preclude the immediate termination of this Permit by Tacoma Power under this Section.

Tacoma Power may periodically review the types and amounts of coverage required of Permittee and provide notice of required changes in the types and minimum amounts of such coverage.

An entity that is wholly or partially self insured may, with the approval of Tacoma Power provide evidence of <sup>acceptable</sup> self-insurance funding, and by letter commit its self insurance program to the minimum amounts required herein. By executing this Permit, Permittee agrees that it will pay any deductible or self-insured portions of the insurance or self insurance provided.

9. **GENERAL CONDITIONS**

- a. **Public Use.** Public Utility Board Policy restricts the private use of Tacoma Power property. Therefore, any improvements or work authorized by this Permit shall be for non-exclusive public use.
- b. **Public Defined.** For purposes of this Permit, "Public" is defined as the general citizenry, and not restricted to any particular group or geographical area.
- c. **Warranty.** Tacoma Power does not warrant that it has sole authority to permit the above-described use of the Premises, and the Permittee agrees to secure any other rights, approvals or permits that are needed by it for its lawful use of said Premises.
- d. **Prior Agreements.** The rights herein granted shall be subject to any prior agreements or contracts made or entered into by Tacoma Power and further shall be subject to any subsequent agreements between city, state, or federal wildlife, fishery, ecology, energy, or other regulatory agency having jurisdiction.
- e. **Other Agencies' Regulations.** This Permit is at all times subject to provisions and requirements of federal, state, and local agencies and any future rules and regulations of these agencies or their successors or assigns. The permission granted herein is subject to any lawful rules or regulations now in effect, or which may hereafter become effective or which are imposed upon the subject Premises by any regulating authority including Tacoma Power. Tacoma Power reserves the right at any and all times to prescribe additional rules and regulations for the conduct, operation, and maintenance of any or all the rights and privileges granted under the terms of this Permit. Tacoma Power will endeavor to give sixty (60) days' notice to Permittee of any such additional rules and regulations.
- f. **Primary Purpose of Property.** The rights and privileges under this Permit shall at all times be subservient to the construction, operation, and maintenance of the utility systems of Tacoma Power, and shall not at any time or in any manner interrupt or interfere therewith; and Tacoma Power shall not be liable to the Permittee or to any third parties entering upon the Premises on account of such construction, operation, or maintenance, or any act or thing done in connection therewith.
- g. **Subordination of Rights.** The permission granted herein is subordinate and subject to the paramount right of Tacoma Power to use the subject Premises under its federal power license and any extensions of said license.

- h. **Non-Exclusive Rights.** This Permit is nonexclusive, and shall not prohibit Tacoma Power from granting other permits of like or other nature to others, nor shall it prevent Tacoma Power from using any of the subject Premises or affect its right to full supervision and control over all or any part of the said Premises, none of which is hereby surrendered.
- i. **Tacoma Power's Use of Property.** Permittee shall not damage or interfere with Tacoma Power's use of the Premises, structures, or facilities. If Tacoma Power requires that Permittee's operations, facilities, or structure(s) be moved or modified as a result of interference or conflict with Tacoma Power operations or facilities, Permittee will promptly make those modifications at its own expense.
- j. **Exclusive Tacoma Power Control and Access in Cases of Emergency:** Tacoma Power shall have the right to assert exclusive temporary control over access and use of the Premises as necessary, in Tacoma Power's sole discretion, for purposes of conducting emergency repairs and/or maintenance to its electrical utility facilities located on the Premises. Permittee hereby expressly acknowledges this right and agrees to hold Tacoma Power harmless against any claims, demands or damages related to Permittee's temporary denial of access and Permittee's use of the Premises hereunder.
- k. **Maintenance of Permittee's Structures.** The structure(s), improvement(s) and any associated habitat conditions permitted herein will be maintained by Permittee its sole cost in a safe, clean, neat condition and according to the requirements set forth in this Permit.
- l. **Damage to Permittee's Facilities.** Any improvements that Tacoma Power may allow Permittee to install are subject to being damaged by Tacoma Power's operations and Permittee assumes the risk of such limited use rights and will be responsible for its own additional costs and expenses in restoring any such damage.
- m. **Supervision.** The Permittee, its successors and assigns, shall give the conduct, operation, and maintenance of the Premises (and authorized improvements thereon) granted herein its personal supervision and direction.
- n. **Unlawful Purposes.** The Permittee will, at all times, maintain the Premises in an orderly manner and will not create or permit any nuisance to exist or allow the Premises to be used for any immoral or unlawful purposes.

- o. **Cooperation.** The Permittee shall cooperate fully with federal, state, and county departments of fish, wildlife, or other departments preserving and maintaining wildlife, energy, ecology, or environment and shall, at all times, give access to said departments and employees for the purpose of making studies of or performing other duties in connection with said endeavors.

#### 10. SPECIAL CONDITIONS/ADDITIONAL PROVISIONS:

- a. **Boundary marking.** Permittee will mark the ends or corners of the common boundary between the permitted Premises and Permittee's adjoining land by setting 24 inch long (minimum) reinforcing bar or equivalent acceptable to Tacoma Power.
- b. **Warning Signs.** Permittee shall keep the site continuously posted with the following warning sign(s) located so as to be visible to park users: "Caution, High Voltage Lines Overhead".

#### 11. ASSIGNMENT

The assignment of this Permit by Permittee requires Tacoma Power's prior written approval.

#### 12. HAZARDOUS SUBSTANCES AND/OR CONDITIONS

- a. No goods, merchandise, or material shall be kept, stored, or sold on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade business or occupation shall be conducted therein, thereon or therefrom other than as provided for in this Permit. No machinery or apparatus shall be used or operated on the Premises which will in any way damage the Premises; provided, however, that nothing in this paragraph shall preclude Permittee from bringing, keeping, or using on or about the Premises such materials, supplies, equipment, and machinery as are necessary or customary in carrying out the authorized uses under this Permit.
- b. In the event such uses include keeping or storage of inflammable or explosive substances, such substances shall be stored in closed containers, and shall be stored, used, or dispensed in the manner prescribed by the regulations of Tacoma Power or other public body having authority in the matter, and in any event, in the safest manner reasonably possible. Permittee shall be solely liable for the remediation of any hazardous substance and/or conditions on the Premises resulting from Permittee's use of said Premises.



- c. Permittee hereby acknowledges that Tacoma Power has high voltage transmission lines located on the Premises. Such transmission lines generally carry at least 100,000 volts. Permittee shall exercise due care and follow all state and federal safety codes and laws regarding work around energized power conductors. Additionally, The Premises is necessary for the continued operation, maintenance, and/or improvement of Tacoma Power's utility system; therefore, Permittee or its agents, employees, visitors, invitees, and/or property may be subject to hazards of utility operation which risk Permittee hereby expressly acknowledges.

### 13. INSPECTION

Tacoma Power, its officers and agents, may at any and all times enter upon the Premises hereinabove described, or any part thereof, for any purpose in connection with the construction, revision, operation, or maintenance of the Utility systems of Tacoma Power, or at other reasonable times in connection with the Permit, or for the purposes of inquiry or inspection.

### 14. TERMINATION

- a. Operational Necessity: In the event it should become necessary for Tacoma Power to make use of the Premises to such an extent as to necessitate discontinuance of the use thereof by the Permittee, Tacoma Power may terminate this Permit by giving Permittee written notice of such termination at any time. Said notice to be given by certified mail addressed to the City of Gig Harbor; 3510 Grandview Street; Gig Harbor, WA 98335, and termination shall be effective IMMEDIATELY upon delivery thereof.
- b. Insolvency/Bankruptcy: It is hereby agreed that if the Permittee becomes either insolvent or files a proceeding in bankruptcy, or if a receiver is appointed, Tacoma Power may upon giving ten (10) days notice to the Permittee cancel this Permit and re-enter and retake possession of the subject Premises and this Permit and concession shall, at the option of Tacoma Power, be cancelled and terminated and all interests herein shall be forfeited and inure to Tacoma Power.
- c. Other: This Permit may be terminated by the Permittee or Tacoma Power upon ninety (90) days written notice, for any reason stated in said notice, mailed by certified mail to the Permittee at City of Gig Harbor; 3510 Grandview Street; Gig Harbor, WA 98335, OR to Tacoma Power at 3628 South 35<sup>th</sup> Street; Tacoma, WA 98409-3192. In the event of such termination, Permittee shall retain sole responsibility for any permitted improvements and/or structures per paragraph 6 above.

- d. Surrender of Premises: Upon the termination of this Permit for any reason, the Permittee agrees to promptly and peaceably surrender possession of the subject Premises, remove its improvements and to return said Premises to Tacoma Power in as good condition as the same now exists, reasonable wear and tear excepted. Any damages to the subject Premises shall be repaired at Permittee's expense.
- e. Permit Re-issuance: In the event this Permit is terminated based upon Permittee's failure to comply with the terms and conditions set forth herein, and Tacoma Power thereafter grants a new Permit, then additional processing fees will be charged to cover the administration of re-issuing a new Permit and/or collection of late Use Fees.

#### 15. ELECTROMAGNETIC FIELDS

Electric devices, including power lines, emit electromagnetic fields (EMF). Some studies have suggested that EMF may affect human and/or animal biological systems. Although a National Academy of Sciences Committee has concluded that "The findings to-date do not support claims that EMF fields are harmful to a person's health", the Permittee is hereby notified that potential causal connections between EMF and human diseases may exist. Tacoma Power does not warrant that use of the Premises is without risk of exposure to EMF. In spite of this concern, the Permittee has decided to enter into this real property agreement with Tacoma Power and expressly assumes all risk of harm, if any, as set forth herein.

#### 16. RECORDING

This Permit may be filed with the County Auditor's office by Tacoma Power. Should any assignment of the subject Premises be approved by Tacoma Power, it is the Permittee's duty to provide notice to each assignee.

#### 17. INTERPRETATION AND NON WAIVER OF RIGHTS

The Permittee acknowledges that the Permit has been mutually negotiated, and that any ambiguity regarding the terms and conditions herein shall not be construed or interpreted against Tacoma power as the drafter of this Agreement.

P2003-187/P1759

IN WITNESS WHEREOF, I have executed this instrument at Pierce County, Washington, on behalf of the City of Gig Harbor, a municipal Corporation, said company has caused its corporate name and seal to be hereunto subscribed and affixed and these presents to be executed by its officers thereunto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

ACCEPTED  
Subject to said Terms and Conditions:

CITY OF GIG HARBOR

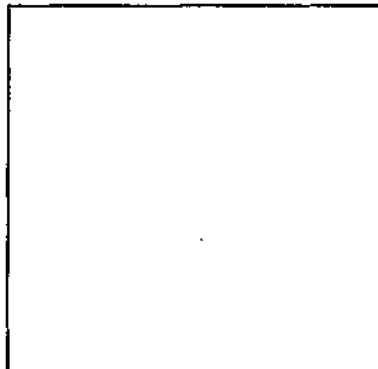
\_\_\_\_\_  
Gretchen Wilbert, Mayor

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 signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor, Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Place Notary Seal in Box



\_\_\_\_\_  
Notary Public in and for the State of Washington

Residing in \_\_\_\_\_

My Commission Expires \_\_\_\_\_

2003-187/P1759

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Formal Public Utility Board action is not necessary pursuant to Resolution No. U-8228.

AUTHORIZED:

\_\_\_\_\_  
Light Division Superintendent

REVIEWED:

\_\_\_\_\_  
Transmission & Distribution Manager

REVIEWED:

\_\_\_\_\_  
Chief Surveyor

REVIEWED:

\_\_\_\_\_  
Project Lead

REVIEWED

\_\_\_\_\_  
TPU Asset Management

FORM APPROVED:

\_\_\_\_\_  
Assistant City Attorney

(MASTER Rev'd 12/99)

**CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
PERMIT**

**ATTACHMENT "A"**

**1. CONSTRUCTION REQUIREMENTS**

- a. Permittee shall design and construct facilities to minimize use of the permitted lands and ensure safe conditions.
- b. Permittee shall maintain a safe distance between construction equipment and Tacoma Power towers and/or conductors in accordance with National Electric Safety Code and Light Division standards.
- c. Permittee shall submit final construction plans and drawings to Tacoma Power for review and approval at least two (2) weeks prior to planned construction. Permittee shall not begin construction until all plans and drawings are approved by Tacoma Power and written notice has been delivered to Permittee.
- d. Inspection of the permitted area may be performed by Tacoma Power before, during, and after construction to ensure that Permit requirements are met. If such inspections are required, Permittee agrees to pay the City a \$200 inspection fee for each site visit deemed necessary by Tacoma Power.
- e. All underground utilities shall be clearly marked with signage.
- f. Permittee shall notify Tacoma Power's Project Engineer, Mr. Thad Glassy; P. O. Box 11007, Tacoma, Washington 98411 at (253) 502-8704 at least two (2) weeks prior to the commencement of construction activities, and the parties agree that if construction or use conflicts exist, Tacoma Power's schedule shall prevail.

- g. As a condition of this permit, the Permittee agrees that, prior to back-filling or covering trenches or points where horizontal boring has occurred, Permittee shall measure the actual locations of all buried facilities, including any changes from construction plans previously approved by Tacoma Power. Permittee shall notify Tacoma Power's Inspector at least 48 hours prior to such back-filling or covering of said work. Within Sixty (60) days of completion, Permittee will provide Tacoma Power with a set of "as built drawings" with actual dimensioned locations of underground facilities noted. These "as-built" plans shall be of sufficient quality that the drawing can be reproduced, in order that the constructed location of Permittee's facilities can be noted on Tacoma Power's right of way plans.
- h. Permittee shall promptly notify Tacoma Power when completion of the work on the permitted Premises is complete. Tacoma Power shall, within a reasonable period of time, inspect the work and provide written notice to Permittee upon acceptance.
- i. Permittee warrants that no hazardous substances, toxic waste, or other toxic substance will be produced, disposed of, or will be kept on the premises which, if found on the property, would subject Tacoma Power to any damages, penalty, or liability under an applicable local, state, or federal law or regulation. Permittee shall indemnify and hold harmless Tacoma Power with respect to any and all damages, costs, attorney fees, and penalties arising from the presence of such substances on the premises, except for such substances as may be placed on the premises by Tacoma Power.

**b. Drainfields**

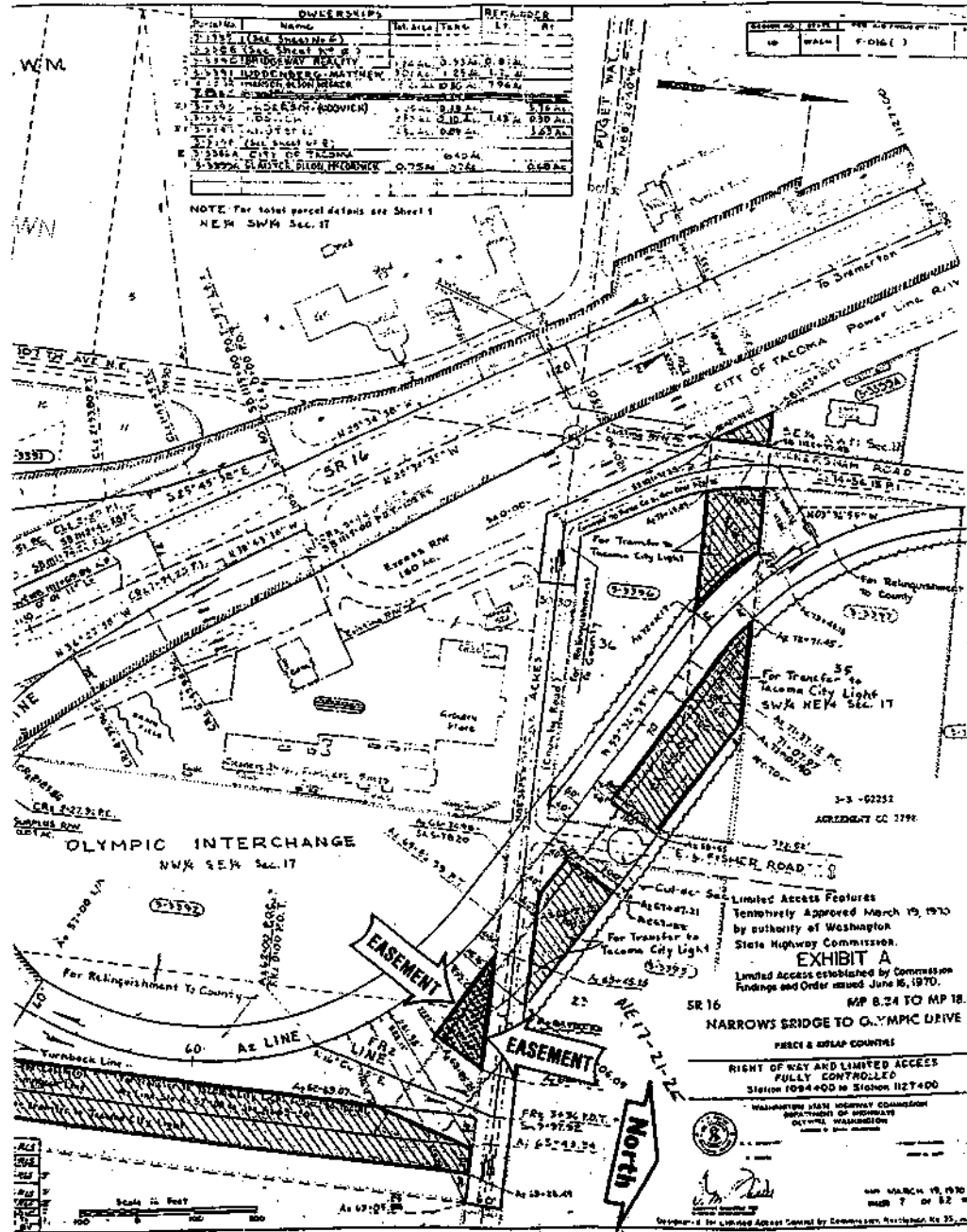
Drainfields shall not be located on the permitted Premises.

City of Tacoma - Department of Public Utilities - Asset Management

Date 10/31/2003  
 Bob Peters  
 Sr. Real Estate Specialist

Light Division Permit No. 1759  
 The City of Gig Harbor, Permittee  
 Cushman R/W at Olympic Village Interchange  
 NW¼ of SE¼ Sec. 17, Twp. 21N, R2E, W. M.

Project No.  
 P2003-187



ASSET MANAGEMENT ILLUSTRATION

This illustration is not to scale. It is provided as a customer convenience to assist in identifying significant characteristics of the installation. Tacoma Power assumes no liability by reason of reliance hereon.

Exhibit "A"



ASSOCIATION OF  
WASHINGTON CITIES

Employee  
Benefit Trust

Risk  
Management  
Service Agency

Drug &  
Alcohol Testing  
Consortium

1076 Franklin St. SE  
Olympia, WA 98501-1346

Phone: 360-753-4137

Toll Free: 1-800-562-8981

Fax: 360-753-0148

Website: [www.awcnet.org](http://www.awcnet.org)

February 6, 2004

Renee Mattsen  
Tacoma Public Management  
TPU Asset Management  
PO Box 11007  
Tacoma, WA 98411

**RE: Letter of Coverage for the City of Gig Harbor  
Permit #868**

The City of Gig Harbor is a member of the Association of Washington Cities Risk Management Service Agency (AWC RMSA). The AWC RMSA is a municipal self-insurance pool.

As a member of the AWC RMSA, the City of Gig Harbor is afforded the following coverages:

All Risk Property Coverage	\$250 million per occurrence
Liability Coverage	\$5 million per occurrence
Employee Fidelity Blanket Coverage	\$1 million per occurrence
Comprehensive Auto Liability	\$5 million per occurrence

The policy term is from January 1, 2004 to January 1, 2005. *AWC is not an insurance company and therefore cannot name an additional insured.* However, our coverage agreement allows coverage to be extended to another party by contractual agreement.

If you have any questions, please give me a call.

Sincerely,

Brenda Mingo  
Insurance Services Analyst

/blm

c: Molly Towslee, City of Gig Harbor ✓  
Underwriting file





COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**SUBJECT: COMMUNITY DEVELOPMENT DIRECTOR**  
**36<sup>TH</sup> STREET/POINT FOSDICK DRIVE PROJECT CSP-0029**  
**CONSULTANT SERVICES CONTRACT AMENDMENT NO. 1**  
**DATE: FEBRUARY 23, 2004**

**INTRODUCTION/BACKGROUND**

On, October 27, 2003, the City Council approved a consultant services contract for the design of interim intersection improvements for the above-mentioned project to the engineering firm of HDR Engineering, Inc. in the amount of \$21,855.80. This amendment provides for the development of final construction plans, specifications, and estimate for a modern day roundabout at this intersection.

The tasks to be completed under this amendment include the following:

- Project Management,
- Supplemental Topographic Survey,
- Geotechnical Investigation,
- Environmental Permitting,
- Right of Way Acquisition Assistance,
- Preliminary Plans, Specifications, and Estimate,
- Final Plans, Specifications, and Estimate,
- Bidding Assistance,
- Contingency Work as authorized by the City of Gig Harbor,
- And miscellaneous expenses.

**FISCAL CONSIDERATIONS**

This is a budgeted item from the 2004 Street Operating Fund, Objective No. 16, and is within the \$180,000 allocated for this project.

Council approval is requested to execute a contract amendment to the engineering services contract with HDR, Inc.

The consultant services contract with HDR for engineering services is currently in the amount of \$21,855.80; Amendment No. 1, in the amount of \$137,793.90, revises the total contract with HDR to \$159,649.70.

**RECOMMENDATION**

I recommend that the Council authorize execution of Amendment No. 1 to the consultant services contract for final design services between the City of Gig Harbor and HDR Engineering, Inc. in the not to exceed amount of one hundred thirty seven thousand seven hundred ninety-three dollars and ninety cents (\$137,793.90).

**AMENDMENT TO CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
HDR ENGINEERING, INC.**

THIS AMENDMENT is made to the AGREEMENT, dated November 10, 2003, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and HDR Engineering, Inc., a corporation organized under the laws of the State of Washington, located and doing business at 500 108<sup>th</sup> Avenue NE, Suite 1200, Bellevue, Washington 98004-5549 (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the interim design for the 36<sup>th</sup> Street/Point Fosdick Drive Intersection Improvement Project and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agreed to perform the services, and the parties executed an Agreement on November 10, 2003 (hereinafter the "Agreement"); and

WHEREAS, the existing Agreement requires the parties to execute an amendment to the Agreement in order to modify the scope of work to be performed by the Consultant, or to exceed the amount of compensation paid by the City;

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

**Section 1. Amendment to Scope of Work.** Section I of the Agreement is amended to require the Consultant to perform all work described in **Exhibit A – Scope of Services**, attached to this Amendment, which Exhibit is incorporated herein as if fully set forth.

**Section 2. Amendment to Compensation.** Section II(A) of the Agreement is amended to require the City to pay compensation to the Consultant for the work described in **Exhibit A** to the Amendment in the amount of: one hundred thirty seven thousand seven hundred ninety three dollars and ninety cents (\$137,793.90). This Amendment shall not modify any other of the remaining terms and conditions in Section II, which shall be in effect and fully enforceable.

**Section 3. Effectiveness of all Remaining Terms of Agreement.** All of the remaining terms and conditions of the Agreement between the parties shall be in effect and be fully enforceable by the parties. The Agreement shall be incorporated herein as if fully set forth, and become a part of the documents constituting the contract between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

THE CITY OF GIG HARBOR

By: *Laurence Kyle*  
Its Principal

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

Notices to be sent to:

CONSULTANT  
HDR Engineering, Inc.  
Attn: Larry Kyle, P.E., Principal  
500 108<sup>th</sup> Avenue NE, Suite 1200  
Bellevue, Washington 98004-5549  
(425) 453-1523

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 \_\_\_\_\_ Inc., 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: \_\_\_\_\_



# **AMENDMENT #1**

## **EXHIBIT A SCOPE OF SERVICES**

**36<sup>th</sup> Avenue / Pt. Fosdick Drive  
Intersection Improvement Project  
Phase 2**

- Plans, Specifications and Estimate
- Bidding Assistance

Prepared by:

**HDR Engineering, Inc.**  
2401 Bristol Court SW, Suite B-18  
Olympia, Washington 98502-6061

February 2004

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**EXHIBIT A  
SCOPE OF SERVICES**

**36<sup>th</sup> Avenue / Point Fosdick Drive  
Intersection Improvement Project  
Phase II**

**I. INTRODUCTION**

In 2003, the City of Gig Harbor began the design of Phase I improvements to the existing 36<sup>th</sup> Ave / Pt. Fosdick intersection. Phase I improvements include minor widening of the intersection to provide a left-turn pocket onto eastbound 36<sup>th</sup> Avenue. Phase I was anticipated to increase the capacity of the intersection to correspond with the planned phased completion of the SR-16 ramp improvements related to the WSDOT Narrows Bridge Project. Phase I is designed as an interim improvement since the intersection will fall below the adopted LOS when the Narrows Bridge project is completed in 2007. The final proposed configuration of the 36<sup>th</sup> / Pt. Fosdick intersection is a modern roundabout which will adequately handle the increased traffic volume upon completion of the Narrows Bridge project and to the year 2025. As part of the continuing upgrade and to increase operational efficiency at the 36<sup>th</sup> Ave / Pt. Fosdick Drive intersection, the City of Gig Harbor desires to prepare final design plans, specifications and construction estimates for the Phase II improvements. Phase II improvements include the development of a single-lane modern roundabout at the intersection to correct existing geometric and operational deficiencies. This project will incorporate curb, gutter and sidewalk, storm drainage, pedestrian and bicycle improvements, illumination and landscaping improvements.

During the term of this AGREEMENT, HDR Engineering, Inc. (CONSULTANT) together with PRIZM, Inc. professional land surveyors (SUBCONSULTANT), AMEC Earth and Environmental, Inc. (SUBCONSULTANT), and SB&A Landscape Architects (SUBCONSULTANT), shall perform professional services for the City of Gig Harbor (CITY) in connection with the 36<sup>th</sup> Ave. / Pt. Fosdick Dr. Intersection Phase II Improvement Project. Work items include:

- Topographical Surveying and Base Mapping
- Geotechnical Investigation
- Right-of-Way Acquisition assistance
- Plans, Specifications, and Estimate (PS&E)
- Construction Engineering

The work is authorized by the signing of this Amendment #1. Work on subsequent phases may be authorized by supplement to this AGREEMENT, after negotiation of scope and budget.

The work will include the development of construction documents. Plans, Specifications, and Estimate (PS&E) will be developed for construction of a single-lane modern roundabout. Work in this phase will include supplemental survey base mapping, geotechnical investigation, plan preparation and right-of-way (ROW) acquisition.

CONSULTANT's work is expected to start in February 2003, and be completed by December 2004. The CONSULTANT will perform the work tasks listed in Section III A for the 36<sup>th</sup> Avenue / Point Fosdick Drive Intersection improvement Project except Task B "Construction Engineering" may be authorized at a later date.

HDR Engineering, Inc. staff of over 3,500 professional engineers has designed and provided construction management for many modern roundabouts throughout the nation and the state of Washington including the City of Gig Harbor. Together with the team we have assembled, we will provide the City with the construction documents to allow the City to advertise and ultimately construct the proposed modern roundabout at the intersection of 36<sup>th</sup> Ave. and Point Fosdick Drive.

## II. DESIGN CRITERIA

The CITY will designate the basic premises and criteria for the design. Reports and plans, to the extent feasible, shall be developed in accordance with the latest edition and amendments as of the date of the signing of this AMENDMENT #1 of the following documents. Changes in any design standards or requirements after work has begun may result in Extra Work.

*Measurements will be in English units.*

*Drafting Standard: APWA*

*Datums:*

*Horizontal: Washington State plane coordinate system, north zone NAD 83 (91)*

*Vertical: NAVD 88*

### **City of Gig Harbor Publications:**

*Current Drainage and Public Works Standards. City of Gig Harbor standards will supercede any other standards identified below.*

### **WSDOT Publications:**

- a) *Standard Specifications for Road, Bridge and Municipal Construction, English edition (1998) (M41-10)*
- b) *Standard Plans for Road, Bridge and Municipal Construction, English edition (M21-01)*
- c) *Design Manual, (M22-01)*
- d) *Hydraulic Manual, (M23-03)*
- e) *Plans Preparation Manual, (M22-31)*
- f) *Bridge Design Manual, (M23-50)*
- g) *Amendments and General Special Provisions*
- h) *Standard Item Table*
- i) *Traffic Manual, (M51-02)*
- j) *Highway Runoff Manual, (M31-16)*
- k) *Utilities Manual, (M22-87)*
- l) *Local CITY Guidelines, (M36-63(PA))*
- m) *Environmental Procedures Manual, (M31-11)*
1. *EIS Format Standards, (M31-14)*

### **American Association of State Highway and Transportation Officials (AASHTO) Publications:**

- a) *A Policy on Geometric Design of Highways and Street, (1994 - 'Green Book')*
- b) *Guide for the Design of High Occupancy Vehicles and Public Transfer Facilities, (1983)*
- c) *A Guide for Highway Landscape and Environmental Design, (1970)*
- d) *Highway Design and Operational Practices Related to Highway Safety, (1974 - 'Yellow Book')*

### **U.S. Department of Transportation (USDOT) Publications:**

- a) *Manual of Uniform Traffic Control Devices for Streets and Highways*
- b) *Highway Capacity Manual, Special Report 209*



- c) *Roundabouts: An Informational Guide, Publication No. FHWA-RD-00-067*

**Other Publications/Design Guides:**

- a) *American Public Works Association standards*
- b) *Americans With Disabilities Act (ADA)*
- c) *Department of Ecology*

### **III. DETAILED SCOPE OF SERVICES**

#### **A. Plans, Specifications, and Estimate (PS&E)**

##### **Task 1. Project Management/CONSULTANT Coordination**

###### **1.1 Project Reporting/Project Management**

Administer the project and coordinate with the CITY to facilitate efficient progress and timely completion.

- a. Prepare and submit brief monthly status reports outlining the work completed during the previous month, project status, and an outline of issues to be resolved.
- b. Attend up to 6 monthly meetings with the CITY to discuss project related technical issues. Prepare meeting notes for the monthly meeting documenting status, schedule, and invoicing. Participate in weekly conference call meeting with CITY and key team staff to update on project status and resolve current outstanding issues.

###### **1.2 Project Schedule**

Develop a project schedule using Microsoft Project and update as necessary.

##### **Task 2. Supplemental Topographic Survey and Base Maps**

A portion of the intersection was surveyed and a base map compiled in Phase I of the intersection project. Additional survey and base mapping will be required to obtain the necessary information within the ultimate project limits and adjacent properties to determine right-of-way and wetland impacts.

Location and limits of the topographic survey will extend to 100 feet each side of the ROW centerline of 36<sup>th</sup> Avenue and Point Fosdick Drive. Limits of the survey will extend 500 feet along roadway centerline each direction from the intersection of the two roadways.

###### **2.1 Utility Base Mapping**

Use utility "as-built" information provided by CITY, identified by "One Call" locates and acquired from utility agencies to assist in location during the field survey. Field survey will include location of all utilities in the roadway corridor including invert elevations where accessible. All information gathered from these agencies will be verified in the field and incorporated into the project base maps.

###### **2.2 Topographic Survey**

- a. Utilize the vertical and horizontal control for survey and mapping developed in Phase I at a scale of 1" = 20' (horizontal) and 1" = 2' (vertical).

- b. Acquire records of survey, plat maps, assessor maps, etc. as required to establish ROW along the project corridor.
- c. Acquire supplemental topographic survey of the project corridor. Survey shall include the establishment of surface grades, pavement edges, utility poles, hydrants, valves, manholes, stormdrains, culverts, mailboxes, signs, fences, major trees, and significant landscaping, etc. in sufficient detail to support design. Additional topographical survey may also be required to identify any wetlands encountered within the project limits.

## 2.3 Base Map Preparation

Update the project base maps developed in Phase I in ACAD 2000 format, scaled at 1" = 20' horizontal, showing all features outlined above. Maps will show contours at 2-foot intervals, spot elevations on existing roadway areas, and critical driveway areas, as necessary to support the design of project improvements.

## Task 3. Geotechnical Investigation

Geotechnical investigation will be performed within the project limits to determine infiltration rates, pavement design, and design criteria for any required retaining walls or slopes. The geotechnical information will be assembled with design recommendations in a report to be delivered to the City as part of the final document package.

### **Assumptions:**

1. *Investigations will be limited to 4 borings to establish pavement design criteria and 4 borings to establish infiltration rates and slope stability for drainage facilities.*

## Task 4. Environmental Permitting

Consultant will assist the City in preparing a SEPA checklist for this project by providing information to the City regarding project environmental impacts. City will prepare and submit SEPA checklist for approval.

### **Assumptions:**

1. *City will prepare and submit SEPA checklist*
2. *It has been assumed that no wetlands will be impacted for this project. If wetlands are found to be within the project limits an increase in scope and budget will be negotiated prior to additional work performed.*

## Task 5. Right-of-Way Acquisition

### **Assumptions:**

1. *All final right-of-way acquisition will be performed by CITY staff.*
2. *Consultant will provide assistance to the City as needed throughout the right-of-way acquisition process. The estimate assumes the time required for assistance will be limited to 100 hours of a right-of-way specialist. Any work beyond this estimate will require an increase in fee to be negotiated prior to the work being performed. Estimate does not include title reports or appraisals.*

## 5.1 Right-of-Way Needs

Provide the CITY with locations and dimensions of ROW requirements for temporary and permanent easements, as well as fee simple acquisitions on four parcels required to construct the project improvements. This information will be added in the form of "red lines" to a copy of the project base map. The CONSULTANT will title their product: "RIGHT-OF-WAY NEEDS" map.

## **Task 6. Utility Coordination**

### **Assumption:**

1. *It is assumed that no municipal utility design (such as sanitary sewer or water main) is included in the project.*
2. *All utility potholing will be performed by the individual utilities. The City will coordinate with the individual utilities for potholing.*

### **6.1 Preliminary Utility Contacts**

The CITY will prepare and send a notice containing the scope and schedule of the project, and include preliminary project plans, to all public and private utility agencies with known underground or overhead facilities that may be affected by the project. The CONSULTANT will supply the CITY with the preliminary project plans for the notice.

### **6.2 Utility Coordination Meetings**

The Consultant shall prepare for and attend up to two (2) meetings with affected utilities to coordinate potential impacts to the existing systems related to the proposed intersection improvements.

## **Task 7. Preliminary Plans, Opinion of Probable Construction Cost, and Recommendations**

### **7.1 Preliminary Drainage Concepts**

Develop a preliminary concept for drainage facilities to comply with the City/County drainage requirements for the affected roadway. Plan (roll plot) will comply with the City of Gig Harbor Drainage Manual. Pre-submit preliminary drainage plan for approval by CITY staff prior to preparation and submittal of Preliminary Construction Drawings (~60%).

### **7.2 Preliminary Design Meetings**

Meet with CITY staff as requested (up to two meetings) to prepare the various elements of the preliminary design listed above. Prepare meeting notes describing comments and decisions resulting from these meetings with staff.

### **7.3 Preliminary Construction Drawings (~60%)**

Prepare preliminary Construction Drawings, including plan views, profiles, cross-sections and details, along with supporting design calculations as necessary to allow CITY staff sufficient information for a comprehensive project review. Drawings will be prepared at 1" =20' scale. Format for plans will be ink or equivalent, on City of Gig Harbor title/border, 22-inch x 34-inch size sheets. The scales to be used, the lettering, and the general delineation of the plans will be such as will provide legible reproduction at full scale or when reproduced at one-quarter the original size (50 percent reduction).

### **7.4 Engineer's Opinion of Probable Construction Cost and Bid Item Tabulation (~60%)**

Prepare an Engineer's Opinion of Probable Construction Cost, with an itemized list in tabular form describing specification section, item, and quantity, estimated unit costs, and estimated total cost.

*It is understood that any cost opinion or engineer's estimate provided by the CONSULTANT will be on the basis of experience and judgment. Because the CONSULTANT has no control over market conditions or bidding procedures, the CONSULTANT does not provide warranty or guarantee of the estimated costs.*

## 7.5 Respond to CITY Comments

Revise plan to incorporate comments from CITY review. Work required beyond the level of effort identified in the hours estimate will be considered Extra Work.

## Task 8. Final Plans, Specifications, and Opinion of Probable Construction Cost

Based on CITY comments resulting from Task 7, prepare complete construction bid documents. Submit complete bid documents (including plans, specifications, and opinions of probable construction costs) to the CITY at "90 percent complete" for review and comment and at "Final Completion" stage with 90% review comments incorporated. With each submittal, the CONSULTANT will include a response to the CITY's comments generated from the previous submittal.

### 8.1 Detailed Construction Drawings

#### **Assumption:**

1. *It is assumed that no municipal utility design (such as sanitary sewer or water main) is included in the project.*

Prepare Detailed Construction Drawings, including plan views, profiles, cross-sections and details, along with supporting design calculations. To develop a basis for a work hour estimate, an estimate of the contract plans that are assumed to be required is included below. The project limits are calculated from the center of the intersection and approximately 400 linear feet along each leg. It is assumed that the project can be covered on six (6) plan/profile sheets. Plans will be drawn at 1" = 20' scale unless noted otherwise. Plans will be generated in accordance with the City of Gig Harbor Public Works Standards. Format for plans will be ink or equivalent, on CITY title/border, 22-inch x 34-inch size sheets. The scales to be used, the lettering, and the general delineation of the plans will be such as will provide legible reproduction at full scale or when reproduced at one-quarter the original size (50 percent reduction).

A total of 19 drawings [mjt1] is anticipated and will be based on the following sheet breakdown and descriptions:

- a. **Title and Index Sheet** (1 Sheet, not-to-scale (NTS))  
Title and index sheet will include a vicinity map.
- b. **Legend, Abbreviations, and General Notes** (1 Sheet, NTS)  
Sheet will present legend, abbreviations, and general notes for contract drawings.
- c. **Roadway Sections and Details** (1 Sheet, NTS)  
Roadway sections for the typical roadway cross-sections for construction.
- d. **Paving, Grading, and Drainage Plans/Curb and Drainage Profiles**  
(6 Sheets, H:1" = 20', V:1" = 5' Scale )

These plans will be a "split sheet" format, containing both plan and profile elements.

The plans will include:

- horizontal alignment information, paving limits, retaining walls (assumed to be standard rockeries, "unit masonry", or WSDOT cantilever walls), and limits of any cut/fill required. No structural design is anticipated
- limits of pavement removal and grading limits
- proposed drainage, stormwater treatment, and detention facilities
- elevation and pipe slope information for drainage laterals on plan view; elevation and pipe slope information for main drainage lines on the drainage profiles
- adjustments of valve boxes and manholes

The plans will include centerline and curb profiles (including location and elevation) to control the vertical elements of the work outside of the intersection areas. On the same profile, drainage profiles (including location and elevation) will be prepared for the main drainage lines throughout the project. These profiles will provide information on drainage structure types, rim elevations, and invert elevations. Design slopes between drainage structures will be shown here and not on the Plans. Profiles will not be prepared for the laterals.

- e. **Temporary/Permanent Pollution, Erosion and Sedimentation Control Plans** (3 Sheet, 1" = 40' Scale) Both temporary and permanent control measures will be incorporated into the same plans and distinguished by line type, callout, and legend.
- f. **Roadway, Erosion Control, and Drainage Details** (2 Sheets, NTS)  
Roadway, erosion control, and drainage detail sheets that include miscellaneous details not covered by standard plans. Standard plans will be utilized to the maximum extent possible. Standard plan details will be exhibited on 8-1/2" x 11" pages attached to the Contract Provisions and will not be included in the contract drawing set.
- g. **Channelization, Illumination, and Signing Plans** (6 Plan/Plan Sheet, 1" =20' Scale)  
Channelization, illumination, and signing plans (including sign schedule) that illustrate project channelization and signing.
- h. **Roundabout Layout Plan and Details** (3 Sheets, 1" =20' Scale)  
Roundabout layout and grading plan with truck apron profile, details
- i. **Landscaping Plans/Details** (6 Sheets, 1" =20' Scale)  
Develop landscape plans, plant lists and planting details.
- j. **Miscellaneous Plans/Details** (2 Sheets, NTS)
- k. **Traffic Control Plans** (2 Sheets, NTS)

## 8.2 Contract Provisions

Edit the CITY's "Boiler Plate" Contract Provisions, supplementing as necessary with project specific information and deleting unnecessary special provisions. It is assumed the City will complete division 1 and the bid proposal for the bid package for this project. The Consultant will complete divisions 2 through 8 together with any required special provisions.

### **8.3 Engineer's Opinion of Probable Construction Cost and Bid Item Tabulation**

The "Engineer's Opinion of Probable Construction Cost" will include an itemized list in tabular form, describing section, item, and number of units (quantity), "estimated unit costs", and estimated total cost. Opinions of Probable Construction Cost will be prepared at the 90 percent and final levels of design.

*It is understood that any cost opinion or engineer's estimate provided by the CONSULTANT will be on the basis of experience and judgment. Because the CONSULTANT has no control over market conditions or bidding procedures, the CONSULTANT does not provide warranty or guarantee of the estimated costs.*

### **8.4 Drainage Design Report**

Prepare a Complete Drainage Design Report in accordance with current CITY standards. Assumes a level 1 drainage analysis will be required. Any additional analysis required beyond the requirements of a level 1 will be considered extra work.

### **8.5 Storm Drainage Easement Exhibits**

Prepare storm drainage easement exhibits for all easements required for the installation of storm drainage improvements related to the project located on private property. City will prepare and obtain all easements.

### **8.6 Respond to CITY Comments**

Revise plan to incorporate comments from CITY review. Work required beyond the level of effort identified in the hours estimate will be considered Extra Work.

### **8.7 Quality Assurance and Quality Control**

Quality control includes senior engineer reviews. The CONSULTANT will conduct an internal quality assurance program prior to the 90 percent submittal of the bid documents. This task will supplement the continuous quality assurance program by conducting a detailed review of the project's plans and specifications for constructibility and consistency within the bid documents.

## **Task 9. Bidding Process**

### **9.1 Respond to CITY Requested Questions**

Assist the CITY by answering questions during the bidding process. Because of the unknown nature of this task, this assistance will be limited to the dollars identified in the fee breakdown.

### **9.2 Preconstruction Meeting**

The CONSULTANT's project manager and one additional staff member will attend the preconstruction meeting.

## **B. Construction Engineering**

Provide construction engineering services for the construction contracts to complete the improvement. These services will include necessary surveys, inspection, and contract administration required for the construction of the contract.

Authorization to proceed with construction engineering services will be provided by supplement after the scope and the related budget are negotiated. No services are currently included in the proposed scope and budget.

#### **IV. DOCUMENTS FURNISHED BY CONSULTANT TO CITY**

The following documents, exhibits or other presentations for the work covered by this AGREEMENT ("Documents") shall be furnished by CONSULTANT to CITY upon completion of the various phases of the work. Whether the Documents are submitted in electronic media or in tangible format, any use of the Documents on another project or on extensions of this project beyond the use for which they were intended, or any modification of the Documents, or conversion of the Documents to an alternate system or format shall be without liability or legal exposure to CONSULTANT; CITY shall assume all risks associated with such use, modifications, or conversions. CONSULTANT may remove from the electronic Documents delivered to CITY all references to CONSULTANT's involvement and will retain a tangible copy of the Documents delivered to CITY which shall govern the interpretation of the Documents and the information recorded. Electronic files are considered working files only—CONSULTANT is not required to maintain electronic files beyond 90 days after project final billing, and makes no warranty as to the viability of electronic files beyond 90 days from date of transmittal.

1. Project Schedule Updates, as necessary
2. Preliminary Drainage Concept Roll Plot, 1" =20' Scale, 1 copy
3. Level 1 drainage report (3 copies)
4. Existing Traffic Data and future traffic volumes.
5. Opinion of cost at the 60 percent and 90 and 100 percent submittals, 2 copies each
6. All sheets (at half-scale--11-inches x 17-inches) comprising the set of contract plans for CITY review at the 60 percent and 100 percent completion stage, 5 copies and one original of plan set for each submittal.
7. Contract Provisions for CITY review at the 90 percent design submittal, 2 copies
8. "Full-size" final contract plans on mylar, one set
9. "Half-scale" final contract plans on mylar, one set
10. One electronic copy of Final plans and specifications on CD.
11. Storm Drainage Easement Exhibits

#### **V. ITEMS AND SERVICES TO BE FURNISHED BY CITY TO CONSULTANT**

CITY will provide the following items and services to CONSULTANT that will facilitate the preparation of the Plans and studies within the limits of the project. CONSULTANT is entitled to rely on the accuracy and completeness of the data furnished by others, including but not limited to, survey and traffic data.

1. Any available record drawings and information or public works projects in the project area.
2. Utility facility maps for the project area. CITY will provide CONSULTANT with available as-built drawings for water, sewer, and storm drainage facilities in the area, in both hard copy, and electronic format (to be derived from the CITY GIS database).
3. Copy of survey control data for existing survey monumentation and benchmarks. The CITY has established and will provide the CONSULTANT with horizontal and vertical control for the project using the Washington State plane coordinate system, south zone NAD 83(91) for horizontal control and NAVD-88 to establish the vertical datum. This information will be made available to the CONSULTANT. Any



reformatting or reconfiguration or hardware/software purchase necessary to make the supplied files compatible will be considered Extra Work.

4. Existing ROW information plans for the project route.
5. Roadway section(s) for corridor, 1 copy
6. Boilerplate Contract Provisions, electronic copy (MS Word) and hard copy.
7. Prepare permit applications and submit for approval. Give CONSULTANT copies of project permit applications submitted by the CITY.
8. Any right of entry permission for either public or private property required for this work.
9. Timely reviews of all work at mutually agreed upon times and consolidation of all review comments onto one review set prior to return to the CONSULTANT.
10. Payment of all review and/or permit fees.
11. Payment for potholing for utility locations by utility companies.
12. Title reports for affected properties.
13. Reproduction of final Bid Documents.
14. 5 copies of final Bid Documents.
15. Payment of costs associated with advertisement for bids.

## VI. EXTRA WORK

All work not described under Section II above, will be considered Extra Work. The following tasks are possible Extra Work items, which may be performed under a supplement to this Agreement:

1. Construction Administration
2. Wetland Delineation
3. Right-of-way acquisition and negotiation services beyond items identified in Task 4.

## VII. ADDITIONAL SERVICES / CONTINGENCY

Consultant shall perform additional out of scope services as requested in writing by the City. A contingency amount of \$10,000 has been estimated and included in the amendment #1. If any such request causes an increase or decrease in the estimated cost of, or time required for, performance of any part of the work under this amendment #1 the City shall make an equitable adjustment in the maximum amount payable and shall modify the Agreement accordingly.

Project Name: City of Gig Harbor  
Phase Name: 36th Ave. / Pt. Fosdick Dr. Intersection Phase II Improvements

Prepared by: D. Skinner  
Date: 2/9/2004  
Checked by: M. Terrell  
Date: 2/12/2004

WORK CODE	Task Subtask	TOTALS HOURS/ DOLLARS	Senior PM \$59.00	Senior PM \$46.53	Project Engineer \$33.50	Project Designer \$26.19	CADD \$25.00	Right of Way Specialist \$40.00	Word Processor \$20.00	Project Controller \$25.23	Program Assistant \$20.66
	<b>PHASE II - Roundabout Design (~6 months)</b>										
	<b>Task 1 - Project Management/CONSULTANT Coordination</b>										
1.1	Project Reporting/Project Management - Assumes 6 monthly meetings	70 \$2,767.12	4 \$232.00	32 \$1,552.96	4 \$134.00				6 \$160.00	24 \$605.52	4 \$92.64
1.2	Project Schedule	6 \$310.12	2 \$116.00	4 \$194.12							
	<b>Task 2 - Supplemental Topographic Survey and Base Maps</b>										
2.1	Utility Base Mapping (survey in task 2.2)	2 \$67.00			2 \$67.00						
2.2	Topographic Survey	1 \$33.50			1 \$33.50						
2.3	Base Map Preparation	6 \$167.00			2 \$67.00		4 \$100.00				
	<b>Task 3 - Geotechnical Investigation</b>										
3.1	Geotechnical Investigation and coordination - Assumes four borings for pavement design and 4 borings for storm drainage facilities.	6 \$261.12		4 \$194.12	2 \$67.00						
	<b>Task 4 - Environmental Permitting</b>										
4.1	SEPA Checklist assistance - Assumes City will prepare and submit SEPA checklist	6 \$261.12		4 \$194.12	2 \$67.00						
	<b>Task 5 - Right-of-Way Acquisition</b>										
5.1	Right-of-Way Acquisition assistance and Needs assessment - Assumes City will negotiate the right of way acquisition. Estimate includes acquisition of four parcels. Estimate does not include title reports or appraisals.	132 \$4,974.88		4 \$194.12	6 \$268.00	4 \$112.76	16 \$400.00	100 \$4,000.00			
	<b>Task 6 - Utility Coordination</b>										
6.1	Preliminary Utility Contacts	8 \$326.12		4 \$194.12	4 \$134.00						
6.2	Utility Coordination Meetings	8 \$326.12		4 \$194.12	4 \$134.00						
	<b>Task 7 - Preliminary Plans, Opinion of Cost and Recommendations</b>										
7.1	Preliminary Drainage Concept (30% plan)	24 \$774.88		4 \$194.12	6 \$268.00	4 \$112.76	8 \$200.00				
7.2	Preliminary Design Meetings (2)	8 \$326.12		4 \$194.12	4 \$134.00						
7.3	Preliminary Construction Drawings (~60%)	120 \$3,812.26	4 \$232.00	16 \$776.48	40 \$1,340.00	20 \$563.60	40 \$1,000.00				
7.4	Engineer's Opinion of Probable Cost (~60%)	24 \$610.12		4 \$194.12	16 \$535.00				4 \$80.00		
7.5	Respond to City Comments	2 \$62.03		1 \$46.53	1 \$33.50						
	<b>Task 8 - Final Plans, Specifications and Opinion of Probable Cost</b>										
8.1	Detailed Construction Drawings	406 \$12,110.23		36 \$1,747.08	102 \$3,417.00	85 \$2,398.15	182 \$4,550.00				
	a. Title and Index Sheet (1)	3 \$78.19				1 \$26.19	2 \$50.00				
	b. Legend, Abbreviations and General Notes (1)	4 \$106.38				2 \$56.38	2 \$50.00				
	c. Roadway Sections and Details (1)	28 \$743.82		2 \$97.06	4 \$134.00	4 \$112.76	18 \$400.00				
	d. Paving, Grading, Drainage Plans and Profiles (6)	112 \$3,482.58		16 \$776.48	24 \$804.00	32 \$802.08	40 \$1,000.00				
	e. Temp/Perm Erosion Sedimentation Control Plans (3)	20		2	4	4	16				

Project Name: City of Gig Harbor  
Phase Name: 36th Ave. / Pl. Fosdick Dr. Intersection Phase II Improvements

Prepared by: D. Skinner  
Date: 2/9/2004  
Checked by: M. Terrell  
Date: 2/12/2004

WORK CODE	Task/Subtask	TOTALS HOURS/ DOLLARS	Senior PM \$56.00	Senior PM \$48.53	Project Engineer \$33.50	Project Designer \$28.18	CADD \$25.00	Right of Way Specialist \$40.00	Word Processor \$20.00	Project Controller \$25.23	Program Assistant \$20.66
		\$743.82		\$97.06	\$134.00	\$112.76	\$400.00				
	f. Roadway, Erosion Control and Drainage Details (2)	30		2	4	8	18				
		\$658.58		\$97.06	\$134.00	\$225.52	\$400.00				
	g. Channelization, Illumination, and Signing Plans (6)	76		4	24	16	32				
		\$2,249.19		\$194.12	\$804.00	\$451.04	\$800.00				
	h. Roundabout Layout Plans/Details (3)	84		4	30	10	40				
		\$2,481.02		\$194.12	\$1,005.00	\$261.80	\$1,000.00				
	i. Landscaping Plans/Details (8)	6		2	4		2				
		\$281.06		\$97.06	\$134.00		\$50.00				
	j. Miscellaneous Plans/Details (2)	18		2	4	4	8				
		\$543.82		\$97.06	\$134.00	\$112.76	\$200.00				
	k. Traffic Control Plans (2)	16		2	4	4	8				
		\$543.82		\$97.06	\$134.00	\$112.76	\$200.00				
6.2	Contract Provisions	70	2	8	16	20			24		
	- Assumes City will create division 1 of specifications and bid package.	\$2,064.04	\$116.00	\$388.24	\$538.00	\$963.60			\$480.00		
6.3	Engineers Opinion of Probable Cost	20	2	4	8	2			4		
		\$714.60	\$116.00	\$194.12	\$268.00	\$50.38			\$80.00		
6.4	Drainage Design Report	40		8	24	2			8		
		\$1,311.95		\$261.18	\$804.00	\$55.38			\$160.00		
6.5	Storm Drainage Easement Exhibits	32		4	16	4	8				
		\$1,042.88		\$194.12	\$538.00	\$112.76	\$200.00				
6.6	Respond to City Comments	10		2	4				4		
		\$311.06		\$97.06	\$134.00				\$80.00		
6.7	Quality Assurance/Quality Control	24	16	8							
		\$1,316.24	\$928.00	\$388.24							
Task 9 - Bidding Process											
9.1	Respond to City Requested Questions/Pre-Bid Meeting	12		4	8						
		\$462.12		\$194.12	\$268.00						
9.2	Preconstruction Meeting	6		4	4						
		\$328.12		\$194.12	\$134.00						
TOTALS		1050	30	161	280	141	258	100	62	24	4
		\$35,065.28	\$1,740.00	\$7,613.33	\$9,300.00	\$3,874.78	\$6,450.00	\$4,000.00	\$1,040.00	\$605.52	\$82.64

Direct Salary			\$35,065.28	OUTSIDE REIMBURSABLE			SUBCONSULTANTS		
Overhead @ 173.15%		\$60,751.88	Per Diem		1) Topographical Surveying	\$4,000.00			
Subtotal		\$95,836.17	Lodging		2) Landscape Architecture	\$3,500.00			
Fee @ 15%		\$14,375.73	Mileage/pers. Vehicle (\$0.375/mile)	\$200.00	3) Geotechnical Engineering	\$9,000.00			
Outside Reimbursable		\$360.00	Travel		4) Traffic Court	\$500.00			
Subconsultants		\$17,000.00	Meals		5)				
Additional Services / Contingency		\$10,000.00	Supplies	\$25.00	6)				
TOTAL =		\$437,793.80	Reproduction	\$300.00	7)				
			Telephone	\$20.00	8)				
			Postage/Delivery	\$35.00	9)				
			Other		10)				
			Markup for Reimb. =		Markup =				
			Total =	\$580.00	Total:	\$17,000.00			



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: WATER VULNERABILITY ASSESSMENT**  
**CONSULTANT SERVICES CONTRACT**  
**DATE: FEBRUARY 23, 2004**

**INTRODUCTION/BACKGROUND**

A new federal law requires public water systems to evaluate the security of their water distribution system and prepare plans for action in the event of an emergency. Protective measures to help prevent physical damage or destruction of critical assets must be reviewed. This plan must be submitted to the U.S. Environmental Protection Agency no later than June 30, 2004.

After reviewing the Consultant Services Roster, the firm of Roth Hill Engineering Partners, LLC was selected as the most qualified to perform the work. Their selection was based on their understanding of the work, and extensive specialized experience.

Council approval of the Consultant Services Contract is requested.

**POLICY CONSIDERATIONS**

Roth Hill Engineering Partners, LLC meets all of the city's standard insurance provisions for professional services contracts.

**FISCAL CONSIDERATIONS**

This project is identified in the adopted 2004 Water Operating Budget is within the 2004 Water Operating budgeted allocation of \$35,000, objective 8.

**RECOMMENDATION**

I recommend that the Council authorize execution of the Consultant Services Contract with Roth Hill Engineering Partners, LLC for consulting services related to the Water Vulnerability Assessment in an amount not to exceed two thousand seven hundred fifty-seven dollars and zero cents (\$2,757.00).

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
ROTH HILL ENGINEERING PARTNERS, LLC**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Roth Hill Engineering Partners, LLC, a limited liability company organized under the laws of the State of Washington, located and doing business at 2600 116<sup>th</sup> Avenue NE, Suite 100, Bellevue, Washington 98004, (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the evaluation of the security of the City's water system 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 January 29, 2004, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

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

**TERMS**

**I. Description of Work**

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

**II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Thirty-four thousand nine hundred sixty-seven dollars and zero cents (\$34,967.00) 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 A**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**; 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 June 30, 2004; 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  
Kelly Snyder  
Roth Hill Engineering Partners, LLC  
2600 116<sup>th</sup> Avenue NE, Suite 100  
Bellevue, Washington 98044  
(800) 835-0292

David Brereton  
Director of Operations  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170

**XVII. Assignment**

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

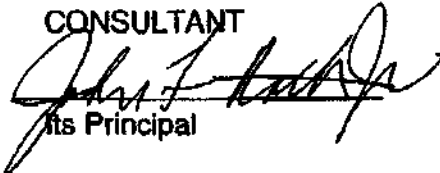
**XVIII. Modification**

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

**XIX. Entire Agreement**

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

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

CONSULTANT  
By:   
its Principal

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

Notices to be sent to:

Kelly Snyder  
Roth Hill Engineering Partners, LLC  
2600 116<sup>th</sup> Avenue NE, Suite 100  
Bellevue, Washington 98004  
(800) 835-0292

David Brereton  
Director of Operations  
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 )  
 )  
COUNTY OF King ) ss.

I certify that I know or have satisfactory evidence that John F. Roth Jr. 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 Vice President of Roth Hill Engineering Partners LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: February 18, 2004



Katherine E Maxwell

KATHERINE E MAXWELL  
(print or type name)

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

8517 139th NE REDMOOD WA  
My Commission expires: 07/16/05

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  
Water Utility Vulnerability Assessment  
Scope of Services  
January 29, 2004**

**Roth Hill Engineering Partners, LLC**

**A. Project Management - Assemble core team**

Project management of the assessment will include production and implementation of the project plan, schedule and budget. It also includes project coordination and communication with the City such as internal and external meetings and project file management. This includes periodic briefing to the City Administrator on project status and request for confirmation of key decisions. It also involves lead core team process at meetings, assisting the project team members in the implementation of the task items, reviewing the Work-In-Progress reports and administering the monthly invoices to the City.

**Goal:** Timely completion of the RAM-W vulnerability assessment process with the authority, knowledge and participation of appropriate decision-makers, informed staff and consultants.

Client will staff Core Team as necessary to fulfill planning functions and provide oversight and authority. Roth Hill will staff the Core Team as necessary with:

- Roth Hill Project Manager – facilitator, internal team lead and project management
- Roth Hill Project Assistant – information liaison and collection, data management, process documentation and final report preparation
- Roth Hill Project Engineer – Water system analysis, system knowledge and modeling assistance as necessary

**B. Define Existing Physical Protection Systems**

**Team Meeting #1 (remote facilities) and #2 (operations center)**

**Goal:** Introduce core team members, outline RAM-W process and then review project scope and schedule. Collect information about and define objectives of the existing physical protection systems and system operational characteristics. Assess effectiveness of existing systems.

**1. Site visits (all facilities)**

All prioritized utility sites must be visited with a select subgroup of the core team. Site visits must be conducted with the mindset of the adversary in the DBT. Specific items to review include:

- Fences
- SCADA system
- Alarms
- Firewalls

- Doors
- Monitoring systems
- Access hatches
- Computer systems
- Locks
- Video systems

### C. Define and Rank Utility Missions/Criteria

#### Team Meeting #2

Goal: Define and rank the relative importance of water utility missions and criteria.

Note: Example missions could include:

- Supply treated water
- Supply fire flow volume and pressure
- Maintain flow to critical customers
- Maintain water quality
- Maximize geographic distribution of water
- Maintain flow to highest number of customers

- A) Define missions and criteria at team meeting.
- B) Use pairwise comparison to rank criteria importance at team meeting.
- C) City Administrator approval of Missions/Criteria

### D. Complete Facility Ranking

#### Team Meeting #3

Goal: Rank the relative importance of facilities necessary to meet the utility missions.

Note: Ranked facilities could include:

- Interties
- Source of supply connection points
- Pump systems
- Critical valves
- Storage reservoirs
- Cameras
- Radio towers
- Utility Billing System
- Computer systems
- SCADA system
- Critical distribution components

- A) Identify all reservoirs and well facilities at team meeting
- B) Use facility weighting and criteria comparison to rank relative importance of critical facilities at a team meeting.
- C) Client to determine one reservoir, one water source plus City water operations center and SCADA system based on relationship to criteria at team meeting to proceed in next steps

### E. Conduct Threat Assessment

#### Team Meeting #3

Goal: Generate a judgment of realistic actual or potential threats to one or more facilities or programs vital to achieving the defined water utility missions.



The Design Basis Threat (DBT) is a management decision to:

- Identify and define categories of adversaries.
  - Identify and define consequences of successful attack.
  - Define the likelihood of attack.
  - Calculate relative risk.
  - Reach core team decision on level threat against which to defend.
  - Understand that not all threats can be protected against.
- A) Facilitate client development during a team meeting of three realistic DBTs based on previously defined missions, knowledge of the system and input from the Core Team, local police, FBI, and others as determined by the Core Team. To include: internal, external and cyber threats.
- B) Document DBT development
- C) Team to choose one threat for remainder of exercise

**F. Complete Facility Characterization for 3 Facilities for 1 DBT**

**Goal:** Assess existing utility facilities, physical protection systems and operations, assess the consequences of successful attacks and define the measures of consequence.

This can be a lengthy process, depending on the complexity and size of the utility. Specific tasks follow but the general tasks include:

- A) Client to collect data on the facility and bring team expert, if needed, to team meeting #4.

**Team Meeting #4**

- B) Generate custom fault trees based on the structures based on data received from client.
- C) Team meeting to trim and limb tree in accordance with DBT to determine critical assets. Define outside system interdependencies (power, transportation, chemical, etc.). Define system interdependencies (eg. Must protect both the pumps needed to fill the reservoirs and the reservoirs themselves to meet storage mission).

**Team Meeting #5**

- D) **Lead Consequence Assessment**  
Generate a table of relative importance of consequences. Examples of consequences include loss of fire protection, number of users affected, illness and death.
- E) Assess consequences of facility loss, develop matrix, add numerical values to High, Medium and Low and summarize by value. Calculate overall consequence value "C" for RAM-W formula.

Specific tasks include:

1. Team meeting to determine consequences established and High, Medium and Low criteria numbers and calculate overall "C" value
2. City Administrator approval of consequences for setting High, Medium and Low

#### **Team Meeting #6**

##### **F) Define Existing Physical Protection Systems for selected facilities**

**Goal:** Collect information about and define objectives of the existing physical protection systems and system operational characteristics. Assess effectiveness of existing systems.

##### **1. Operational Procedures**

Review overall and site specific operating systems and procedures for selected facilities, including:

- Staffing levels
- Staff redundancy
- Routines
- Staff interviews

##### **2. Physical Protection Features Data Collection Worksheet**

Team meeting to determine ability of existing physical protection systems and operations to Detect, Delay and Respond to the Design Basis Threat.

#### **G. Physical Protection Systems**

##### **Team Meeting #6**

##### **A) Define strengths and weaknesses of the existing physical protection systems and system operational characteristics at the facility. Specifically:**

- Define detection systems.
- Define delay systems.
- Define response.

##### **B) Generate diagrams of Adversary Task Time versus Physical Protection System Time.**

#### **H. System Effectiveness**

##### **Team Meeting #7 and #8**

**Goal:** Evaluate system effectiveness of existing physical protection systems for Worst Case Scenario for one chosen DBT. Specific tasks include

##### **A) Assess operational system effectiveness, including:**

- Ability to detect and assess incident
- Incident response times after detection
- Available materials (pumps, generators, pipe, etc.)
- Existing response procedures (staffing, knowledge of what to do, etc.)
- Compare adversary path to existing delay, detection and response systems with combined timelines.

- B) Define adversary paths – this is an ordered “attack scenario”, that, if successful, leads to a cascading series of consequences defined in the fault tree. This is the plan of how best to damage the mission of the utility and is very sensitive material. Adversary path diagrams will include:
- Plan view diagrams of vulnerable facilities with distances and paths of attack.
  - Schematic diagrams of adversary path from offsite to critical asset, with all likely routes, time to breach or defeat systems and time to complete task.
- C) Identify System Vulnerabilities
- Consider DBT and capabilities
  - Look at all possible paths
  - Select worst case path
  - Develop worst case scenario
  - Identify vulnerabilities along worst case path
- D) Determine if delay, detection and response systems are adequate to protect the utility mission.
- E) Assign “PE” value for RAM-W formula. Estimate system effectiveness in Low, Medium, High range. This generates a series of numbers to include in the Risk Assessment Methodology formula.

#### I. Risk Reduction

##### Team Meeting #9 and #10

Goal: Complete the RAM-W formula and assess acceptability of apparent risks, based on current physical and operational system effectiveness. If risks are not acceptable, propose upgrades to physical or operational systems, in a potentially iterative process, to reduce risk to a level acceptable to the utility decision makers. Specific tasks include:

- A) Complete RAM-W formula for existing systems.
- B) Discuss results with core team and evaluate acceptability of risk.
- C) If risks are acceptable, proceed to prepare final report.
- D) If risks are unacceptable, propose physical system upgrades and/or operational changes to reduce risks to acceptable level. This requires re-calculating the RAM-W formula.
- E) Generate costs for two to three alternatives per facility and review with team. Recalculate RAM-W formula.
- F) City Administrator approval of alternatives to include in report.

#### J. Final RAM-W Report

Goal: Prepare and submit a letter as proof of completion of final RAM-W report to USEPA Regional Office. Prepare draft report tasks:

The final report will include seven chapters and will finalize chapters drafted as process meetings occur.

- A. Introduction – background, purpose and scope

- B. Planning – team members, missions, criteria and facility prioritization, risk reduction goals
  - C. Threat Assessment – design basis threat
  - D. Consequence Assessment – entire water system, documents fault trees, describes existing physical protection systems, policies and procedures, describes consequence table, consequence values
  - E. System Effectiveness – existing system and operational effectiveness, adversary strategies and tactics, summary of strategy versus systems
  - F. Risk Assessment – risk analysis, relative risks for critical assets at each facility
  - G. General Recommendations – general and specific security upgrades, consequence mitigation, SCADA recommendations, all relative to utility missions, risk evaluation tables for each utility mission
- Team Meeting #11 (Only Item H will be addressed during the core team meeting)**
- H. Team meeting to review of Draft Report.
  - I. Complete Final Report.
  - J. City Administrator approval of Final Report.
  - K. Prepare and submit proof of completion of final RAM-W report with a Letter to USEPA.
  - L. Prepare and deliver three hard copies to client.
  - M. Prepare two CD's for client.

**PROPOSED SCHEDULE:**

**Proposed Project Core Team Meetings Summary**  
(meetings subject to change)

Meeting # 1 – Task B (in part).	Tuesday, March 2, 10 – 3
Meeting # 2 – Task B and C. *	Date to be determined, 1 - 4
Meeting # 3 – Task D, E and F (A).	Date to be determined, 1 - 4
Meeting # 4 – Task F (B and C).	Wednesday, April 7, 1 - 4
Meeting # 5 – Task F (D and E). *	Wednesday, April 21, 1 - 4
Meeting # 6 - Task F (F) and G.	Wednesday, May 5, 1 - 4
Meeting #7 – Task H (in part).	Wednesday, May 19, 1 - 4
Meeting #8 – Task H (in part).	Wednesday, June 2, 1 - 4
Meeting #9 – Task I (in part).	Wednesday, June 9, 1 - 4
Meeting #10 – Task I (in part). *	Wednesday, June 16, 1 - 4
Meeting #11 – Task J. *	Wednesday, June 23, 1 - 4

**\*Proposed City Administrator Meetings Summary – key decision dates**

March 10 (unless adjusted during Meeting #1)

April 21

June 18

June 25

City staff will provide briefings to the City Administrator during other key points of the project.

Final Vulnerability Assessment is due to the USEPA in June of 2004.

**ITEMS NOT INCLUDED IN THIS SCOPE OF SERVICES**

- Meetings with impacted agencies
- Certification of Vulnerability Assessment

**EXHIBIT B  
SCHEDULE OF RATES AND  
ESTIMATED HOURS**

*City of Gig Harbor  
Water Utility Vulnerability Assessment  
Scope of Services  
September 2003*

**BUDGET**

TASK DESCRIPTION	TOTAL LABOR		TOTAL REIMBURSABLES	TOTAL COST
	Hours	Cost		
A: Project Management -	29	\$3,529		\$3,529
B: Define Existing Physical Protection Systems (in part)	18	\$2,391	\$50	\$2,441
C: Define and Rank Utility Missions/Criteria (in part)	15	\$1,697	\$50	\$1,747
D: Complete Facility Ranking	5	\$610	\$25	\$635
E: Conduct Threat Assessment	5	\$610	\$25	\$635
F: Complete Facility Characterization	5	\$610	\$0	\$610
G: Physical Protection Systems	69	\$7,710	\$400	\$8,100
H: System Effectiveness	16	\$1,784	\$200	\$1,984
I: Risk Reduction	49	\$5,995	\$350	\$6,345
J: Final RAM-W Report	70	\$7,941	\$1,000	\$8,941
<b>PROJECTED PROJECT TOTALS:</b>	<b>281</b>	<b>\$32,877</b>	<b>\$2,100</b>	<b>\$34,967</b>



**COMMUNITY DEVELOPMENT DEPARTMENT**

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: JOHN VODOPICH, COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: COMMUNICATIONS MAINTENANCE**  
**DATE: FEBRUARY 23, 2004**

**INFORMATION/BACKGROUND**

The Public Works Department has used the services of the Pierce County radio shop for communications maintenance for a number of years. This is a year-to-year contract and requires renewal to continue. The renewal date is January 1, 2004.

**FISCAL IMPACTS**

The rates quoted in the submitted contracts were used in our budget planning for 2004.

**RECOMMENDATION**

The Public Works Departments recommend that the Council authorize the Mayor to renew the contract with Pierce County for communications maintenance services for 2004.



Pierce County

Department of Emergency Management

Radio Communications Division  
2403 South 35th Street  
Tacoma, Washington 98409  
(253) 798-7147 • FAX (253) 472-5565

December 8, 2003

RECEIVED

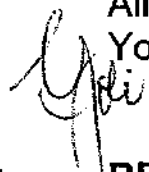
DEC 10 2003

CITY OF GIG HARBOR  
OPERATIONS & ENGINEERING

STEVEN C. BAILEY  
Director

TIM LENK  
Supervisor

## MEMO

TO: All Contracting Agencies  
FROM:  Yoli Roberts / Office Administrator  
SUBJECT: RENEWAL OF CONTRACT FOR 2004

Please find enclosed two copies of your contract for radio communications work to be performed in the year 2004. If you wish to contract with us for the year 2004, please sign both copies, retain one for your records, and return one to us in the enclosed self-addressed envelope.

Should you have any questions or require additional information, please do not hesitate to contact us. We can be reached Monday – Friday from 7:00 a.m. to 3:30 p.m.

We look forward to working with you in the coming new year.

2 Enclosures (as stated)





**AGREEMENT FOR COMMUNICATIONS  
MAINTENANCE PROGRAM**

**RECEIVED**

DEC 10 2003

CITY OF GIG HARBOR  
OPERATIONS & ENGINEERING

AGREEMENT made January 1, 2004, between PIERCE COUNTY, herein referred to as "County," and CITY OF GIG HARBOR (PW) referred to as CITY OF GIG HARBOR (PW).

SECTION I. THE PARTIES

This is a communications maintenance and installation program contract between CITY OF GIG HARBOR (PW) and PIERCE COUNTY.

SECTION II. TERM OF AGREEMENT – TERMINATION

This agreement shall commence as of January 1, 2004 and terminate on December 31, 2004. Either party may terminate this agreement upon thirty- (30) days written notice.

SECTION III. OBLIGATIONS OF COUNTY

- A. All maintenance, repair, installation, engineering, and upgrading of CITY OF GIG HARBOR (PW)'s radio communications system previously agreed to or requested in writing by CITY OF GIG HARBOR (PW) shall be carried out by County, according to schedules or arrangements to be negotiated by the parties giving due consideration to the immediacy of the need and the workload of the County.
- B. On notice from CITY OF GIG HARBOR (PW), County shall make any repairs necessitated by normal wear and tear resulting from normal operation, whenever such repairs are required for safe and proper operation of radio system unit.
- C. County and its agents and representatives shall at all reasonable times be given access to the radio system unit for the purpose of inspecting, altering, repairing, improving or adding to or removing the same.
- D. The described work on base station and associated equipment will be done on site. Work on all equipment, including portables, will be performed at the County Radio Shop, which shall include installation of radio equipment in all CITY OF GIG HARBOR (PW)'s vehicles.

SECTION IV. FEES

CITY OF GIG HARBOR (PW) Shall reimburse the County for its services described above, at the rate of Ninety (\$90.00) Dollars per hour from 7:30 a.m. through 3:00 p.m., plus time and one-half or double time adjustments required by law, where performed outside these hours as authorized by CITY OF GIG HARBOR (PW). In addition, the County shall be reimbursed its cost plus 20% for all materials and parts provided by County; except that prior written authorization by CITY OF GIG HARBOR (PW) shall be required for materials or parts in excess of Five Hundred (\$500.00) dollars. Payment shall be made by CITY OF GIG HARBOR (PW) within thirty (30) days of presentation of invoice listing time, parts and materials by the County.

DEC 16 2003

CITY OF GIG HARBOR  
OPERATIONS & ENGINEERING

SECTION V. INDEMNITY

Notwithstanding anything to the contrary contained in this agreement, CITY OF GIG HARBOR (PW) shall not be responsible or liable in any manner whatsoever for, and the County shall indemnify CITY OF GIG HARBOR (PW) against any and all claims, suits, damages, costs or expenses arising from or growing out of, or caused directly or indirectly by any defect or error in, or any negligence or error, in connection with the installation, maintenance, engineering or upgrading of the radio system unit performed by the County, except for the sole negligence of CITY OF GIG HARBOR (PW). The County will not be responsible for claims arising out of the Antenna Supporting Structures.

SECTION VI. ASSIGNABILITY

This agreement shall not be assigned by County without the written consent of CITY OF GIG HARBOR (PW). If this agreement is assigned without CITY OF GIG HARBOR (PW)'s written consent either by act of County or by operation of law, it shall thereupon terminate subject to the provisions herein before set forth.

SECTION VII. GOVERNING LAW

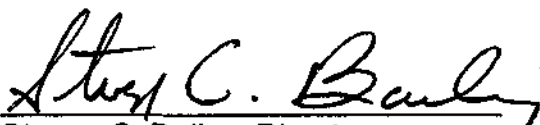
This agreement shall be governed by and construed under the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF GIG HARBOR (PW)

PIERCE COUNTY

BY: \_\_\_\_\_  
Authorized Signatory

  
Steven C. Bailey, Director  
Department of Emergency Management  
Radio Communications Division



**TO: CITY COUNCILMEMBERS**  
**FROM: GRETCHEN A. WILBERT, MAYOR** *gw*  
**SUBJECT: GIG HARBOR / PENINSULA COMMUNITY CENTER DEVELOPMENT PROPOSAL – GARY YAZWA.**  
**DATE: FEBRUARY 18, 2004**

The opportunity is once again available to continue the city's partnership with Pierce County Parks & Recreation, the Peninsula School District, service clubs, professionals, the business community, volunteers, and community organizations to provide an indoor recreational service center for people of all ages.

The promotional interest of this multi-million dollar facility is looking for public agency support. The funders will look to the City of Gig Harbor to commit to foster the management and operation of this new Gig Harbor Community Center.

Gary Yazwa, President and CEO of the Boys & Girls Clubs of South Puget Sound, and the major fund-raiser of this project, is here to introduce to the City Council the first opportunity in the State of Washington to establish a facility that combines the activities of the successful programs of the Boys & Girls Clubs with community social and recreational programs.

For fourteen years, the students in our school district have been saying "there is nothing to do in Gig Harbor after school," and the seniors have been advocating for a Senior Center. Only a partnership of agencies can provide these needed services.

In the near future, I will request a motion from the Council to commit in principle to provide for the management and operation of the proposed Gig Harbor Community Center, in a net operational amount not to exceed \$150,000 annually.



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCILMEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: SECOND READING OF AN ORDINANCE AMENDING SPECIAL USES,**  
**TO DEFINE SPECIAL USES AND CLARIFY EXISTING REGULATIONS**  
**DATE: FEBRUARY 23, 2004**

**INFORMATION/BACKGROUND**

Attached for the Council's consideration and second reading is an ordinance amending GHMC chapter 17.65 Special Use Permits, to include a definition for special uses and to clarify existing regulations. The proposed amendment was initiated by City staff. The Special Use chapter provides the City with a means to regulate infrequent, temporary uses. Such uses might include a tent sale locating in a parking lot, or an outdoor art show on private property. Essentially a special use is an event or promotion which occurs outdoors or in temporary structures on private property. It does not include the indoor use of a conference center or community building.

Currently special uses are limited to no more than seven 12-hour event periods in a specified time frame. If an applicant wishes to exceed seven 12-hour event periods, the special use may only be approved as a conditional use. This code provision is contradictory, however, because special uses are not included in the list of conditional uses in any zone, meaning they cannot be approved as a conditional use. Staff initially researched adding special uses as a conditional use to certain zones to resolve this contradiction. However it was discovered that many of the uses proposed for a special use permit were already permitted uses in the zone making it inappropriate to require a conditional use permit. The proposed amendment therefore includes elimination of the requirement for a conditional use permit to allow longer special uses, relying instead upon the site plan review process.

At a Planning Commission work session, questions arose about the permitted frequency of special uses. The code currently states that "a request for more than two special uses per calendar year shall not be considered a special use..." (17.65.050(E) GHMC). The Planning Commission was concerned not only about the frequency of special uses at any one site, but also about traveling vendors who might avoid the costs of a permanent business location by locating at a different site every few weeks/months. To address this concern language was added to limit special uses to no more than two for any given applicant, or for any given site.

While reviewing the special use chapter, staff and the City Attorney identified a number of housekeeping changes intended to clarify the special use permit process. The changes include the addition of a definition of special use, a revised purpose and intent statement, and clarification of the criteria for a complete application. Additionally, the sections on procedure and general conditions have been replaced by an expanded review section, and the exemptions section has been amended to indicate that other permits may be required.

The Planning Commission held a public hearing on the proposed amendments on December 18, 2003. There was no public testimony made at the hearing. After brief discussion, the Planning Commission voted unanimously to recommend approval of the proposed text amendment. A copy of the December 18, 2003 Planning Commission Minutes was attached for the first reading and is not included in this packet. Notice of this proposed ordinance was sent to the State for the required 60 day comment period on May 23, 2003. The comment period expired on July 22, 2003; no comments were received.

#### **POLICY CONSIDERATIONS**

Applicable land use policies and codes are as follows:

Zoning text amendments are addressed in chapter 17.100 of the Gig Harbor Municipal Code. There are no criteria for approval of a Zoning text amendment, but the Council should generally consider whether the proposed amendment furthers the public health, safety and welfare, and whether the proposed amendment is consistent with the Gig Harbor Municipal Code, the Comprehensive Plan and the Growth Management Act (chapter 36.70A RCW).

The Gig Harbor Municipal Code Chapter 17.65 – Special Use Permits. This chapter provides procedures for reviewing and approving uses that are temporary and infrequent in nature.

#### **ENVIRONMENTAL ANALYSIS**

A SEPA threshold Determination of Nonsignificance (DNS) was issued for the proposed amendments on May 28, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on June 4, 2003. The deadline for appealing the determination was June 18, 2003. No appeals have been filed and, to date, no comments have been received. A copy of the DNS was attached for the first reading and is not included in this packet.

#### **FISCAL IMPACTS**

There are no adverse fiscal impacts associated with this text amendment.

#### **RECOMMENDATION**

**Staff recommends that the Council approve the proposed ordinance.**

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE DEFINITIONS IN 17.04 AND THE STANDARDS FOR SPECIAL USES IN SECTION 17.65. CHANGES INCLUDE ADDING A DEFINITION FOR SPECIAL USES; A NEW PURPOSE STATEMENT AND REVISING THE INTENT STATEMENT IN 17.65.010 GHMC; THE APPLICATION CRITERIA, , REVIEW CRITERIA AND EXPIRATION SECTIONS (17.65.020 AND 17.65.060 GHMC) ARE BEING REVISED TO CLARIFY THE PERMITTING PROCEDURE FOR SPECIAL USES; SECTON 17.65.030 GHMC PROCEDURE, SECTION 17.65.040 GHMC GENERAL CONDITIONS, AND SECTION 17.65.080 REVOCATION OF A SPECIAL USE PERMIT ARE DELETED; SECTION 17.65.100 EXEMPTIONS IS REVISED TO INCLUDE A STATEMENT THAT OTHER PERMITS MAY BE REQUIRED.

---

WHEREAS, The City made the last update to Chapter 17.65 Special Uses GHMC in 1996; and,

WHEREAS, The City now desires to amend the Zoning Code to define special uses; and,

WHEREAS, The City wishes to clarify the permitting procedure for special uses; and,

WHEREAS, The City's State Environmental Policy Act (SEPA) Responsible Official issued a Determination of Nonsignificance (DNS) under the State Environmental Policy Act Rules (Chapter 197-11-WAC) on May 23, 2003; and

WHEREAS, The Community Development Director forwarded a copy of this ordinance to the Washington State Office of Community Development on May 23, 2003, pursuant to RCW 36.70A.106; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on December 18, 2003, and made a recommendation of approval to the City Council; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of \_\_\_\_\_; Now, Therefore,

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

Section 1. Section 17.04.742 of the Gig Harbor Municipal Code is hereby adopted to read as follows:

**17.04.742 Special uses**

are uses permitted under chapter 17.65 that are permitted or conditionally permitted in the underlying zone, but which are temporary and infrequent in nature, lasting seven days or less and occurring not more than twice in any calendar year by any given applicant or at any given site. Special uses include events or promotions which occur outdoors or in temporary structures, often siting in fields, plazas or parking areas.

Section 2. Section 17.65.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.65.010 Purpose and Intent.**

A special use permit is a mechanism by which the City may permit a use to locate within the City on an interim basis for specified periods of time. Because of the limited time allowance special uses can be compatible with, or have limited impacts to neighboring properties and the general community. This chapter is intended to provide flexibility to accommodate these temporary uses. Certain uses, because of their infrequent occurrence temporary nature, are classified as special uses. These types of uses are temporary in nature, of limited duration and may be associated with special events or promotions. These uses may be allowed in certain zoning districts by a special use permit granted by the administrator.

Section 3. Section 17.65.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.65.020 Criteria for a complete application.**

A special use permit is a Type I permit application and shall be subject to the following review procedures and requirements:

- A. Complete Application. In addition to the requirements in GHMC 19.02.002, the following requirements must be met for a complete application:
  1. Signed and dated application form for a special use permit;
  2. Written statement of justification for approval of the special use permit which meets the criteria in GHMC 17.65.050;
  3. A map site plan showing the proposed location of the requested use, and any existing development on the site. The site plan shall indicate locations of any proposed temporary structures and include a circulation plan showing all access points for the site, all driveways, streets or roads and parking areas.

4. ~~The original and three~~ Four copies of all documents. (Ord. 725 § 6, 1996; Ord. 708 § 1, 1996).

Section 4. Section 17.65.030 of the Gig Harbor Municipal Code is hereby repealed.

Section 5. Section 17.65.040 of the Gig Harbor Municipal Code is hereby repealed.

Section 6. Section 17.65.050 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.65.050 Review criteria.**

A. Every applicant for a special use permit shall demonstrate that all of the following criteria have been met. Each determination granting a special use permit shall assure that the following conditions are met:

- ~~A.~~ 1. That the type of use for which the special use permit is applied for is permitted or conditionally permitted in the applicable zoning district and is consistent with the description and purpose of the zone district in which the property is located;
- ~~B.~~ 2. That the granting of the special use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;
- ~~C.~~ 3. That the proposed use is properly located in relation to the other land uses in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;
- ~~D.~~ 4. That the site is of sufficient size to accommodate the proposed use;
- ~~E.~~ 5. The special use may not operate more than seven events during the authorized period. An event is equal to one 12-hour period per day;
- ~~F.~~ 6. A request for more than two special uses per calendar year by any given applicant or for any given site shall not be considered as a special use and may only be authorized through the site plan approval process, as a conditional use, subject to the requirements in Chapter 17.64 GHMC.

B. The Director shall determine whether the criteria have been satisfied, and shall approve, approve with conditions or deny the application. The Director may attach conditions pertaining to traffic congestion, parking, or any other public health/safety concerns, to ensure compatibility with adjacent uses and compliance with the above criteria. (Ord. 725 § 7, 1996; Ord. 708 § 1, 1996).

Section 7. Section 17.65.080 of the Gig Harbor Municipal Code is hereby repealed.



Section 8. Section 17.65.100 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.65.100 Exemptions.**

The following activities or uses are exempt from ~~obtaining~~ the requirement of a special use permit, but other permits or approvals may be required:

- A. Annual Christmas tree and fireworks sales;
- B. Community wide events such as annual art fairs, street fairs, etc. operating under a special event license ;
- C. Events approved ~~for use~~ at a city park or facility. (Ord. 708 § 1, 1996).

Section 10. 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 11. 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 City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of \_\_\_\_\_, 2004.

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: \_\_\_\_\_



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCILMEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: SECOND READING OF AN ORDINANCE**  
**- (RB-2) TO PERMIT SINGLE-FAMILY AS AN ALLOWED USE**  
**DATE: FEBRUARY 23, 2004**

**INFORMATION/BACKGROUND**

Attached for your consideration and for second reading is an ordinance amending the list of permitted uses in the Residential and Business (RB-2) zone to allow single-family attached and detached dwellings as an allowed use, (GHMC 17.30.020(A)).

The Planning Commission held a public hearing on the proposed amendments on December 18, 2003. One person spoke in favor of the amendments. After brief discussion following public testimony, the Planning Commission voted unanimously to recommend approval of the proposed amendments. The Planning Commission also directed staff to eliminate the requirement in the RB-2 zone to provide buffering when residential development is proposed adjacent to an existing residential zone. A copy of the December 18, 2003 Planning Commission Minutes is attached.

**POLICY CONSIDERATIONS**

The intent of the RB-2 is to provide a mix of residential and commercial uses. The intent specifically states that multi-family uses should be allowed, but does not purposefully state that anything less than multi-family should not be allowed.

The Comprehensive Plan goal on page 11 of the Comprehensive Plan states, "Promote Community Diversity and Distinction and Increase Housing Opportunities." The definition of this goal is further explained in item #11, (also on page 11), by stating "Expand residential districts and code definitions to allow a broad choice of housing types, locations, and tenures."

**ENVIRONMENTAL ANALYSIS**

A SEPA threshold determination of Non-significance (DNS) was issued for the proposed amendments on September 24, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on October 1, 2003. The deadline to file an appeal was October 15, 2003.

**FISCAL IMPACTS**

None.

**RECOMMENDATION**

I recommend that the City Council approve the ordinance as presented.

**City of Gig Harbor Planning Commission  
Minutes of Work-Study Session and Public Hearing  
Thursday, December 18, 2003  
Gig Harbor Civic Center**

**PRESENT:** Commissioners Paul Conan, Kathy Franklin, Theresa Malich, Bruce Gair, and Dick Allen. Staff present: Steve Osguthorpe, Jennifer Sitts and Rob White.

**CALL TO ORDER:** 6:00 p.m.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of December 4, 2003 as presented. Franklin/Malich – unanimously approved.

**NEW BUSINESS**

Proposed addition of GHMC Chapter 17.01 – General Regulations, Small Animals and Beekeeping (ZONE 03-13). - Jennifer Sitts went over proposed text, briefing the Commission on discussions with the City Attorney Carol Morris on the scope of the Planning Commission. She stated that nuisance/dangerous animal regulations are located in Title 6 and it is not within the scope of the Planning Commission to make changes to this section, however, a recommendation could be made to council to update Title 6. Prohibiting of animals is possible within the zoning code, but you must have substantial evidence to support it. Additionally Ms. Sitts stated that no city in the state has prohibited beekeeping. Most cities allow it within certain parameters. The City attorney has suggested that we not prohibit bees and use regulations from other cities, modifying them to meet our needs and deal with nuisance animals under Title 6. Ms Sitts further stated that the City of Bellevue has most stringent standards. She outlined the changes made, limiting the number of hives to 4 on any city lot and only allowing bees on lots larger than 20,000 sq ft.

Commissioner Conan asked about the 6 foot physical barrier. How does this keep them from swarming? Planning Manager Steve Osguthorpe suggested removal of the barrier provision and just have a 30 ft setback.

Commissioner Gair asked if we could have the Ewerts look at these changes since they had originally proposed them? Mr. Osguthorpe again reminded the commission that we have to have findings and evidence and prohibit beekeeping. Commissioner Gair asked if since this was a matter of health and safety was there some liability for the city and stated that he would like to have a position paper from experts on bees. Associate Planner Sitts stated that she had researched the topic and couldn't find anything that supports prohibition.

Commissioner Allen stated that bees are dangerous and we live in an urban

environment which is not the place for beekeeping and a setback is not going to stop the situation. He further stated that he would rather err on the side of life safety and assume the risk. Planning Manager Steve Osguthorpe replied that our City Attorney would advise us to utilize the evidence out there, which does not support prohibiting beekeeping. Commissioner Gair stated that there is evidence that bees are fatal. Ms. Sitts clarified that the evidence does not indicate whether these are wild or domesticated bees.

Commissioner Malich suggested requiring beekeepers to have a larger lot? Ms. Sitts stated that the number suggested is an average number, however, we can research it. Mr. Osguthorpe suggested contacting the Ewerts and maybe they know where to obtain this information. Ms. Sitts did ask the state about the number of hives licensed, however she has not received a call back but will keep trying. Bellevue had additional language about re-queening and maintenance, however, staff felt that that would be more appropriately located in title 6. The Planning Commission then directed staff to draft a proposed ordinance for public hearing.

Discussion followed on the other categories of the proposal. Associate Planner Jennifer Sitts reported that there is precedence for prohibiting swine. In the section on household pets staff is recommending allowing them as an accessory use without a maximum number. Ms. Sitts further informed the Commission that they would need to recommend to council a nuisance ordinance if they wanted to limit the number of household pets. There was no substantial change to the section on domestic fowling on size. Ms. Sitts further outlined the section on livestock and informing the Commission that the section on wild animals and reptiles had been removed as that should be in Title 6.

Commissioner Gair asked how many livestock are permitted and stated he thought the number of livestock should be limited. Ms. Sitts stated that there are health regulations which regulate the number of livestock allowed per acre.

Planning Manager Steve Osguthorpe reminded the Commission that we do have regulations regarding where agricultural uses are allowed and that this ordinance is at least more than we have now. Commissioner Conan stated that he did not see a need to address the number of animals.

Proposed amendments to GHMC Chapter 17.54 – Planned Community Development – Business Park (ZONE 03-16)

Senior Planner Rob White gave a brief overview of the application by Swede Hill LLC proposing to add Hospitals to the PCD-BP zone. He further stated that this application was similar to previous proposal adding hospitals to B-2 and reviewed those zones that do allow hospitals; B-2, ED, C-1 and DB. Mr. White stated that the area is capable of supporting high intensity urban development infrastructure and the conditional use criteria can address additional concerns.

Commissioner Conan suggested changing the medical or surgical to medical and surgical in the definition of hospital, so as not to include a medical office in the definition of a hospital and reminded the other Planning Commission members that this is not a site specific proposal and therefore could apply to any PCD-BP zone. There was no further discussion and the Planning Commission directed staff to draft an ordinance reflecting the proposed changes.

## **PUBLIC HEARING**

### **Proposed amendments to GHMC Chapter 17.28 and 17.30 – Add single family residences and accessory apartments in the RB-1 and RB-2 zones (ZONE 03-10).**

Rob White outlined the proposed ordinance and the suggested change to clarify buffers that are required only when commercial and residential uses are adjacent. Mr. White brought the commissions attention a letter from Marco and Carla Malich in support of the change and suggesting further changes to alleviate inconsistencies in the zoning hierarchy. Mr. White explained that RB1 does not include those uses allowed in less intense zones and that Mr. & Mrs. Malich are asking that duplexes also be added.

Marco and Carla Malich, 7216 Myers Lane, Gig Harbor, - Mr. Malich testified that they have an interest in this ordinance as they have RB1 property that would be affected and currently does not allow multi-family use. R2 and R3 allow duplexes and multi-family as does RB2, however, it skips RB1. Mr. Malich stated that he felt that RB1 should include everything allowed in the lesser zones in order for it to function as a transition zone and said that it seems like it was just an oversight that these uses were left out.

Senior Planner Rob White suggested that if the Planning Commission desired, staff could draft a separate ordinance to address the Malich's concerns since SEPA notice has gone out on the current proposal. He further suggested that staff process the current application submitted by Mr. McNellis as it is, so as not to further delay it. Mr. White also noted that the changes Mr. McNellis proposed are already present in the RB1 zone and that is why you only see the changes to RB2.

**MOTION** - Move to recommend approval of the proposed ordinance Franklin/Conan – unanimously approved.

Planning Manager Steve Osguthorpe will add the text amendment for adding duplexes and multi-family to the RB1, as suggested by Mr. & Mrs. Malich to the Planning Commission schedule.

Commissioner Malich stated that looking at the zoning map you can see the progression and stated that it did not make sense to not include the allowed uses of less intense zones in RB1 and RB2.

### **Proposed addition of GHMC Chapter 17.67 – Performance Based Height Exceptions (ZONE 03-14) -** Associate Planner Jennifer Sitts outlined additional housekeeping

changes in the proposed ordinance and passed out the new ordinance with changes shown in red. She further explained the process by which certain structures would have to go through and also let Commission know that there has been public support of these proposed changes.

Robert Harding, DA Hogan & Assoc., Seattle WA - Mr. Harding spoke in support of the changes and stated that he was specifically interested in sports field lighting. He stated that his company is currently attempting to install lighting at a multi-purpose field at Gig Harbor High School and this change will allow them to go forward.

**MOTION:**– Move to accept staff recommendation and forward the Planning Commissions recommendation to the City Council.  
Conan/Franklin – passed unanimously

Proposed amendment to GHMC Chapter 17.65 – Special Use Permits (ZONE 03-05) – Planning Manager Steve Osguthorpe gave a brief history of the proposed ordinance and the original intention to regulate Farmers Markets. As further research was done it was found to be too cumbersome to regulate. He further stated that Staff then began to address special uses rather than farmers markets specifically. In the proposed ordinance the provisions for special uses make them a conditional use with 7 12-hour events. In the review of each event parking and impacts will be examined. If someone wants more than the allowed number of events it would go through complete site plan review.

Commissioner Franklin asked if there were other additions or changes than those previously proposed? Mr. Osguthorpe stated that there were no additional changes other than those previously suggested by the Planning Commission.

Commissioner Dick Allen stated that 7 12-hour events is somewhat restrictive and Commissioner Conan pointed out that you could have two of those events.

**MOTION:** Accept the proposed ordinance and forward the recommendation to the City Council.  
Malich/Franklin – passed unanimously

There being no further comments the public hearing was closed at 7:40 p.m..

Co-Chair Bruce Gair pointed out that this would be Paul Conan's last meeting with the Planning Commission as he has been elected to the City Council. The entire Planning Commission thanked him for his service to the community.

Additionally Commissioner Gair stated that the Commission will need to elect a new chair person at next meeting as required in the by-laws.

Planning Manager Steve Osguthorpe reminded the Planning Commission to include language in each motion to recommend Council accept ordinance.



**NEXT REGULAR MEETING:**

January 15<sup>th</sup>                      Worksession and Public Hearing  
February 5<sup>th</sup>                      Worksession and Public Hearing

**ADJOURN:**

**MOTION:**    Move to adjourn at 7:45 p.m.  
                    Conan/Franklin – unanimously approved

CD

recorder utilized:

Disc #1 Track 1-5  
Disc #2 Track 1

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE RB-1 AND RB-2 ZONES TO ALLOW SINGLE-FAMILY RESIDENTIAL USES IN SECTION 17.30.020; AND ELIMINATING THE NEED FOR BUFFERING BETWEEN RESIDENTIAL USES IN SECTION 17.30.050(F)

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WHEREAS, the intent of the RB-2 zone is to provide a mix of residential and lower intensity commercial uses; and

WHEREAS, the RB-2 zone currently does not allow single-family residential uses; and

WHEREAS, the City's Design Manual encourages mixed use projects which incorporate residential units; and

WHEREAS, allowing single family and accessory apartments in the RB-2 zone will facilitate mixed use projects on lots too small to achieve multi-family density; and

WHEREAS, buffers within the RB-2 zone should only be required when non-residential development is proposed adjacent to an existing residential development or zone; and

WHEREAS, the City's SEPA Responsible Official has made a Determination of Non-Significance for this Ordinance; and

WHEREAS, the City sent a copy of this Ordinance to the Washington State Office of Community, Trade and Development on September 24, 2003; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on December 18, 2003; and recommended approval to the City Council; and

WHEREAS, on [INSERT DATE HERE], the City Council considered this Ordinance during a regular meeting; Now, Therefore,  
THE CITY COUNCIL OF THE CITY OF GIG HARBOR ORDAINS AS FOLLOWS:

Section 1. Section 17.30.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.30.020 Permitted Uses.**

The following uses and structures are permitted in an RB-2 district:

- A. Single-family detached and attached dwellings;
- B. Multiple-family dwellings;
- C. Bed and breakfast accommodations;
- D. Professional offices or services as described in GHMC 17.28.020;
- E. Retail uses clearly accessory to the principal office use of a structure;
- F. Family daycare;
- G. Publicly owned parks and playgrounds;
- H. Banking institutions;
- I. Mobile/manufactured home parks and subdivisions; and
- J. Adult family homes.

Section 2. Section 17.30.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.30.030 Conditional Uses.**

Subject to the procedures and other provisions for conditional uses as set forth under this title, the following uses may be permitted in an RB-2 district:

- A. Day care centers containing more than six children;
- B. Nursing homes and retirement centers;
- C. Recreational buildings and community centers;
- D. Public utilities and facilities;
- E. Schools, public and private;
- F. Churches and nonprofit clubs;
- G. Ministorage;
- H. Light assembly and associated storage; and
- I. Hotels and motels; and
- J. Accessory apartments which meet the criteria established under GHMC 17.64.045.

Section 3. Section 17.30.050(F) of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.30.050 Development standards.**

F. Any non-residential yard abutting an existing residential use or zone: 40 feet with dense vegetative screening. Easements not having dense vegetative screening are not included.

Section 4. 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 5. 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 City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of \_\_\_\_\_, 2004.

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: \_\_\_\_\_



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: SECOND READING OF AN ORDINANCE**  
**- TEXT AMENDMENT (B-2) TO CONDITIONALLY ALLOW HOSPITALS**  
**DATE: FEBRUARY 23, 2004**

**INFORMATION/BACKGROUND**

Attached for your consideration and for second reading is an ordinance amending the list of conditional uses in the General Business (B-2) zone to conditionally allow hospitals, (GHMC 17.36.030(H)), and adding the definition of hospital in the definitions section, (GHMC 17.04.412).

The Planning Commission held a public hearing on the proposed amendments on December 4, 2003. One person spoke in favor of the amendments. After brief discussion following public testimony, the Planning Commission voted unanimously to recommend approval of the proposed amendments. A copy of the December 4, 2003 Planning Commission Minutes is attached.

**POLICY CONSIDERATIONS**

The intent of the B-2 zone is to provide areas that offer a wide range of consumer goods and services. It is further intended to group buildings and business establishments in a manner that creates convenient, attractive and safe development. Acknowledging that many of the existing uses in the B-2 zone are medical or medical related, especially in the vicinity of Olympic Drive and Point Fosdick Drive, staff feels that conditionally allowing hospitals would be consistent with the intent of the zone.

**ENVIRONMENTAL ANALYSIS**

A SEPA threshold determination of Non-significance (DNS) was issued for the proposed amendments on August 26, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003. The deadline to file an appeal was September 17, 2003.

**FISCAL IMPACTS**

None.

**RECOMMENDATION**

I recommend that the City Council approve the ordinance as presented.

**City of Gig Harbor Planning Commission  
Minutes of Work-Study Session and Public Hearing  
Thursday, December 4, 2003  
Gig Harbor Civic Center**

**PRESENT:** Commissioners Carol Johnson, Paul Conan, Kathy Franklin, Theresa Malich, Bruce Gair and Paul Kadzik. Staff present: Rob White.

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

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of November 20, 2003 as presented. Franklin/Malich – unanimously approved.

**NEW BUSINESS**

Zoning Code Text Amendment – (ZONE 03-09) Proposed amendments to GHMC Chapter 17.36.030 to add hospitals to the B-2 zone and GHMC 17.04.412 to define hospitals.

Senior Planner Rob White gave a brief staff report. He stated that the Planning Commission had already held a work session and public hearing on the addition of hospitals as a conditional use in the B-2 zone, however, he had the City Attorney review the ordinance prior to taking it to the City Council and it was pointed out that there was no definition of Hospitals in the zoning code. Mr. White further stated that the proposed definition was from Webster's Dictionary.

Chairman Paul Kadzik noted that the verbiage in the ordinance had been changed to just say hospital rather than hospitals and convalescent centers and the definition of hospital is all inclusive.

There being no further discussion, Chairman Paul Kadzik opened the Public Hearing at 7:03 p.m.

**PUBLIC HEARING**

Zoning Code Text Amendment – (ZONE 03-09) Proposed amendments to GHMC Chapter 17.36.030 to add hospitals to the B-2 zone and GHMC 17.04.413 to define hospitals.

John Hogan, 4709 Pt Fosdick Drive NW, Gig Harbor WA 98335 - Mr. Hogan spoke in favor of the text amendment. Additionally, he stated he was in competition with the Gig Harbor North site for the location of the hospital, however, if the Gig Harbor North site is chosen as the site he believes their location on the Westside is still a good location for another hospital given the existing medical uses in the area. Mr. Hogan also stated that

he felt it was important to include convalescent care in the definition of hospitals as we do not know what kinds of care a hospital may provide in the future. There being no further comment, Chairman Paul Kadzik closed the public hearing at 7:06 p.m.

**MOTION** - Move to approve the staff's recommended definition of Hospital Franklin/Johnson – unanimously approved.

**NEXT REGULAR MEETING:**

December 18th	Worksession and Public Hearing
January 15 <sup>th</sup>	Worksession and Public Hearing

**ADJOURN:**

**MOTION:** Move to adjourn at 7:07 p.m.  
Malich/Conan – unanimously approved

CD

recorder utilized:

Disc #1 Track 1



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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADDING TO THE LIST OF USES CONDITIONALLY ALLOWED IN THE GENERAL BUSINESS (B-2) ZONE TO ALLOW HOSPITALS IN GIG HARBOR MUNICIPAL CODE SECTION 17.36.030(H).**

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WHEREAS, the intent of the General Business (B-2) zone is to provide a wide range of consumer goods and services and to group buildings and businesses in a manner that creates convenient, attractive and safe development; and

WHEREAS, many of the existing uses in the B-2 zone are medical uses or support medical uses; and

WHEREAS, conditionally allowing hospitals is consistent with the intent of the B-2 zone; and

WHEREAS, the City's Zoning Code does not currently define "hospital"; and

WHEREAS, the City's SEPA Responsible Official has made a Determination of Non-Significance (DNS) for this Ordinance on August 26, 2003; and

WHEREAS, no appeals of the DNS were filed with the City; and

WHEREAS, the City sent a copy of this Ordinance to the Washington State Office of Community, Trade and Development on August 29, 2003; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on December 4, 2003; and recommended approval to the City Council; and

WHEREAS, on [INSERT DATE HERE], the City Council considered this Ordinance during a regular meeting; Now, Therefore,

**THE CITY COUNCIL OF THE CITY OF GIG HARBOR ORDAINS AS FOLLOWS:**

Section 1. Section 17.36.030 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.36.030 Conditional Uses.**

Subject to the requirements of Chapter 17.64 GHMC and the procedures for conditional uses as set forth in this title, the following uses may be permitted in a B-2 district:

- A. Utilities and public service uses such as libraries, electrical substations, water storage facilities, etc.;
- B. Light manufacturing and assembly;
- C. Miniwarehouses;
- D. Recreational buildings and community centers;
- E. Drive-in restaurants;
- F. Radio and television transmission towers;
- and
- G. Residences;
- and
- H. Hospitals, clinics and establishments for people convalescing from illness or operation.

Section 2. Section 17.04 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.04.412 Hospital.**

"A 24-hour, emergency care and inpatient institution, in which sick or injured persons can receive medical or surgical treatment."

Section 3. 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 4. 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 City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of \_\_\_\_\_, 2004.

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: \_\_\_\_\_



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: SECOND READING OF AN ORDINANCE CORRECTING THE LEGAL**  
**DESCRIPTION CONTAINED IN ORDINANCE NO. 938**  
**DATE: FEBRUARY 23, 2004**

**INFORMATION/BACKGROUND**

Ordinance No. 938 approved the annexation of one parcel of property located immediately adjacent to and east of the existing city limits located at the intersection of Vernhardson Street (96<sup>th</sup> Street NW) and Crescent Valley Drive NW on August 11, 2003. As required, the Ordinance was sent to the Washington State Office of Financial Management. The Washington State Department of Transportation Geographic Services Division noted that the map and legal description did not match.

The legal description and map have been revised. The Washington State Department of Transportation Geographic Services Division has reviewed and approved the revision. First reading of this Ordinance was held on February 9, 2004.

Adoption of an Ordinance by Council to correct the legal description is necessary.

**POLICY CONSIDERATIONS**

None.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

I recommend that the Council approve the Ordinance as presented.

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO ANNEXATION OF ONE PARCEL OF PROPERTY LOCATED IMMEDIATELY ADJACENT TO AND EAST OF THE EXISTING CITY LIMITS LOCATED AT THE INTERSECTION OF VERNHARDSON STREET (96<sup>th</sup> STREET NW) AND CRESCENT VALLEY DRIVE NW, AMENDING CITY OF GIG HARBOR ORDINANCE NO. 938 TO CORRECT THE LEGAL DESCRIPTION IN EXHIBIT A TO ORDINANCE NO. 938.**

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WHEREAS, on August 11, 2003, the City Council of the City of Gig Harbor adopted Ordinance 938, which approved the annexation of one parcel of property located immediately adjacent to and east of the existing city limits located at the intersection of Vernhardson Street (96<sup>th</sup> Street NW) and Crescent Valley Drive NW, Gig Harbor, Washington; and

WHEREAS, attached to Ordinance No. 938 as Exhibit A was a legal description of the real property annexed to the City; and

WHEREAS, the City has recently been informed by the State of Washington Office of Financial Management that the legal description of the real property annexed to the City was inaccurate; and

WHEREAS, the City Council seeks to correct the legal description for the property annexed by Ordinance No. 938; and

WHEREAS, the City SEPA Responsible Official has determined that this Ordinance is exempt from SEPA under WAC 197-11-800(6)(d); and

WHEREAS, the City Council held a public hearing and considered this Ordinance on February 9, 2004; and

WHEREAS, the City Council considered this Ordinance at a second reading during its regular City Council meeting of February 23, 2004; Now, Therefore,

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

Section 1. Ordinance No. 938 is hereby amended to eliminate the Exhibit A, attached thereto, entitled "Exhibit A Parcel No. 0222323033"

Section 2. Exhibit A, attached to this Ordinance and incorporated herein by this reference, shall be the legal description for the property annexed to the City under Ordinance 938. Exhibit A, attached hereto, is entitled: "Exhibit A, First Amended Legal Description, Parcel No. 0222323033."

Section 3. Severability. If any portion of this Ordinance or its application to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remainder of the Ordinance or the application of the remainder to other persons or circumstances.

Section 4. 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 23rd day of February, 2004.

CITY OF GIG HARBOR

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

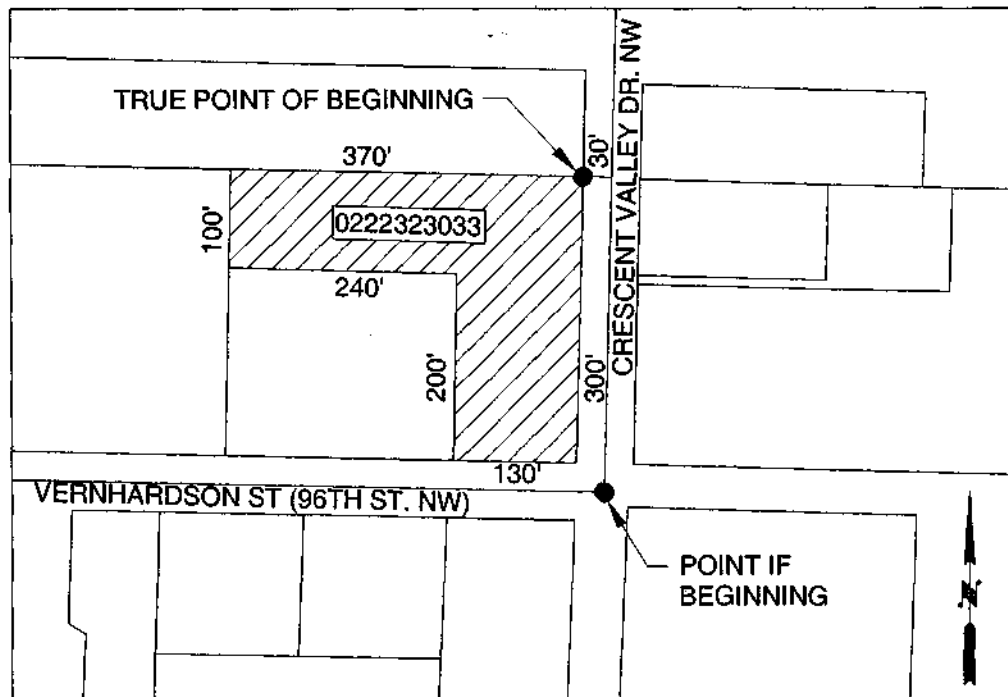
ATTEST/AUTHENTICATED:

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.



### LEGAL DESCRIPTON

BEGINNING AT THE SE CORNER OF THE SW QUARTER OF SECTION 32, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M.; THENCE NORTH 330' ALONG THE CENTERLINE OF SAID SECTION 32, MORE OR LESS, TO THE NORTH LINE OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION; THENCE WEST 30' ON A LINE PARALLEL WITH THE SOUTH LINE OF SAID SECTION 32 TO THE TRUE POINT OF BEGINNING; THENCE WEST ALONG SAME SAID LINE 370'; THENCE SOUTH 100' ON A LINE PARALLEL TO THE EAST BOUNDARY OF SECTION 32; THENCE EAST 240' ON A LINE PARALLEL TO THE SOUTH BOUNDARY OF SECTION 32; THENCE SOUTH 200' ALONG A LINE PARALLEL TO SAID EAST BOUNDARY; THENCE EAST 130' ALONG A LINE PARALLE TO SAID SOUTH BOUNDARY; THENCE NORTH 300' ALONG A LINE PARALLEL TO SAID EAST BOUNDARY TERMINATING AT THE TRUE POINT OF BEGINNING.

## EXHIBIT A

FIRST AMENDED

LEGAL DESCRIPTION, PARCEL NO. 0222323033



**SUMMARY OF ORDINANCE NO.**

of the City of Gig Harbor, Washington

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On February 23, 2004, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. , 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 ANNEXATION OF ONE PARCEL OF PROPERTY LOCATED IMMEDIATELY ADJACENT TO AND EAST OF THE EXISTING CITY LIMITS LOCATED AT THE INTERSECTION OF VERNHARDSON STREET (96<sup>th</sup> STREET NW) AND CRESCENT VALLEY DRIVE NW, AMENDING CITY OF GIG HARBOR ORDINANCE NO. 938 TO CORRECT THE LEGAL DESCRIPTION IN EXHIBIT A TO ORDINANCE NO. 938**

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

APPROVED by the City Council at their meeting of February 23, 2004.

---

MOLLY TOWSLEE, CITY CLERK



**Pierce County**

Office of the Assessor-Treasurer

2401 South 35th Street, Room 142  
Tacoma, Washington 98409-7496  
(253) 798-8111 • FAX (253) 798-3142  
ATLAS (253) 798-3333  
www.co.pierce.wa.us/atr

**KEN MADSEN**  
Assessor-Treasurer

State of Washington )  
County of Pierce )ss.

**DECLARATION**

I, Ken Madsen, Assessor-Treasurer of Pierce County, do hereby certify that the Petition entitled: Northwest Gig Harbor Employment Center , submitted to me by the City of Gig Harbor , bears the names and purported signatures of persons who are owners or part owners of parcels lying within the proposed annexation and are owners of the majority of the acreage of the area proposed for annexation. The undersigned cannot certify the authenticity of the signatures of such named owners, because authenticated signatures of all such owners are not required to be kept in the records of Pierce County for such real property.

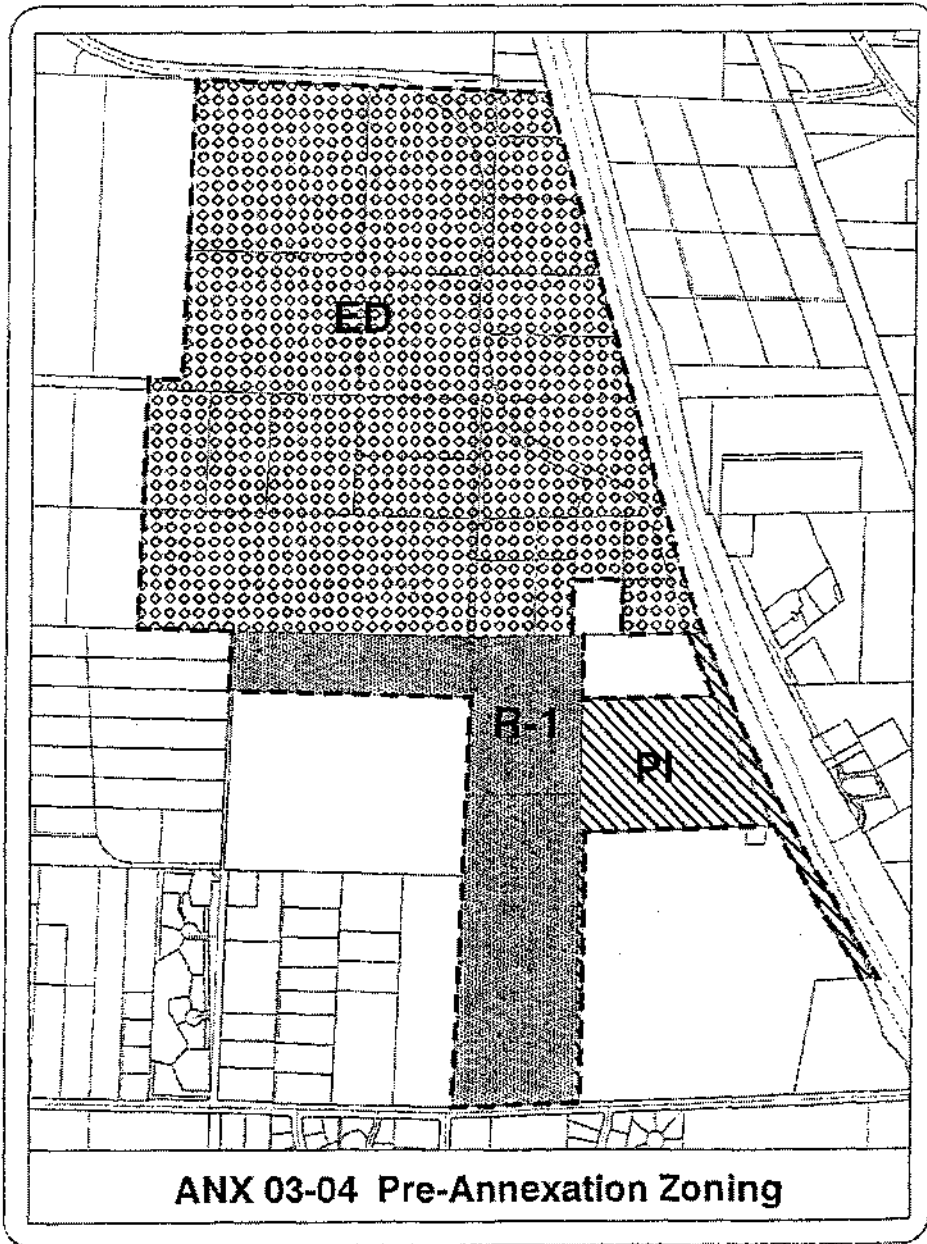
I declare under penalty of perjury under the laws of the State of Washington that I have read the foregoing declaration, and know the contents thereof to be true.

Dated this 5th day of February, 2003, in Tacoma, Washington.

  
Ken Madsen, Assessor-Treasurer



"B"



ANX 03-04 Pre-Annexation Zoning



ADMINISTRATION

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR** *MH*  
**SUBJECT: SECOND READING OF ORDINANCE - ARTS COMMISSION**  
**DATE: FEBRUARY 18, 2004**

**INFORMATION/BACKGROUND**

The attached ordinance adjusts conditions under which Arts Commission members may be appointed and serve. The attached ordinance conforms to City Council direction from the February 9, 2004, Council Meeting.

**POLICY CONSIDERATIONS**

The ordinance directs that a majority of arts commissioners shall reside or work within city limits at the time of appointment and throughout their terms of office. In the event a vacancy cannot be filled, a commissioner may serve more than two terms.

**FISCAL CONSIDERATIONS**

None

**RECOMMENDATION**

Staff recommends approval of the ordinance as presented at this second reading.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF GIG HARBOR,  
WASHINGTON, AMENDING THE GHMC CHAPTER 2.49.010  
REGARDING THE ESTABLISHMENT OF AND TERMS OF  
OFFICE FOR THE GIG HARBOR ARTS COMMISSION.

---

WHEREAS, there have been several vacancies on the Gig Harbor Arts Commission during the past two years; and

WHEREAS, the lack response from the community to serve on the Commission has not allowed for the filling of those positions within the parameter of the code; and

WHEREAS, members have served two terms which would prohibit them from continuing to serve another term;

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Gig Harbor, Washington as follows:

Section 1. Section 2.49.010 of the City of Gig Harbor Municipal Code is hereby amended to read as follows:

2.49.010 Commission established – Membership.

A. The Gig Harbor arts commission, consisting of nine members appointed by the mayor and confirmed by the vote of a majority of the members of the city council, is established. The term of office shall be three years. Commission members shall be selected for staggered terms. Three commissioners or their successors will serve a one, two or the full three-year term based on the position. All subsequent appointments shall be for three years, or for the duration of an unexpired term in the case of an appointment to a vacancy. All commission members' terms shall expire on March 31st and all successive terms shall commence on April 1st. No member shall serve more than two consecutive full terms of office, **unless the vacancy cannot be filled by new applicant(s).**

B. Commission members shall be appointed upon the basis of demonstrated interest, knowledge and support of the arts. Members shall serve without salary or other compensation; provided that members shall be reimbursed for necessary expenses actually incurred with prior administrative approval. ~~Two~~ Commissioners may be selected from the Gig Harbor community-at-large. ~~Seven~~ **A majority of the** commissioners shall reside or work within the city limits at the time of appointment and throughout their terms of office.

\* \* \*

Section 2. Effective Date. This ordinance shall take effect and be in full force and effect five (5) days after its passage, approval and publication as required by law.

PASSED by the Council of the City of Gig Harbor, this \_\_\_ day of February, 2004.

APPROVED:

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

ATTEST/AUTHENTICATED:

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

FILED WITH THE CITY CLERK: 2/4/04  
PASSED BY THE CITY COUNCIL:  
DATE PUBLISHED:  
DATE EFFECTIVE:

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

On \_\_\_\_\_, 2004, 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, AMENDING THE GHMC CHAPTER 2.49.010  
REGARDING THE ESTABLISHMENT OF AND TERMS OF  
OFFICE FOR THE GIG HARBOR ARTS COMMISSION.**

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 \_\_\_\_\_,  
2004.

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



**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR** *MH*  
**SUBJECT: 2004 SKANSIE BROTHERS PARK GRANT APPLICATION**  
**DATE: FEBRUARY 19, 2004**

### **INFORMATION/BACKGROUND**

In 2003, the city successfully competed for its third IAC grant, one of three funded state recipients statewide in an amount to be allotted by the legislature in 2004 between \$400,000 and \$500,000. Previously, two IAC grants were awarded to Jerisich Dock, first to build, and then to expand the dock. In 2003, IAC viewed the northern part of the Skansie yard, driveway and garage as an attractive addition to the Jerisich Park uplands space, an addition of seven times the upland space.

Historically and currently, all these grants promote strictly outdoor recreational interests. IAC does not fund commercial or non-recreational interests. Any aspect of a grant proposal to IAC that contains a commercial or non-recreational component must clearly segregate such a component from the recreational project in order to be eligible for IAC grant funds. This segregation must be physically discrete and enforceable over time. Even if these criteria are met, approval of a grant application for a mixed recreational and non-recreational or commercial use proposal is unlikely and burdened.

Prior to winning the 2003 grant competition - in fact, prior to the purchase of the Skansie property - the city applied to IAC for the right to use the grant eligible portions of the property and the purchase price of the property as matching funds in the event of a future IAC grant application. *Due the immediate threat of loss or conversion of the property to non-recreational or commercial uses*, the city was granted a two-year right to apply and compete for IAC grants, while using the value of the property acquisition to substantiate the 50% grant match requirement. **This current grant application cycle will be the last chance to utilize the Skansie property purchase value to match an IAC grant.**

### **POLICY CONSIDERATIONS**

There are currently four IAC grant application possibilities for this IAC grant cycle. These possibilities are not equally fundable. A characterization and assessment of fundability follows:



**#1 Improve Jerisich Dock with recreational dock improvements and apply for a land acquisition grant for the south lawn of the Skansie property.** The city is eligible to apply for a maximum of \$500,000 of property acquisition support for the property south of the 2003 grant area. The house and the netshed, which are interior spaces and ineligible for grant purposes by definition, must be excluded from any IAC grant application. Since the value of this property exceeds the grant maximum, likely by 2 to 1 after review by an MAI, state-approved appraiser, the property is an attractive addition and complement to the recreational park complex through Jerisich Dock in the eyes of an IAC grant committee. Moreover, should the city apply for a dock enhancement grant for recreational boating, the entire grant scenario is enhanced – even stronger in the eyes of the review board. This dock option would entail General Fund support for the grant match.

The IAC views Jerisich Dock and Skansie Brothers Park as one recreational space. Enhancing the recreational character of the overall site would meet strong approval with the state review committee. The probability of attaining grant funding through this approach is very high.

**#2 Apply strictly for a land acquisition grant for the south lawn of Skansie Brothers Park.** This proposal is just like #1 without improvements to Jerisich Dock.

The probability of attaining grant funding through this approach is high.

**#3 Apply for a combination land acquisition and project development grant.** This approach anticipates land acquisition like in #1 and #2, and includes the development of driveway access just north of the south Skansie property line which leads to a maritime pier that can be used by commercial and recreational interests with a limited stay provision for load-and-unload purposes. The City Engineer prefers this option for access to the property even though this option presents a moderate re-grading issue adjacent to the sidewalk. The dock space must be physically segregated into commercial and recreational space and must be clearly enforceable as such. Commercial dock space, the street access driveway, and all related costs must be backed out of the grant proposal. A minimum direct investment from the General Fund, *in addition* to utilizing the purchase value of the property – approximately 20% of the total land acquisition and development project cost – would be required for grant eligibility.

IAC views mixed use applications like these with skepticism, and requires absolute assurance that commercial and non-recreational uses can be physically separated and enforced. The grant committee will ask difficult questions that must be clearly answered in order for this project proposal to rate well during grant evaluation. The probability of attaining grant funding through this approach is moderate to low.

**#4 Apply for a combination land acquisition and project development grant.**

This approach is like #3, but utilizes the existing residential driveway access and removes the garage for access to the Maritime Pier. The advantage of this driveway is short, direct access to the Maritime Pier. As a strictly residential driveway, however, the existing driveway presents a disadvantaged site distance issue that can be mitigated through removal of existing landscaping. The City Engineer advises that a driveway on the south side of the house conflicts less with major intersections and avoids a minor conflict with the commercial driveway across the street from the commercial parking access for the Maritime Inn.

The access is problematic from a grant perspective because the driveway, an ineligible use for grant purposes, divides the park and its recreational function. An IAC grant committee will immediately view the park layout as superior *without* the access improvement. The probability of attaining grant funding through this approach is very low.

**FINANCIAL CONSIDERATIONS**

A successful grant application in this cycle can be awarded up to \$500,000 for land acquisition. If the application presents a uniformly eligible proposal, then, in this last year of state-authorized exception, the 50% grant match can be made up entirely of value attributable to the purchase of the property.

A successful land application and project development combination grant will require approximately 20% of the entire value of the project to be funded by the General Fund. Land value for such a combination grant application would likely be \$1 million and the Maritime Pier was estimated at \$800,000. Consequently, for such a project, the General Fund will need to support approximately \$360,000 to \$400,000.

**RECOMMENDATION**

I recommend that the City Council articulate a preferred approach at this Council Meeting, so that staff can file a preliminary IAC Letter of Intent by the administrative grant application deadline of March 1.

This letter of intent will be followed by a complete application no later than May 3, by a project review meeting in early June, by a Technical Completion Deadline of July 1, and by a competitive presentation in Olympia between July 26 and August 6.



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**SUBJECT: COMMUNITY DEVELOPMENT DIRECTOR**  
**NW GIG HARBOR EMPLOYMENT CENTER ANNEXATION PETITION**  
**(03-04)**  
**DATE: FEBRUARY 23, 2004**

**INFORMATION/BACKGROUND**

The City Council met with the initiators of a 'Notice of Intention to Commence Annexation Proceedings' on September 8, 2003 with regards to the proposed annexation of approximately two hundred and twenty six (226) acres of property located west of Highway 16, south of the Washington Correction Center for Women, and north of Rosedale Street. At that time, the Council voted to authorize circulation of the annexation petition subject to certain conditions including the simultaneous adoption of Employment District (ED), Public Institutional (PI), and Single-Family Residential (R-1) zoning for the proposed area as recommended by the Planning Commission on March 8, 2002 and that the property owners assume a proportionate share of the City's indebtedness.

The City received a petition for annexation on November 10, 2003. Given that the entire annexation area is uninhabited, the petition must be signed by the owners of a majority of the acreage for which annexation is sought (RCW 35A.14.420 (3)). The petition was subsequently certified by the Pierce County Office of the Assessor-Treasurer as being legally sufficient on February 5, 2004.

The Council must now hold a public hearing to consider a resolution approving the annexation as presented. Prior to such a hearing, public notice must be published in the Peninsula Gateway ten days prior to the date of the hearing. Notice must also be posted in three areas within the area proposed for annexation.

**POLICY CONSIDERATIONS**

None.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

I recommend that the Council set a public hearing date of March 22, 2004 for the consideration of a resolution approving the annexation as proposed.



**Pierce County**

Office of the Assessor-Treasurer

2401 South 35th Street, Room 142  
Tacoma, Washington 98409-7498  
(253) 798-8111 • FAX (253) 798-3142  
ATLAS (253) 798-3333  
www.co.pierce.wa.us/atr

**KEN MADSEN**  
Assessor-Treasurer

State of Washington )  
County of Pierce )ss.

**DECLARATION**

I, Ken Madsen, Assessor-Treasurer of Pierce County, do hereby certify that the Petition entitled: **Northwest Gig Harbor Employment Center**, submitted to me by the **City of Gig Harbor**, bears the names and purported signatures of persons who are owners or part owners of parcels lying within the proposed annexation and are owners of the majority of the acreage of the area proposed for annexation. The undersigned cannot certify the authenticity of the signatures of such named owners, because authenticated signatures of all such owners are not required to be kept in the records of Pierce County for such real property.

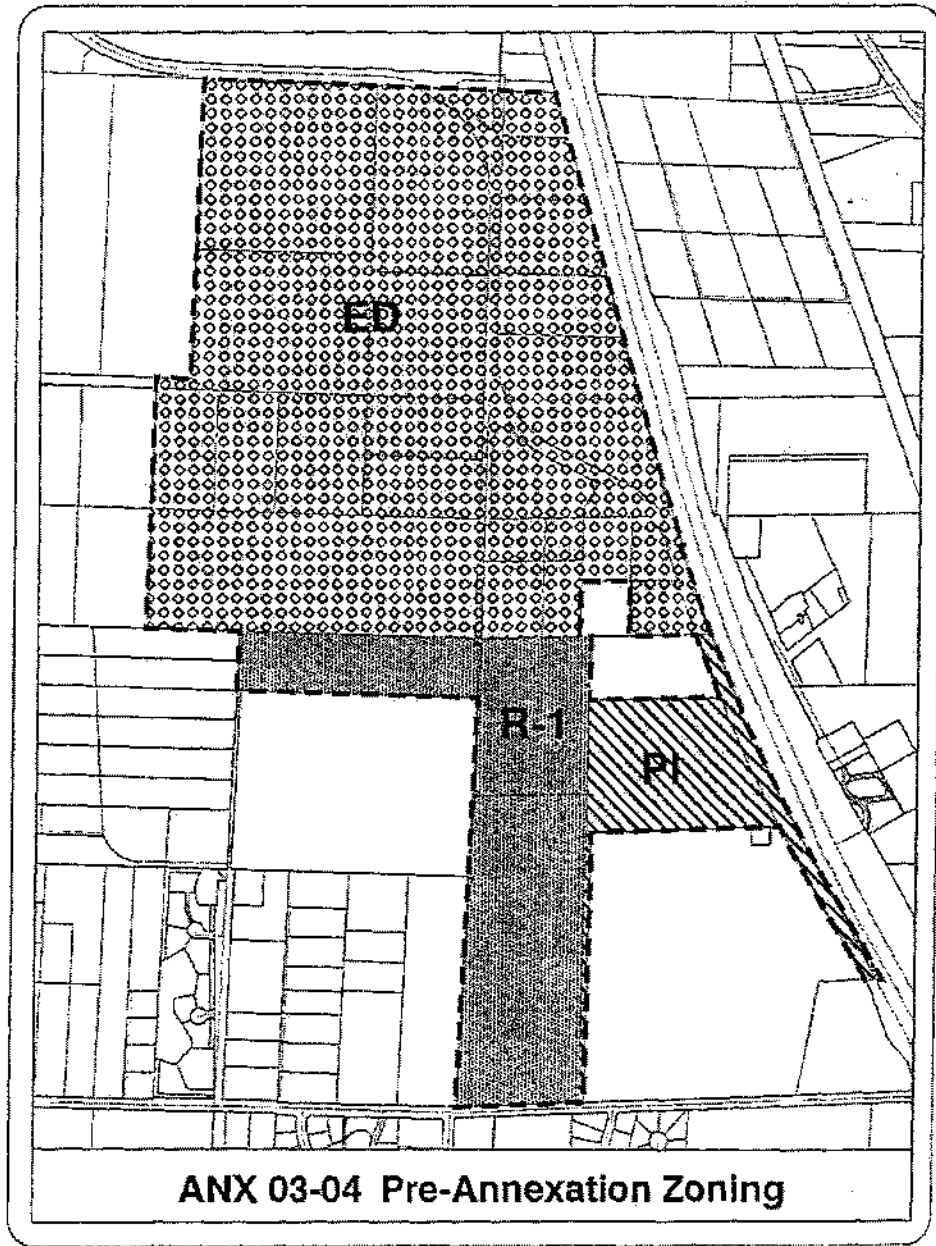
I declare under penalty of perjury under the laws of the State of Washington that I have read the foregoing declaration, and know the contents thereof to be true.

Dated this 5th day of February, 2003, in Tacoma, Washington.

  
Ken Madsen, Assessor-Treasurer



"B"



ANX 03-04 Pre-Annexation Zoning



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**SUBJECT: COMMUNITY DEVELOPMENT DIRECTOR**  
**SECOND READING OF AN ORDINANCE**  
**- TEXT AMENDMENT TO THE PLANNED COMMUNITY**  
**DEVELOPMENT BUSINESS PARK (PCD-BP) ZONE TO**  
**CONDITIONALLY ALLOW HOSPITALS**  
**DATE: FEBRUARY 23, 2004**

**INFORMATION/BACKGROUND**

Attached for your consideration and for second reading is an ordinance amending the list of conditional uses in the Planned Community Development – Business Park (PCD-BP) zone to conditionally allow hospitals, (GHMC 17.54.025(A)).

The Planning Commission held a public hearing on the proposed amendments on January 15, 2004. One person spoke in favor of the amendments. After brief discussion following public testimony, the Planning Commission voted unanimously to recommend approval of the proposed amendments. A copy of the January 15, 2004 Planning Commission Minutes is attached. A letter was also submitted on January 11, 2004, by Mr. Jack Sutton, who is not in favor of allowing hospitals in the PCD-BP zone. A copy of Mr. Sutton's letter is attached.

**POLICY CONSIDERATIONS**

The intent of the PCD-BP zone generally is to provide areas that limit retail uses while encouraging major employment opportunities. Maintaining hospitals as conditional uses will ensure that, if necessary, aesthetic, environmental, and buffering concerns will be addressed on a site specific basis with more detail than allowed through the typical site plan and design review process.

**ENVIRONMENTAL ANALYSIS**

A SEPA threshold determination of Non-significance (DNS) was issued for the proposed amendments on February 16, 2004. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on December 17, 2003. The deadline to file an appeal is March 1, 2004.

**FISCAL IMPACTS**

None.

**RECOMMENDATION**

I recommend that the City Council approve the ordinance as presented.

**City of Gig Harbor Planning Commission  
Minutes of Work-Study Session and Public Hearing  
Thursday, January 15, 2004  
Gig Harbor Civic Center**

**PRESENT:** Commissioners Carol Johnson, Kathy Franklin, Theresa Malich, Bruce Gair, Dick Allen and Chairman Paul Kadzik. Staff present: Steve Osguthorpe, Rob White and Diane Gagnon.

**CALL TO ORDER:** 6:00 p.m.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of December 18, 2003 with a correction to page 4.  
Franklin/Johnson – unanimously approved.

**NEW BUSINESS**

1. **Election of Chair and Vice-Chair for 2004**

**MOTION:** Move to re-elect Paul Kadzik as Chair  
Malich/Franklin – passed unanimously

**MOTION:** Move to re-elect Bruce Gair as Vice Chair  
Kadzik/Malich – passed unanimously

**WORK-STUDY SESSION**

**Proposed amendments to GHMC 17.50 – Maximum density in the Waterfront Commercial zone (ZONE 03-07).** - Senior Planner Rob White reported on the background of the application, explaining that the applicant was asking for an increase in the density from 3.5 to 7.0 dwelling units per acre. Mr. White further explained that currently the density range is undefined in the Comprehensive Plan. The applicants have not applied for a Comprehensive Plan amendment, therefore, staff is recommending denial without guidance provided by the Comprehensive Plan.

Chairman Paul Kadzik pointed out that the recent Task Force on Building Size had recommended rezoning some of the Waterfront Commercial properties to Waterfront Millville.



Planning Manager Steve Osguthorpe explained that city staff would be examining the capacities within each zone during the upcoming 2004 Comprehensive Plan update.

Chairman Kadzik stated that we will need to hold a public hearing on this issue and voiced his concern with processing this application without a comprehensive plan amendment.

Mr. Osguthorpe explained that the applicant feels they don't need a comp plan amendment since the plan states, "Generally, the lower intensity waterfront areas would favor residential and marinas while the more intense use waterfront areas would provide for higher density residential and commercial/retail uses."

Commissioner Gair stated that with higher density residential uses we will end up with shoulder to shoulder development along the waterfront, blocking off more views and access to the bay.

It was decided to hold a public hearing on this issue at the February 5<sup>th</sup> meeting of the Planning Commission.

Commissioner Gair asked if SEPA had been done on this application yet. Senior Planner Rob White replied that it had not as the environmental checklist submitted by the applicant did not adequately address the impacts.

The Chairman called a recess until the public hearing at 7:00.

### **PUBLIC HEARING**

Proposed amendments to GHMC Chapter 17.54 – Planned Community Development – Business Park (ZONE 03-16). – Senior Planner Rob White outlined the request to allow hospitals as a conditional use in the PCD-BP zone. Mr. White explained that maintaining hospitals as a conditional use will address any environmental concerns as they are developed. Staff is recommending that the recently adopted definition of hospital be used.

Commissioner Gair pointed out that the word "provide" should be deleted in the second line of the ordinance at the first whereas, and that the date above the Mayor's signature should be 2004. He further pointed out that in the reference line of the staff report the word "conditional" is misspelled.

Nina Albert, Hammes Company, 1411 Fourth Ave., Suite 1020, Seattle WA - Ms.

Albert testified that her company was working with the applicant on this text amendment. She wanted to point out that the current definition of hospitals is vague and could be interpreted to include clinics. Ms. Albert further suggested that by adding the words 24-hour emergency care and inpatient beds to the definition it would more in keeping with the state's definition.

There being no further comment the public hearing was closed at 7:08 p.m.

Senior Planner Rob White pointed out that the Planning Commission had just held a work session and public hearing on the definition of hospital and that it would be inappropriate to change the definition as part of this application.

The Planning Commission directed staff to return with a definition that was more in keeping with the state's definition.

**MOTION** - Move to forward a recommendation of approval of the proposed ordinance to the City Council  
Johnson/Allen – unanimously approved.

**NEXT REGULAR MEETING:**

February 5<sup>th</sup>                      Work session and Public Hearing

**ADJOURN:**

**MOTION:**      Move to adjourn at 7:10 p.m.  
Johnson/Allen – unanimously approved

utilized:

CD                      recorder

Disc #1 Track 1

**ORDINANCE NO. 2004**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADDING HOSPITALS AS CONDITIONALLY ALLOWED USES IN THE PLANNED COMMUNITY DEVELOPMENT – BUSINESS PARK (PCD-BP) ZONE IN GIG HARBOR MUNICIPAL CODE SECTION 17.54.025.**

WHEREAS, the intent of the Planned Community Development – Business Park (PCD-BP) zone is to discourage retail uses in order that it might be preserved for major employment opportunities; and

WHEREAS, hospitals generally provide major employment opportunities; and

WHEREAS, allowing hospitals is consistent with the intent of the PCD-BP zone; and

WHEREAS, allowing hospitals as conditional uses ensures that aesthetic, environmental, and buffering concerns will be addressed on a site specific basis with more detail than allowed through the typical site plan and design review process; and

WHEREAS, the City's SEPA Responsible Official has made a Determination of Non-Significance (DNS) for this Ordinance on February 16, 2004; and

WHEREAS, no appeals of the DNS were filed with the City; and

WHEREAS, the City sent a copy of this Ordinance to the Washington State Office of Community, Trade and Development on December 17, 2003; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on January 15, 2004; and recommended approval to the City Council; and

WHEREAS, on [INSERT DATE] , the City Council considered this Ordinance during a regular meeting; Now, Therefore,

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

Section 1. Section 17.54.025 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.54.025 Conditional Uses.**

Subject to the requirements of Chapter 17.64 GHMC and the procedures for conditional uses as set forth in this title, the following uses may be permitted in a PCD-BP district:

A. Hospitals.

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 City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_\_ day of \_\_\_\_\_, 2004.

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: \_\_\_\_\_

Jack P. Sutton  
5612 W. Old Stump Dr. NW  
Gig Harbor, WA. 98332

January 11, 2004

Washington Dept of Health  
Certificate of Need Program  
PO Box 47852  
Olympia, WA. 98504-7852

COPY

Attn: Karen Nidermayer

RE: Gig Harbor Hospital

Dear Ms. Nidermayer,

I am in favor of the proposed hospital for Gig Harbor. I think we do need it because of the increased population. I think the population is spread out from the peninsula area to southern Kitsap area as well. The new bridge creates a different issue however. It will simply be more convenient to have full health services available in our community.

My primary reason however in writing you are that I do **not** favor the Gig Harbor North proposed site. Hospitals create additional buildings, clinics etc and the Point Fosdick area already has many of those services available so why try to re-locate those, over time, to the Gig Harbor North site. Franciscan Health just announced a new satellite dialysis center at 4700 Point Fosdick so they should want to consolidate those services in their area. Why split health care service providers between two sites. Gig Harbor North already has a fast growing and diverse occupants, with Target, Home Depot, banks, fast food, Albertsons, strip retail and now Costco and maybe the YMCA. This will continue to split our community into three areas Point Fosdick, Downtown and now Gig Harbor North. With the hospital in the Gig Harbor North site it will lessen the importance to the other two sites. Another reason I am not in favor of it at the North site is traffic and noise. Hospitals mean sirens and helicopters. The small traffic circle cannot take the current load, leave alone Costco and a hospital. Massive road improvements are necessary at the North site and very little would be needed at the Point Fosdick site.

Sincerely,

Jack P. Sutton

Copy: City of Gig Harbor  
Franciscan Health System



"THE MARITIME CITY"

ADMINISTRATION

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR** *MH*  
**SUBJECT: EMPLOYMENT AGREEMENT REQUEST - JUDGE MICHAEL DUNN**  
**DATE: FEBRUARY 18, 2004**

### INFORMATION/BACKGROUND

Municipal Court Judge Michael Dunn requests a salary adjustment that places his salary within the range of similar judge salaries locally with respect to hours worked. In recent years, conservatively estimated, time attributable to municipal judge duties has increased from an approximate average of about 14 hours per week to an average of about 20 hours per week.

Indicative of this time increase is the increase in infraction filings, which have increased from 551 in 2001 to 1,082 in 2003. In 2001, there were a combined 207 infraction hearings that has increased to 442 in 2003. Criminal hearings in 2001 were 1,339 up in 2003 to 1,902. The judge now consistently works two seven-hour days a week in the court with six hours of off-site time in general administrative and direct court business.

Municipal Court Judge Dunn's current contract expires December 31, 2005.

### FINANCIAL CONSIDERATION

Judge Dunn requests a salary from \$2000 per month to \$4000. This potential increase is available in the 2004 budget. Comparative analysis with 2003 salary data reveals the following:

	Judge Salary	Benefits*	Working Hours
Bonney Lake	\$45,000	Yes	21
Lakewood	\$60,000	No (\$269 monthly)	34
Fife	\$75,000	Yes	34
Port Orchard	\$57,000	Yes	24
Puyallup	\$52,000	Yes	20
Sumner	\$52,000	Yes	20
Gig Harbor	\$48,000	No	20

\*A rule-of-thumb for benefits would be 30% of salary.

### RECOMMENDATION

Staff recommends that the City Council motion to approve this contract amendment as presented.

**MUNICIPAL COURT JUDGE  
EMPLOYMENT AGREEMENT**

**THE PARTIES**

The parties to this agreement are as follows: Michael A. Dunn, hereinafter referred to as "Judge," and the City of Gig Harbor, Washington, hereinafter referred to as the "City."

**PURPOSE**

The purpose of this agreement is to set forth the terms of the agreement between the parties whereby the City appoints a municipal court judge at an established compensation level and the Judge agrees to perform the municipal court judge duties as provided by state statute and city ordinance.

**AGREEMENT**

The parties hereto agree as follows:

- A. **Performance of Duties.** The Judge shall at all times faithfully, and to the best of his ability and experience, perform all of the duties that are required of him pursuant to the expressed and implicit terms of this agreement and pursuant to the rules of professional ethics. The provisions of chapter 3.50 RCW and the Gig Harbor Municipal Code section creating the municipal court are incorporated into the agreement as fully as if set forth therein.
- B. **Compensation.** The City shall compensate the Judge for conducting municipal court cases for the City of Gig Harbor as follows:
1. The monthly salary shall be ~~\$2000~~ \$4000 for general administrative time, jury and non-jury trials and hearings, occasional in-custody arraignments, regular Tuesday and Wednesday court calendars, and related activities not specified herein.
  2. Mileage incurred by the Judge shall not be reimbursed by the City.
  3. Long distance telephone expenses shall be documented and reimbursed by the City to a limit of \$15 per month.



4. The City will annually budget up to fifteen (15) hours of judicial training for the Judge.

The judge shall submit monthly payment invoices to the City after such services have been performed. The City shall pay the full amount of the invoice within thirty (30) days of the receipt.

- C. Liability Insurance. The City shall provide and maintain public officials liability insurance covering the Judge for the discharge of his official duties at limits consistent with levels of coverage maintained for other city public officials and employees.
- D. Judge Pro Tem. In the event of a judicial conflict or disqualification, or when in the discretion of the Judge the use of a Judge Pro Tem is required, the Judge may assign cases to a Judge Pro Tem. The Judge shall propose candidates for the position of Judge Pro Tem to the Mayor with a brief explanation of the need for the employment of the Judge Pro Tem, who shall be members of good standing of the Washington State Bar Association, and subject to confirmation by the Mayor. Salary of Judges Pro Tem shall be paid by the Judge when Judges Pro Tem are employed for reasons other than a judicial conflict or disqualification of the Judge.
- E. Employment Conditions. The employment relation of the Judge and Judges Pro Tem shall be governed by this Agreement. The Judge and Judges Pro Tem are independent contractors and shall provide professional services to the City pursuant to this Agreement. Neither the Judge nor the Judges Pro Tem are employees of the City, and each shall be responsible for paying federal income tax and other taxes, fees, or other charges imposed by law upon independent contractors from the compensation paid to them by the City. Neither the Judge nor the Judges Pro Tem shall be entitled to any benefits provided to City employees and shall specifically not be entitled to sick leave, vacation, unemployment insurance, worker's compensation, overtime, compensatory time or any other benefit not specifically addressed and provided for in this agreement. The Judge and Judges Pro Tem shall be solely and entirely responsible for their acts during the performance of this Agreement. The Judge and Judges Pro Tem shall be subject to the rules of conduct of the relevant personnel policies of the City and the Code of Judicial Conduct. Judges Pro Tem shall be paid at the rate of sixty dollars (\$60) per hour.

In addition, it is recognized that the Judge and Judges Pro Tem will provide work and services for other clients in their independent law practices. The Judge and Judges Pro Tem agree not to perform such services for other clients where a conflict of interest or ethical violation as defined in the rules of professional conduct for attorneys may exist.

- F. **Indemnification.** The Judge is a public official of the City of Gig Harbor. The Judge agrees to indemnify, defend and hold the City harmless for any and all claims or liabilities of any nature for any acts of the Judge that are outside of the scope of his official duties as described herein.
- G. **Term.** This agreement shall commence on January 1, 2002 and terminate on December 31, 2005 unless terminated as provided in this section and section H. If the City chooses to appoint or reappoint the municipal court judge, such appointment or reappointment shall take place on or before December 1, 2005. This agreement may be terminated by the Judge providing a sixty (60) day written notice of termination to the city. The City may remove the Judge from office only as provided in RCW 3.50.095 (as it now exists or may be amended in the future); PROVIDED THAT, the city may decide at any time after execution of this Agreement, to terminate the municipal court as provided in chapter 3.50 RCW and eliminate the position of municipal court judge. Both parties specifically agree that elimination of the position of municipal court judge does not constitute "removal" of the judge from office, and does not trigger RCW 3.50.095 (as it now exists or may be amended in the future). PROVIDED FURTHER, that if the position of municipal court judge becomes full-time as defined in RCW 3.50.055, and the City is required to fill the position by election, the City may also terminate this Agreement by providing the Judge at least sixty (60) days written notice.
- H. **Nonexclusive Contract.** This shall be a nonexclusive contract. The City reserves the right to appoint additional judges, to contract for additional court services in the future, or to terminate this agreement for the purpose of filling the position by election (as required by RCW 3.50.055). Nothing herein shall be interpreted to prohibit such future appointment, or restrict the City's decision to increase the position to full-time, which could trigger the provisions of RCW 3.50.055. Nothing in this Agreement shall guarantee renewal of this Agreement, its level of payment, nor the level of cases forwarded to the Judge for future years, regardless of whether the Judge shall be within the terms of his appointment. In the event of such future appointments, the City reserves the right to renegotiate any and all provisions of this Agreement for future contract terms.
- I. **Resolution of Disputes.** 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, and the City shall determine the term or provision's true intent or meaning. If any dispute arises between the City and the Judge which cannot be resolved by the City's determination in a reasonable period of time, or if the Judge does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be with the Pierce County Superior Court, in Pierce County, Washington. The prevailing party shall be reimbursed by the other party

for its costs, expenses and reasonable attorneys fees incurred in any litigation arising out of the enforcement of this Agreement.

- J. **Integration.** The written provisions and terms of this Agreement shall supersede all prior verbal statements of any officer or representative of the City, or any prior agreements between the parties and such statement or prior agreements shall not be effective or be construed as entering into, forming a part of, or altering this Agreement in any way. The entire agreement between the parties is contained in this Agreement document.
- K. **Severability.** In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect.
- L. **Notice.** Notice given pursuant to this Agreement shall be given in writing to the parties as follows:

Judge: Michael A. Dunn  
585 Bethel Ave., Suite 204  
Port Orchard, WA 98366

City: City Administrator  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, WA 98335

This contract contains the complete agreement concerning the employment arrangement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties.

No waiver or modification of this agreement shall be valid unless in writing and duly executed by both parties. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed to be a waiver or relinquishment of said Agreement provision, and the same shall remain in full force and effect.

DATED this \_\_\_\_\_ day of ~~January, 2002.~~ February, 2004.

CITY OF GIG HARBOR

\_\_\_\_\_  
Gretchen A. Wilbert, Mayor

\_\_\_\_\_  
Michael Dunn, Municipal Court Judge



COMMUNITY DEVELOPMENT DEPARTMENT

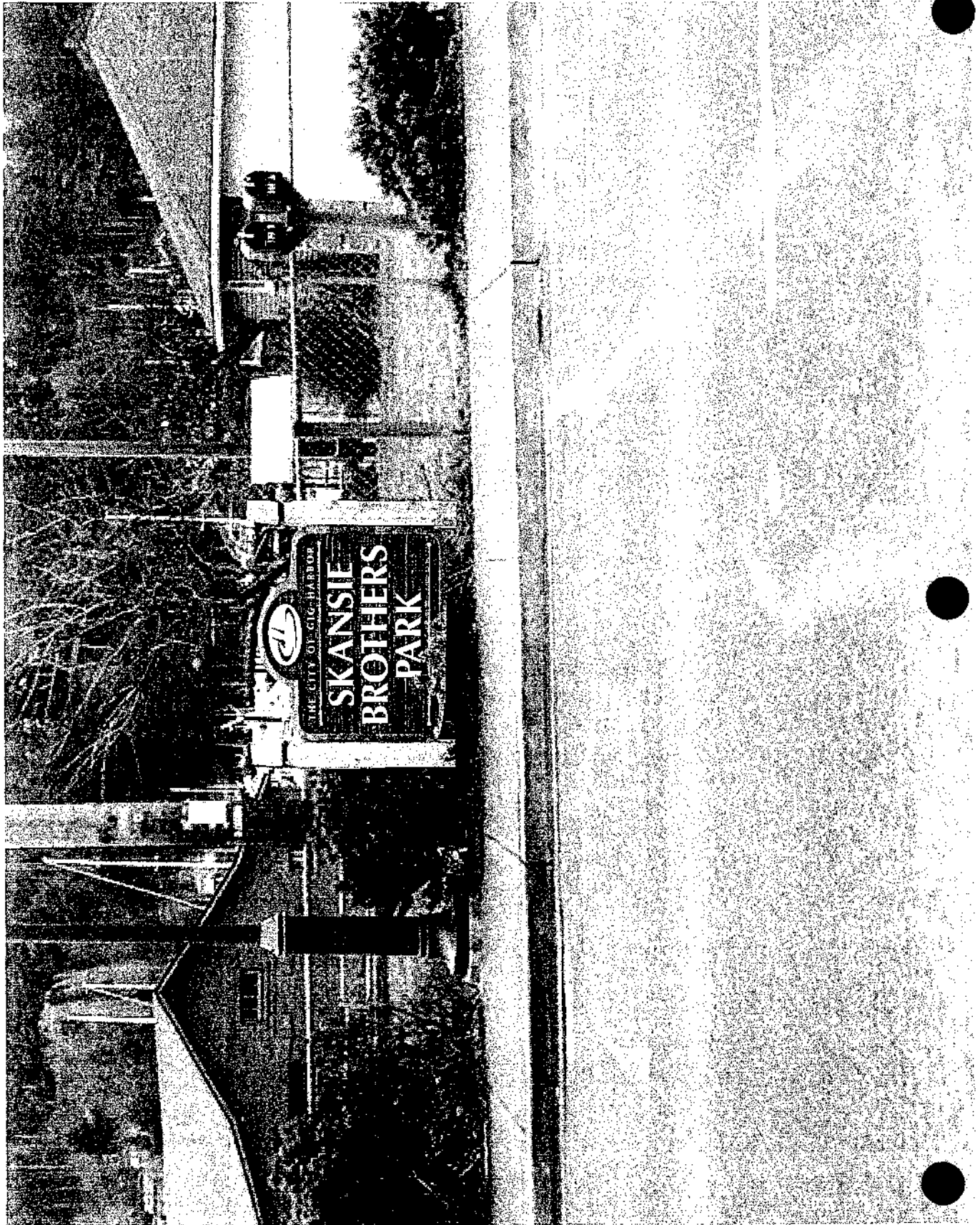
**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: PARK SIGN – SKANSIE BROTHERS PARK**  
**DATE: FEBRUARY 23, 2004**

**STAFF REPORT**

City staff is requesting authorization to install a new park sign at the Skansie Brothers Park. This will include removing all of the existing chain link fence and Mugo pine on the northwest side of the driveway that the city installed behind the sidewalk on Harborview Drive. Attached is the park sign and site map showing the proposed location.

**RECOMMENDATION**

Council approval of the improvements as presented is requested.



THE CITY OF GIG HARBOR  
**SKANSIE BROTHERS PARK**

The logo for the Association of Washington Cities (AWC) features the letters "AWC" in a bold, white, sans-serif font, centered within a solid black square.

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WASHINGTON CITIES

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Fax: (360) 753-0148

Website: [www.awcnet.org](http://www.awcnet.org)

## Elected Officials Training

Monday, March 1, 2004

City of Gig Harbor

6-9:30 pm

Contact: Molly Towslee

(253) 851-8136

[towsleem@cityofgigharbor.net](mailto:towsleem@cityofgigharbor.net)

The City of Gig Harbor will host an elected officials training session on Monday evening, March 1, 2004 at 6 p.m. This will be a two-part session and is presented courtesy of the *Association of Washington Cities, Risk Management Service Agency*:

### 1. " Roles and Responsibilities of Elected Officials "

**Description of Training:** General overview of the division of duties between the mayor, the council, and the municipal court, and the overlap between the three different branches. Discussion of legal requirements and council exposures. Interactive, entertaining and thought-provoking. Bring your own procedural questions to ask the trainer. *Session is conducted by Larry Hoffman, General Legal Council for the Town of Steilacoom. Mr. Hoffman specializes in municipal law.*

### 2. "Meetings, Meetings, Meetings"

**Description of Training:** This session covers the "how to's" of council meetings, public hearings and quasi-judicial meetings. *Session is conducted by Mr. Hoffman.*

### **Questions Regarding the Training?**

Please contact Fred Crumley, Loss Control Specialist at AWC RMSA 1-800-562-8981 or via email address: [fredc@awcnet.org](mailto:fredc@awcnet.org), or Laura Langston [laural@awcnet.org](mailto:laural@awcnet.org)  
Visit our website: [www.awcnet.org](http://www.awcnet.org)

### **Who Can Attend?**

This training is for AWC RMSA members only. It is free. We welcome attendance by you and your staff, council members or commission. Please RSVP directly to the host city contact listed above.