

Gig Harbor City Council Meeting

**September 27, 2004
7:00 p.m.**



"THE MARITIME CITY"

**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
September 27, 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 September 13, 2004.
2. Correspondence / Proclamations: None
3. Cost-Reimbursement Agreement with Department of Ecology – Completion Date Amendment.
4. Renewal of Interlocal Agreement with Pierce County Fire District #5 – Fire Prevention Activities
5. Notice of Intent to Commence Annexation Proceedings – Wright Request (ANX04-02)
6. Street Lights for Stinson Avenue - Purchase Authorization
7. Stinson Avenue Curb, Gutter, and Sidewalk Project – Contract Authorization
8. Resolution No. 630 – Set Public Hearing Date – Prentice Avenue Street Vacation
9. Contract Renewal of Land Use Hearing Examiner Services
10. Survey Monumentation Services – Consultant Services Contract
11. Liquor License Renewals: Thai Hut Thai & Asian Cuisine; Central 76; Fred Meyer #601; Harvester Restaurant; QFC #886.
12. Approval of Payment of Bills for September 27, 2004:
Checks #45087 through #45217 in the amount of \$316,168.18.

OLD BUSINESS: None scheduled.

NEW BUSINESS: None scheduled.

STAFF REPORT:

Worksession - Design Manual Update – Steve Osguthorpe

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

ANNOUNCEMENT OF OTHER MEETINGS:

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i) and property acquisition per RCW 42.30.110(1)(b).

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF SEPTEMBER 13, 2004

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

CALL TO ORDER: 7:02 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 August 23, 2004, Worksession on Building Height of July 19, 2004, and the Design Review Manual Worksession of August 30, 2004.
2. Correspondence / Proclamations: a) Constitution Week b) Letter from Pierce County Housing Authority.
3. Renewal of Copier Maintenance Agreements.
4. Renewal of Laundry Services Agreement.
5. Crosswalk Lighting System – Existing Crosswalk at Discovery Elementary on Rosedale.
6. Resolution No. 629 – Establishing a Work Program for the Review and Revision of the Comprehensive Plan.
7. Civic Center Landscaping Design Improvements.
8. Liquor License Assumption: Quality Food Center #886
9. Approval of Payment of Bills for September 13, 2004:
Checks #44936 through #45086 in the amount of \$333,822.64.
10. Approval of Payroll for the Month of August:
Checks #3378 through #3430 and direct deposits in the amount of:
\$277,150.24.

Mayor Wilbert welcomed members of the local chapter of the Daughters of the American Revolution. She then read the proclamation in support of Constitution Week and presented the signed copy.

MOTION: Move to approve the consent agenda as presented.
Ekberg / Ruffo – unanimously approved.

OLD BUSINESS:

1. Third Reading of Ordinance – Amending the Setback Standards in the PCD-BP District. Steve Osguthorpe, Planning and Building Manager, explained that Council requested that this ordinance be brought back for a third reading after proposing amendments to the definition of ancillary uses. He said that he had amended the ordinance to reflect that ancillary uses for retail would only apply to the Category 2 section. Since that time, the applicant, Dale Pinney, said that he understood the direction from Council to mean that ancillary uses would be allowed in either category if

they meet the setbacks for that category. He said that the ordinance, as presented, allows retail uses that are ancillary to those uses allowed in Category 2 use only, and asked if it was the intent of Council to include both categories.

MOTION: Move to adopt Ordinance No. 967, with the changes outlined by Mr. Osguthorpe.
Ruffo / Young -

Council discussed ancillary use in the two categories and determined that it was desirable to only allow the provision in the category of less intense use.

MOTION: Move to eliminate the modification to the ordinance.
Dick / Young – unanimously approved.

MOTION: Move to adopt Ordinance No. 967.
Ruffo / Young - unanimously approved.

2. Second Reading of Ordinance Supporting a Continuance of a Moratorium on the Acceptance of Applications for Development in the Height Restriction Area for a Period of Six Months. Mr. Vodopich, Community Development Director, explained that two changes had been made to the exemption section of the ordinance. The first is to add demolition permits, the second is to add buildings that do not exceed a certain square footage, which is to be determined by Council before adoption.

Doug Sorensen – 9409 No. Harborview Drive. Mr. Sorensen recommended that Council not vote to continue the moratorium. He said that this is the first time a moratorium, which should be used for an emergency which affects the safety and well-being of the citizens, has been used to stop construction of a single family residence. He asked why Council is circumventing the procedure in place for land use issues utilizing the Planning Commission. He asked Council to exempt single family residences from the moratorium if adopted and to let the Planning Commission hold public hearings on the issue. He mentioned the impact of rising interest rates on projects, adding that he wants to take advantage of the low rates. He then talked about living in the WR zone with an overlay that requires the houses to look like those in Millville, even though there has never been one of that style located there before.

Councilmember Ruffo asked Mr. Sorenson what size home he was considering building. Mr. Sorenson said that he didn't know, but it would be less than 3,500 square feet.

Dawn Sadler – 7508 Pioneer Way. Ms. Sadler said that she supports the previous discussion to exempt residential buildings up to 3,500 square feet from the moratorium. She submitted a letter from her attorney supporting this recommendation.

Susan Harms – 7502 Pioneer Way. Ms. Harms encouraged Council to consider addressing special cases such as the Sadler's if the moratorium is continued.

Councilmember Ruffo suggested inserting 3,500 square feet in the blank of the ordinance.

MOTION: Move to adopt Ordinance 968 continuing the moratorium for a period of six months with the modification to add numbers five, six and seven to the exemptions, and to insert 3,500 square feet to the blank in number seven.
Ruffo / Conan –

Councilmember Young responded to Mr. Sorensen's comments on the need for a moratorium. He explained that the Planning Commission had worked on the building size limitations over the past couple of years. The reason for the moratorium is to prevent a rush of applications before Council had an opportunity to work through all the concerns. The concern was not with structures under 3,500 sq. ft. He said that Council does recognize the significant impact to property owners due to rising interest rates, but the impact to the overall public good and to protect what is left of Gig Harbor's historic nature downtown makes the continuance necessary.

Councilmember Ruffo offered to add language to his motion to reflect that the Council had taken the comments from the worksessions on building size into consideration in adopting the continuance of the moratorium, adding that six months is the maximum time allowed for the moratorium, urging the Planning Commission and staff to get this matter concluded sooner.

Councilmember Dick said that there was considerable testimony that the welfare of our community would be adversely impacted by structures larger than 3,500 square feet. Additionally, there has been question as to how much larger and that matter has yet to be resolved. With the proposed amendment to allow structures up to 3,500 square feet Council is acknowledging the testimony received from a number of sources including that of the Planning Commission. Council has also considered the adverse impacts created by larger structures and that, until it can determined how much larger and in what degree, the purpose of the moratorium is that we not go larger than 3,500 square feet. But, by this exemption I think Council has accommodated the more immediate concern as described by testimony and referenced in the staff report.

John Vodopich asked for clarification on whether the amendment to exclude projects in which buildings do not exceed 3500 s.f. in size, would be inclusive or exclusive of the garage. He recommended that it be exclusive of the garage given that it is not living space.

Councilmembers discussed this option and decided that for the purposes of concerns for the nature of the neighborhood, the character of the town and the views that may be blocked, the garage should be included in the 3500 s.f. threshold.

MOTION: Move to adopt Ordinance 968 continuing the moratorium for a period of six months with the modification to add numbers five, six

and seven to the exemptions, and to insert 3,500 square feet to the blank in number seven. Council has studied the workshop minutes and has taken the comments into consideration in adopting the continuation of the moratorium.

Ruffo / Conan – unanimously approved.

3. Second Reading of Ordinance – Traffic Concurrency Management Update. John Vodopich presented this ordinance that amends the traffic concurrency exemption section based on current case law.

Carol Morris, City Attorney, said that she received notice from the Supreme Court that they will not accept review of the Bellevue case she mentioned at the last meeting, making action on this final, meaning that this ordinance complies with the law.

MOTION: Move to adopt Ordinance No. 969 as presented.
Ekberg / Young – unanimously approved.

4. Second Reading of Ordinance - Northharbor Rezone. John Vodopich presented this ordinance that rezones property held by Donkey Creek Holdings, from Mixed Use Overlay District to the Employment District Zone. This has been approved by the Hearing Examiner and the ordinance is necessary to change the city's zoning map. Staff recommended approval of both this ordinance, and the one following.

Michael Perrow – PO Box 245, Gig Harbor. Mr. Perrow commented on both ordinances. He said that they are troubled by the recent correspondence to two of their tenants stating that these businesses will not be compatible with the ED zoning. Consequently, these businesses will not be allowed to expand or move within the District, but will not be required to terminate. He said that the businesses are not allowed in the ED zone because they are considered retail.

Carol Morris explained that what is before Council is a rezone, and the information that Mr. Perrow is discussing isn't not related to approval of a rezone. The tenants have talked to city staff about an interpretation, which is a quasi-judicial action which would come after the adoption of the ordinances. It is not an action that Council can deal with, and comments should be restricted to the rezone.

Mr. Perrow said that he is asking for an indefinite postponement of the adoption of these ordinances until they could clarify what ancillary and support means. He said that either they were terribly mistaken when they filed for Employment District zoning, and the Planning Commission agreed that it seemed they were more compatible with the ED zoning. Now it turns out that this may not be the case.

Councilmembers agreed and made the following motion.

MOTION: Move to table this ordinance until staff could address the concerns and come back with a recommendation.
Ruffo / Young – unanimously approved.

5. Second Reading of Ordinance - Burnham Drive Rezone. This was discussed under the previous agenda item.

MOTION: Move to table this ordinance until staff could address the concerns and come back with a recommendation.
Ruffo / Young – unanimously approved.

NEW BUSINESS:

1. First Reading of Ordinance – Providing for the Issuance and Sale of Unlimited Tax General Obligation Bonds for the Purpose of Financing the Acquisition of Real Estate. Mark Hoppen, City Administrator, explained that this is an ordinance for approval in one reading to enable this voter approved, bond debt to be placed on the November 2nd ballot. He said that this information has to be submitted to the County Auditor by September 17th. He added that if someone in the community wishes to present a Con statement, they need to contact him immediately. He said that there is already a committee working on the Pro statement.

John McMillan – 9816 Jacobsen Lane. Mr. McMillan said that he appreciates the effort to push this forward. He said that this is a good time to include the other southern three lots in the bond, making the bond easier to sell to the citizens as one package. He then recommended establishing an Ad Hoc Eddon Boatyard Committee to address such issues as the bond campaign, site use and restoration, site development and facility maintenance. Without public participation, there won't be the same level of success as was seen with the Skansie Brother's Park.

Mayor Wilbert asked to have the word "educational" added after "historical" to the explanatory statements in the bond ordinance.

Mr. Hoppen explained that in order to negotiate the additional three lots, one million dollars would have to be added to the bond amount, bringing it to 3.5 million dollars. He said that if all the southern lots were added, the issues related to the waterfront and shared uses between private and public would resolve themselves.

Councilmember Young said that the reason that the bond was pared down, is that Council felt it would be the most likely to be passed by the voters. He said that the increase was worth discussion. Councilmember Ruffo added that the deal was negotiated with the idea that two million would be feasible for approval.

Lita Dawn Stanton – 111 Raft Island. Ms. Stanton asked for information on the waterfront frontage and amount paid for the Skansie Brothers Park property. Mr. Hoppen replied that the waterfront was 280 feet as opposed to the 140 feet at the

Eddon Boat property. The addition of the three lots would bring the total to approximately 300 feet. The city paid 2.8 million for the Skansie property.

Councilmember Ruffo stressed that there was a big difference with the Skansie property, as the city had the ability to purchase the property without having to go out for a bond. In addition, the property owners were willing to deal. Ms. Stanton said that she thinks that preserving the entire cove would make floating a bond more sellable.

Bert Beneville – 3002 Soundview Court. Mr. Beneville said he was speaking for the Gig Harbor Yacht Club in support of the bond issue to keep the Eddon Boatyard and adding the additional three lots.

Jack Bujacich – 3607 Ross Avenue. Mr. Bujacich spoke in support of acquisition of the site for historical purposes. He said that he could not support the additional three lots if the tidelands are not included. He stressed that for a successful promotion of the bond, a clear picture of what was included is important.

Chuck Hunter – 8829 Franklin Avenue. Mr. Hunter urged Council to go for the entire property at 3.5 million for a package to serve the community better. He said that you will have to see if the property owners will accept the 3 million. He asked for clarification that this bond is exclusively for the Eddon Boat property and the work to be done on it. David Rodenbach, Finance Director, assured him that the proposition states that this is specifically for the Eddon Boatyard property. He said that if the city cannot acquire the property, the bonds would not be sold.

Councilmember Young pointed out that the city could not be involved in a campaign process, and therefore could not appoint a committee to oversee the bond campaign.

Councilmember Dick asked for clarification on whether the ordinance would need to be modified to include language to include all parcels of land. Dave Rodenbach said that he would get with the Bond Counsel tomorrow to see if it was necessary to amend the language.

Councilmember Ekberg thanked the public for the recommendation to add the additional parcels. He and Councilmember Conan voiced support of the decision to add the additional three parcels and to increase the bond amount to 3.5 million.

MOTION: Move to adopt Ordinance No. 970, amending the language to increase the amount of the bond to 3.5 million dollars and including the word "educational" where discussed and pass this at its first reading utilizing the emergency procedure.
Ruffo / Young - unanimously approved.

2. Cushman Trailhead Park Asphalt Pathway. John Vodopich presented this contract to complete the asphalt pathway at the triangle Cushman Trailhead Park.

MOTION: Move to authorize the award and execution of the contract for Cushman Trailhead Park Asphalt Pathway to Lakeridge Paving Company in an amount not to exceed Nine Thousand Four hundred dollars and zero cents (\$9,400.00).
Dick / Ruffo – four voted in favor. Councilmember Ekberg abstained.

STAFF REPORTS:

1. John Vodopich, Community Development Director – Fire Inspection Program Analysis.

Mr. Vodopich explained that before he presents information on the Fire Inspection Program, he first would like to update Council on the cost reimbursement agreement with the Department of Ecology. He said that under the terms of the agreement, a decision was to be given by September 10th. Earlier this week, he received indication that the DOE would be unable to meet the deadline, and were proposing a one-month extension to October 11th. The agreement for the extension will be presented to Council at the next meeting. He introduced Don Davidson of the Department of Ecology.

Don Davidson – 300 Desmond Drive, Olympia, Washington. Mr. Davidson, employee of the Water Resources Division of the DOE, explained that the continuation of the contract to process a number of applications for water. He said that there are a number of reasons for the request for the extension; the foremost is the contractor's difficulty in gaining information, unrealistic expectations on the part of DOE, and communication issues. He said that there is no budget increase; only a months delay in processing applications. He said that he fully expected to meet the obligations by October 11th.

Mr. Vodopich then presented information on the Fire Inspection Program Analysis. He said that for the past four years, the city has contracted with Fire District #5 for fire code related inspection services. Earlier this year, staff advised Council that the cost of the contract had increased to the point that it would be fiscally prudent to hire our own fire inspection personnel, and a letter was forwarded to the Fire District indicating that the city would not be renewing the contract for 2005. He was contacted by Chief Bob Black of the Fire District, who met with staff and then reevaluated the program to identify cost savings. They have offered to renew the contract for \$58, 100. Mr. Vodopich explained that a similar in-house program would cost the city \$65,500, so there would be a savings in the Fire Department retaining the program. He recommended that the city re-enter into a contract with Fire District #5. If acceptable, a contract will return at a later date for consideration. He added that Chief Black and Penny Hulse of the Fire Department, were present to answer questions.

Councilmember discussed the proposal and recommended that the contract be considered on a multi-year basis with yearly inflation increases.

MOTION: Move to direct staff to bring back the contract for consideration.
Ruffo / Young – unanimously approved.

2. Chief Mike Davis – GHPD August Stats. No verbal report was given, but the Mayor and Councilmember Ekberg praised the in-depth report.

PUBLIC COMMENT:

Michael Perrow – PO Box 245. Mr. Perrow voiced his concern that the staff doesn't always look for ways for things to work and the explanations that are given are not clear. He said that he would like clarification for "retail uses." He said he appreciates working with John Vodopich on the definition of "ancillary," but asked if staff might need guidance from the Council to more clearly define the percentages of vehicle trips that determine whether or not a business is deemed retail.

Councilmember Young said that it would be desirable to have a clarification of the term "ancillary" because it seems there are different interpretations. John Vodopich said that the issue is that in the Employment District, retail uses are not encouraged in order to reduce the demands on the traffic infrastructure. It allows supportive retail uses ancillary to permitted uses within the zone. It is a gray area that will require a formal, administrative interpretation that will be reviewed by the parties involved. It can then be taken to the Hearing Examiner for a more formal resolution if necessary.

After further discussion, it was determined that this may require a legislative determination to address the concerns.

COUNCIL COMMENTS / MAYOR'S REPORT: None.

ANNOUNCEMENT OF OTHER MEETINGS:

Council Worksession on the Design Review Manual – September 20, 2004 at 6:00 p.m. in the Civic Center Community Rooms.

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

- MOTION:** Move to adjourn to Executive Session at 8:35 p.m. for approximately five minutes for the purpose of discussing pending litigation.
Ekberg / Young - unanimously approved.
- MOTION:** Move to return to regular session at 8:40 p.m.
Ruffo / Young – unanimously approved.
- MOTION:** Move to adjourn at 8:40 p.m.
Ruffo / Young – unanimously approved.

CD recorder utilized:
Disc #1 Tracks 1 – 22.
Disc #2 Tracks 1 – 3.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: COST-REIMBURSEMENT AGREEMENT WITH DEPARTMENT OF
ECOLOGY - COMPLETION DATE AMENDMENT
DATE: SEPTEMBER 27, 2004

INFORMATION/BACKGROUND

The City entered into a cost-reimbursement agreement with the Department of Ecology for the processing of two pending water right applications (Nos. G2-29896 & G2-29937) on June 10, 2004 at a cost of \$53,625.00. The agreement specified a completion date of September 10, 2004. On September 1, 2004 the Department of Ecology requested an amendment to the agreement to extend the completion date to October 11, 2004. The agreement does provide a provision for extension of the final completion date by formal written agreement.

The Department of Ecology has stated that "the scheduled extension is needed to accommodate the consultant's delay in completing the draft Reports of Exam for Ecology's review, and further editing as needed." A representative from the Department of Ecology attended the September 13, 2004 Council meeting and explained the reasons for the delay.

RECOMMENDATION

I recommend Council approve the amendment to the cost-reimbursement agreement as proposed by the Washington State Department of Ecology.

**Washington State Department of Ecology
Cost-Reimbursement Agreement (CRA)
Amendment No. 1**

Between the

**Washington State Department of Ecology
and
City of Gig Harbor
Gig Harbor Project**

CRA Project No. 9R18

**PART A
SPECIAL TERMS AND CONDITIONS AND SCOPE OF WORK**

Current For: FY 2004

The parties agree that the agreement is amended as follows:

1. II. Ecology Information: Ecology's primary point of contact has been changed from Zach Tyler to Laura Lowe, phone 360/407-7031, e-mail LLOW461@ECY.WA.GOV.

2. IV. Schedule: Completion Date – The project completion date is extended to October 11, 2004. The schedule extension is needed to accommodate the consultant's delay in completing the draft Reports of Exam for Ecology's review, and further editing as needed.

All other terms and conditions of the original agreement remain in full force and effect.

The parties sign this agreement.

Applicant's Authorized Official:

By: _____
Title: Mayor
Date: September 27, 2004
Address: 3510 Grandview Street
City, State, Zip: Gig Harbor, WA 98335
Telephone #: 253-851-6170
E-mail: towsleem@cityofgigharbor.net
Fax: 253-851-8563

Ecology's Authorized Official:

By: _____
Title: _____
Date: _____
Address: _____
City, State, Zip: _____
Telephone #: _____
E-mail: _____
Fax: _____



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: RENEWAL OF INTERLOCAL AGREEMENT WITH PIERCE CO. FIRE
DISTRICT 5 FOR FIRE PREVENTION ACTIVITIES
DATE: SEPTEMBER 27, 2004

BACKGROUND

Chapter 15 of the Gig Harbor Municipal Code adopts by reference the 2003 ed. of the International Fire Code (IFC). Section 106.2 of the IFC prescribes a fire safety inspection program for all buildings and premises except residential structures with less than 4 dwelling units and their non-commercial accessory structures.

For the past four years the City has accomplished these inspections through an Interlocal Agreement with Fire District 5. The agreement also specifies certain public education/information functions that are provided for City residents and the business community. The current agreement has an expiration date of December 31, 2004.

FISCAL IMPACT

The fiscal impact of is set forth in Exhibit "B". The cost is based on the number of inspections performed by the District in the previous agreement term plus 50% of the remaining costs of the program. For the year 2005, the total cost to the City will be \$58,100.00. This anticipated cost has been incorporated into the proposed 2005 budget. The proposed agreement is for a three year period and includes a provision for annual increases. Such annual increases would be the lesser of six percent (6%) or the increase in the Seattle Consumer Price Index (CPI) for the 12-month period ending in June of each year.

RECOMMENDATION

I recommend that Council approve the Interlocal Agreement as presented.

**INTERLOCAL AGREEMENT
FOR FIRE INSPECTION SERVICES
BETWEEN THE CITY OF GIG HARBOR
AND PIERCE COUNTY FIRE DISTRICT NO. 5**

THIS AGREEMENT is made and entered into by and between the City of Gig Harbor, Washington, a Washington municipal corporation (hereinafter the "City"), and Pierce County Fire Protection District No. 5, a Washington municipal corporation (hereinafter the "District").

WITNESSETH:

WHEREAS, the City has been annexed to the District, and the District provides fire protection to the City, pursuant to chapter 52.04 RCW; and

WHEREAS, the City and the District have the authority to contract for the provision of fire inspection services, pursuant to chapter 39.34 RCW and RCW 52.12.031(3); and

WHEREAS, in the District's performance of such Fire Inspection Services, the District is required to use the International Fire Code, as adopted by the City of Gig Harbor (pursuant to RCW 52.12.031(6)) and Gig Harbor Municipal Code Section 15.12.015; and

WHEREAS, both the City and the District have the authority to perform fire inspections, pursuant to IFC Sec. 106.2; and

WHEREAS, the District acknowledges that nothing in this Interlocal Agreement or Title 52 RCW grants code enforcement authority to the District (see, RCW 52.12.031(6)); and

WHEREAS, the City desires to contract with the District for the provision of fire inspection services within the City, for the purpose of ascertaining and causing to be corrected any conditions which would reasonably tend to cause fire or contribute to its spread, or any violation of the purpose or provisions of the Uniform Fire Code, as adopted by the City, and of any other law or standard affecting fire safety; and

WHEREAS, the District desires to provide such fire inspection services for the consideration described herein;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Purpose. The purpose of this Interlocal Agreement is to describe the terms and conditions under which the parties will cooperate in fire inspection services within the City of Gig Harbor.

Section 2. Services to be provided by District. The District agrees to provide the following services within the City of Gig Harbor:

A. Inspections.

1. Schedule. Qualified District personnel will inspect buildings and structures in the City, in accordance with the inspection schedule attached hereto as Exhibit A, provided that all buildings except single family, up to four-plex in size with adjacent garage or other accessory structure shall be inspected at least once annually.

2. Inspection Notices. The District shall be responsible for issuance of inspection notices to property owners and occupants.

3. Property Owner's Refusal to Allow Inspection. The District shall notify the City of any response it receives from a property owner/occupant refusing to permit the necessary inspection. The District shall take no action to attempt an inspection without permission of the City, if it receives any refusal from a property owner/occupant for a building/structure inspection.

4. Correction Notices. If the District discovers the presence of any condition which would reasonably tend to cause fire or contribute to its spread, or any violation of the purpose or provisions of the International Fire Code, as adopted by the City, or of any other law or standard affecting fire safety, the District shall issue a Correction Notice. Such Correction Notice shall be provided to the property owner in writing within seven (7) days after the inspection. If any condition exists, which in the opinion of the District inspector, warrants immediate action to protect the public health and safety, the Emergency Correction Notice shall be provided to the property owner within 24 hours of the inspection. The District agrees to provide the City with copies of all Correction Notices within five (5) days after the Correction Notice is issued to the property owner, and to notify the City Fire Marshal within 24 hours of any inspection warranting an emergency Correction Notice.

5. Noncompliance with Correction Notice. If violations are noted during the annual inspection, a correction notice shall be presented to the occupant/owner of the premise. At that time 30 days will be allowed to bring the premise into compliance. If after re-inspection, compliance is still not achieved, the District shall notify the City Fire Marshal in writing within 24 hours of the re-inspection. After such notification by the District, the City shall be responsible for taking any further action to enforce the City's code.

6. The City will provide the District a copy of all preliminary and final utility and street improvement plans, subdivision plans, site plans and building plans of all new construction (except single family homes up to and including four unit dwellings) for review and comment by the District at least one week, (five working days) prior to the date required for comments. The District will forward comments to the City within one week or five working days after receipt of such plans.

Section 3. Annual Reports. The District shall provide the City with an annual report of all its activities under this Agreement, on or before the first day of December. This annual report shall include the following information:

- A. Name and position of inspector(s).
- B. Identification of all properties inspected.
- C. Identification of all Correction Notices issued;
- D. Identification of all Emergency Correction Notices issued;
- E. Identification of disposition of all situations for which Correction Notices or Emergency Correction Notices were issues; and
- F. Listing of all District expenditures relating to such inspections

Section 4. Financial Consideration(s). The City has estimated that the provision of the fire inspection services by the District within the City limits will save the City approximately \$6,900.00 in annual wages and benefits. The District has estimated that the fire inspection services described above will cost the District a total of \$78,600.00. Therefore, the City agrees to make payment to the District as set forth below in order to supplement the inspection program.

Section 5. Payment. The City agrees to pay an amount, as set forth in Exhibit B attached hereto, equivalent to the inspection fees of \$47.00 per occupancy for inspections actually performed by the District and one-half (1/2) of District's remaining actual costs relating to those inspections within the City. The District shall invoice the City for this amount quarterly, and the City shall pay the invoice within 30 days after receipt thereof, unless the City disputes any amount on such invoice. If the City objects to all or any portion of any invoice, it shall so notify the District 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.

Section 6. Term.

A. **Expiration.** This Interlocal Agreement shall expire on December 31, 2007.

B. **Extension of Interlocal Agreement.** Prior to December 31, 2007, the parties will review and analyze the performance, cost effectiveness and efficiency of the District's provision of fire inspection services within the City, and the parties may agree to extend this Interlocal Agreement for one or more years, under the same or different terms and conditions. This contract may be modified by either party with agreement of the other party during an annual review prior to the expiration of the term.

C. **Termination.** The parties may terminate this Interlocal Agreement for any reason, by providing the other party six (6) months prior written notice. In the event of termination, the City shall make the payment described in Section 5 for all fire inspection services satisfactorily performed by the District prior to the effective date of termination, as described in a final invoice provided to the City.

Section 7. Relationship of Parties. In contracting for the services described in this Interlocal Agreement, the District and City are deemed for all purposes to be acting within their governmental capacities. (RCW 52.12.031(3).) No agent, employee, representative, officer or official of the District shall be or shall be deemed to be the employee, agent, representative, official or officer of the City. None of the benefits the City provides to its employees, including, but not limited to, compensation, insurance and unemployment insurance are available from the City to the employees, agents, representatives, officers or officials of the District. The District will be solely and entirely

responsible for its acts and for the acts of its agents, employees, representatives, officials and officers during the performance of this Agreement.

Section 8. Discrimination. In the hiring of employees for the performance of work under this Interlocal Agreement or any subcontract hereunder, the District, or any person acting on behalf of the District, shall not, by reason of race, religion, color, sex, national origin or the presence of any sensory, mental or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

Section 9. Indemnification. The District 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 or damages caused by the sole negligence of the City. In the event of liability for negligence for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the District and the City, its officers, officials, employees, agents and volunteers, the District's liability hereunder shall only be to the extent of the District's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the District's waiver of immunity under Industrial Insurance, Title 51 RCW, or any other applicable insurance available to District employees, including, but not limited to LEOFF, chapter 41.26 RCW or PERS, chapter 41.40 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The District's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the District's employees made directly against the District.

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

Section 10. Insurance.

A. The District shall procure and maintain for the duration of this Interlocal Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the District's provision of fire inspection

services, including the work of the District's employees, agents, officials and officers.

B. Before beginning work under this Interlocal Agreement, the District 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 \$1,000,000 each accident limit, and

2. Commercial General Liability insurance no less than \$500,000 per occurrence with a \$500,000 aggregate.

C. The District is responsible for the payment of any deductible or self-insured retention that is required by any of the District's insurance policies.

D. The City of Gig Harbor shall be named as an additional insured on the District'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 described in subsection B of this section. The City reserves the right to receive a certified and complete copy of the District's insurance policies.

E. It is the intent of this Interlocal Agreement for the District's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to the City. Additionally, the District'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 District shall request from its 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 thirty (30) days in advance of any cancellation, suspension, or material change in the District's coverage.

Section 11. Ownership and Use of Records. Original documents, inspection reports, correction notices, emergency correction notices and other reports developed under this Interlocal Agreement shall belong to and become the property of the District. The City shall have the right to inspect the District's records at all reasonable times, after providing the District with at least five (5) days advance notice. Copies of the documents shall be timely provided to the City as provided in this Interlocal Agreement,

or if such documents are not specifically mentioned in this Interlocal Agreement, at the City's cost for such copies. City agrees to provide similar access to existing historical records on all existing occupancies to show previous agreements or violations, and otherwise assist District in performing the inspection services.

Section 12. District's Agreement to Provide Services Consistent with Law. The District agrees to comply with all federal, state and local codes and ordinances that are now effective or become applicable to the performance of the fire inspection services described in this Interlocal Agreement. The District acknowledges that it is required by law to use the International Fire Code, as adopted by the City of Gig Harbor (chapter 15.12 GHMC), pursuant to RCW 52.12.013(6).

Section 13. Inspections Performed at District's Own Risk. The District shall take all precautions necessary and shall be responsible for the safety of its employees, agents, officers and officials in the performance of the work described in this Interlocal Agreement, and shall utilize all protection necessary for that purpose. All inspections shall be performed at the District's own risk.

Section 14. Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

Section 15. Venue and Attorneys' Fees. Jurisdiction of any litigation brought by either party to enforce the terms of this Interlocal Agreement shall be in Pierce County Superior Court, Pierce County Washington or the U.S. District Court for the Western District of Washington. This Interlocal 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 Interlocal Agreement shall pay the other party's expenses and reasonable attorneys' and expert witness fees.

Section 16. Written Notice. All communications regarding this Interlocal Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified in writing 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 addresses listed on the signature page.

Section 17. Assignment and Modification. Any assignment of this Interlocal Agreement by the District without the written consent of the City shall be void. If the City shall give its consent to any assignment, this section shall continue in full force and effect and no further assignment shall be made without the City's consent. No waiver, alteration or modification of any of the provisions of this Interlocal Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the District.

Section 18. Entire Agreement. The written provisions and terms of this Interlocal Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer, official or employee 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 Interlocal Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Interlocal Agreement and any Exhibits attached hereto.

Section 19. Severability. If any section, sentence, clause or phrase of this Interlocal Agreement 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, sentence, cause or phrase of this Interlocal Agreement.

Section 20. Effective Date. This Interlocal Agreement shall not be effective until signed by the duly authorized representative of the governing body of the parties and all of the following events occur:

- A. Filing of the Interlocal Agreement with the Pierce County Auditor; and
- B. Filing of the Interlocal Agreement with the Gig Harbor City Clerk.
- C. Filing of the Interlocal Agreement with the District Secretary.

IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement on the date below written:

THE CITY OF GIG HARBOR

PIERCE COUNTY FIRE PROTECTION DISTRICT NO. 5

By _____
Gretchen A. Wilbert DATE
Its Mayor

Chairman DATE

Commissioner DATE

Commissioner DATE

Notice shall be sent to:

The City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335

Pierce County Fire District No. 5
10222 Bujacich Rd. NW
Gig Harbor, WA 98332-8540

Attn: Mark Hoppen, City Administrator

Attn: Fire Chief

ATTEST:

Molly Towslee
City Clerk

District Secretary

APPROVED AS TO FORM:

Carol A. Morris
City Attorney

Fire District Attorney

EXHIBIT "A"

Inspection Schedule

In accordance with this contract and under the authority of Gig Harbor Municipal Code, Title 15 Buildings and Construction, the Fire District will perform annual fire safety inspections on all buildings and occupancies except residential structures of less than 4 dwelling units (R-3 dwelling units) and their non-commercial accessory structures.

Exception: Any Group A or B Occupancy having, upon inspection, no noted fire code violations for a period of three years will be allowed a one year grace period prior to its next fire code inspection. They will be sent a letter expressing the District's and City's gratitude for providing a fire safe occupancy and will be placed in the next years regular rotation for inspections. Inspections for that occupancy will be scheduled on a biannual basis thereafter provided no fire code violations are noted during scheduled inspections and the occupancy does not suffer a fire incident.

Exception: City owned buildings and facilities. Such buildings and facilities will be inspected on an annual basis by the City fire marshal.

Other Duties:

- Observe one fire drill at each licensed daycare, private school, and public school within the City limits annually.
- Inspect natural Christmas Trees located in occupancies subject to annual fire inspections.
- Provide Annual Fire Extinguisher Inspection training upon request for the fire extinguisher self-inspection program. This training will be provided by the District using the Ansul Training Manual and NFPA 10 as reference materials. This training will not release the owner/occupant from other maintenance as required in NFPA 10.
- In accordance with Chapter 4 of the 2003 International Fire Code, the District will provide emergency planning assistance and employee training.

Exhibit "B"

Cost of Inspection Program - 2005

Prevention Specialist = ½ FTE **\$42,800.00**

800 – Annual Inspections.

546 – Re-inspections.

1346 X 30 minutes = 40,380 minutes = 673 hours or 27.5 weeks.

Secretarial Support – ½ FTE **\$26,400.00**

Prepare & Mail inspection notices – 2 weeks prior to inspection.

Schedule each inspection.

Prepare Daily inspection schedule.

Enter Inspection data daily.

Prepare and mail inspection compliance notices.

Generate monthly, quarterly and annual reports form data collected.

Pull, update and file inspection documents.

Program Supervision – 1/10th FTE **\$9,400.00**

Review all referrals. (28 Referrals in 2003)

Conduct final inspection on referrals if needed.

Conduct Inspections

Act as Liaison to the City for Code Clarification

Supervise Inspection Personnel

Make referrals.

Adjusted Program Costs for 2005 **\$78,600.00**

Per Contract City pays \$47.00 per each initial inspection + ½ of remaining cost of Inspection Program.

800 Inspections at \$47.00 per inspection = \$37,600

\$78,600 - \$37,600 = \$41,000 divided by 2 = \$20,500.

City Portion Not To Exceed Annual Payments of:

2005 **\$58,100.00**

2006 **\$58,100.00 plus annual increase**

2007 **2006 payment plus annual increase**

Annual Increase - The lesser of six percent (6%) or the increase in the Seattle Consumer Price Index (CPI) for the 12-month period ending in June of each year.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: NOTICE OF INTENTION TO COMMENCE ANNEXATION
PROCEEDINGS - WRIGHT REQUEST (ANX 04-02)
DATE: SEPTEMBER 27, 2004

INTRODUCTION/BACKGROUND

The City has received a complete Notice of Intention to Commence Annexation Proceedings from James Wright for a proposal to annex approximately 16.46 acres (5 parcels) of property located west of Skansie Avenue and north of Hunt Street Northwest adjacent to the existing City limits.

After the filing of the request, no later than sixty (60) days from receipt, the City Council is to meet with the initiating parties to determine:

1. Whether the City Council will accept, reject, or geographically modify the proposed annexation;
2. Whether the City Council will require the simultaneous adoption of the zoning for the proposed area in substantial compliance with the proposed Comprehensive Plan as adopted by City of Gig Harbor Ordinance No. 686; and
3. Whether the City Council will require the assumption of all or any portion of indebtedness by the area to be annexed.

If accepted, the process will then move forward with the circulation of a formal petition for annexation.

RECOMMENDATION

I recommend that Council set a date of October 11, 2004 to meet with the initiating parties of the Wright Notice of Intention to Commence Annexation Proceedings.

**NOTICE OF INTENTION TO COMMENCE ANNEXATION
PROCEEDINGS**

The Honorable Mayor and City Council
City of Gig Harbor
3510 Grandview Street
Gig Harbor WA, 98335

Dear Mayor and City Council:

The undersigned, who are the owners of not less than ten percent (10%) of the acreage for which annexation is sought, hereby advise the City Council of the City of Gig Harbor that it is the desire of the undersigned owners of the following area to commence annexation proceedings:

The property herein referred to is legally described on Exhibit "A" attached hereto and is geographically depicted on a Pierce County Assessor's parcel map on Exhibit "B" further attached hereto.

It is requested that the City Council of the City of Gig Harbor set a date, not later than sixty (60) days after the filing of this request, for a meeting with the undersigned to determine:

1. Whether the City Council will accept, reject, or geographically modify the proposed annexation;
2. Whether the City Council will require the simultaneous adoption of the zoning for the proposed area in substantial compliance with the proposed Comprehensive Plan as adopted by City of Gig Harbor Ordinance No. 686; and
3. Whether the City Council will require the assumption of all or any portion of indebtedness by the area to be annexed.

This page is one of a group of pages containing identical text material and is intended by the signers of the Notice of Intention of Commence Annexation Proceedings to be presented and considered as one Notice of Intention of Commence Annexation Proceedings and may be filed with other pages containing additional signatures which cumulatively may be considered as a single Notice of Intention of Commence Annexation Proceedings.

Resident/Owner Signature	Printed Name	Address & Tax Parcel Number	Date Signed
<i>James A. Wright</i>	James A. Wright	4613 Hunt St N.W 0221073086	3/17/04

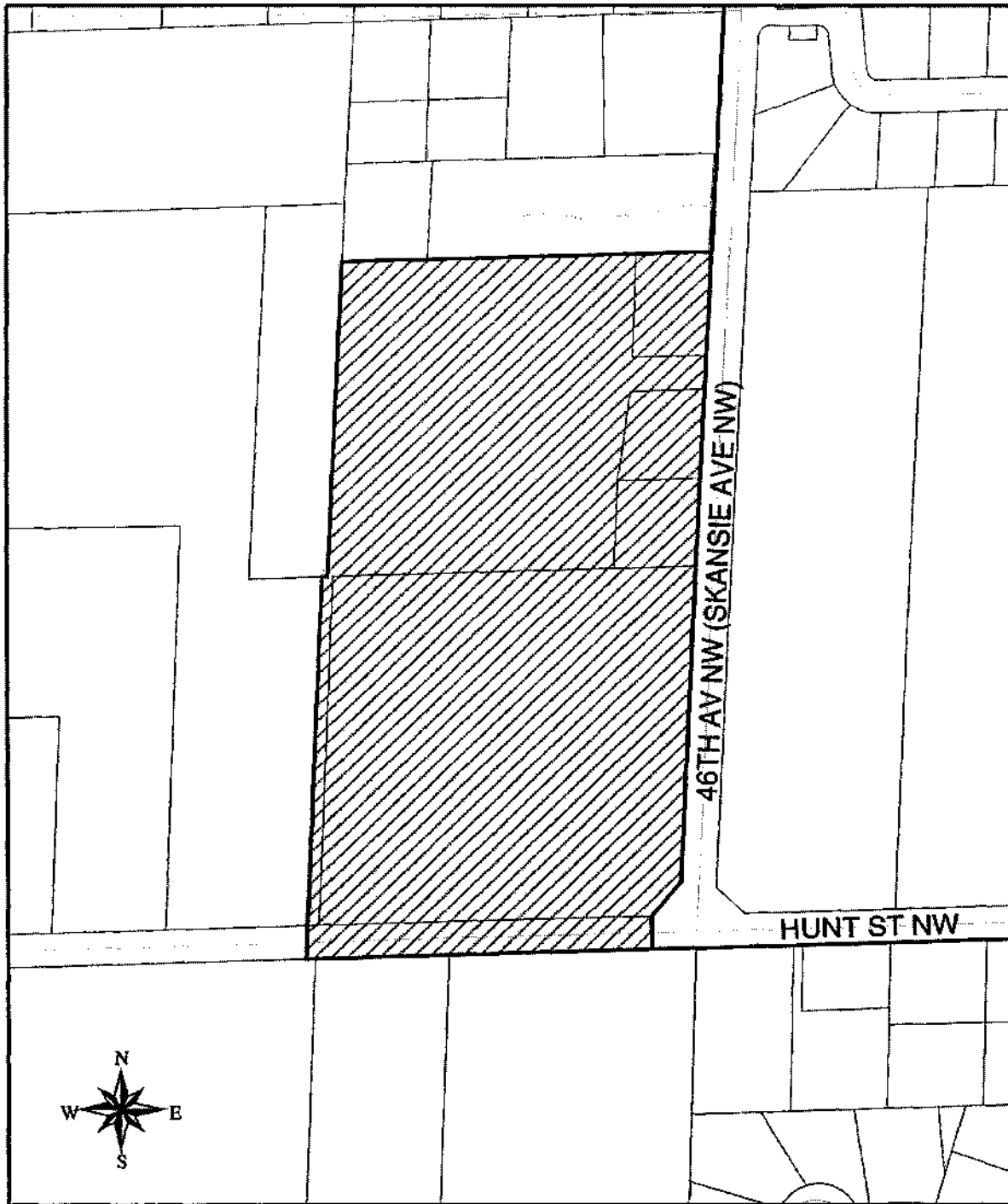
Exhibit A

Wright Annexation Legal Description ANX 04-02

LEGAL DESCRIPTION

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M. IN PIERCE COUNTY, WASHINGTON, THENCE NORTH ALONG THE EAST LINE OF SAID QUARTER SECTION 1224.64 FEET MORE OR LESS TO THE EXTENSION EAST OF THE SOUTH LINE OF LOTS 1 AND 2, AS SHOWN ON SHORT PLAT NUMBER 86021230171, THENCE WEST ALONG THE SOUTH LINE EXTENDED AND THE SOUTH LINE OF SAID SHORT PLAT A DISTANCE OF 667.0 FEET TO THE SOUTHWEST CORNER OF SAID SHORT PLAT, ALSO BEING THE NORTHWEST CORNER OF BALANCE OF ORIGINAL TRACT AS SHOWN ON SHORT PLAT NUMBER 8510140317, FILED WITH THE PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON, AND THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE SOUTH ALONG SAID LINE 562.12 FEET TO THE SOUTHWEST CORNER OF SAID GOVERNMENT SUBDIVISION, THENCE WEST 8 FEET TO THE WEST LINE THE EAST 8 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE SOUTH ALONG SAID WEST LINE 662 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER; THENCE EAST ALONG THE SOUTH LINE THEREOF 665.32 FEET TO THE POINT OF BEGINNING EXCEPT 46TH AVENUE NORTHWEST. EXCEPT THAT PORTION COVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER AUDITOR'S FILE NUMBER 2364858. INCLUDING HUNT STREET NORTHWEST ABUTTING SAID ANNEXATION

Exhibit B
Wright Annexation Map ANX 04-02



Wright Annexation ANX 04-02



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
DIRECTOR, COMMUNITY DEVELOPMENT
SUBJECT: STREET LIGHTS FOR STINSON AVENUE
- PURCHASE AUTHORIZATION
DATE: SEPTEMBER 27, 2004

INTRODUCTION/BACKGROUND

An identified Street Objective in the 2004 Budget was the purchase and installation of street lights which is a portion of the Stinson Avenue Pedestrian Improvement Project.

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

<u>Vendors</u>	<u>Total</u> (Including Sales Tax and Shipping)
Wesco Distribution, Inc.	\$14,230.75
Tacoma Electric Supply, Inc.	\$14,492.16
CED Tacoma	\$14,599.87
TriArc Electric Supply	\$16,744.80

The lowest price quotation received was from Wesco Distribution, Inc. in the amount of \$14,230.75, including Washington state sales tax and shipping.

Work is expected to begin following delivery of the material in mid-December.

ISSUES/FISCAL IMPACT

The material cost is within the \$100,000 that was anticipated in the adopted 2004 Budget, identified under Street Operating, Objective No. 17. City crews will install the street lights.

RECOMMENDATION

I recommend that Council authorize purchase of the street lights for installation along Stinson Avenue from Wesco Distribution, Inc. as the lowest responsible respondent, for their price quotation proposal of fourteen thousand two hundred thirty dollars and seventy-five cents (\$14,230.75), including Washington state sales tax and shipping.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: STINSON AVENUE CURB, GUTTER AND SIDEWALK PROJECT
- CONTRACT AUTHORIZATION
DATE: SEPTEMBER 27, 2004

INTRODUCTION/BACKGROUND

The 2004 budget provides for the construction of a curb, gutter and sidewalk on one side of Stinson Avenue. This contract is for the installation of the curb, gutter and sidewalk. Potential contractors were contacted. One contractor responded with the following price quotation:

Caliber Concrete Construction, Inc. \$ \$19,388.00

Based on the price quotation received, the lowest price quotation was from Caliber Concrete Construction, Inc. in the amount of nineteen thousand three hundred eighty-eight and no cents (\$19,388.00), excluding state sales tax.

It is anticipated that the work will be completed within four weeks after contract award.

FISCAL CONSIDERATIONS

This work is within the \$100,000 that was anticipated in the adopted 2004 Budget, identified under the Street Operating Fund, Objective No. 17.

RECOMMENDATION

I recommend the Council authorize the award and execution of the contract for the curb, gutter and sidewalk on Stinson Avenue to Caliber Concrete Construction, Inc. as the lowest responsible respondent, for their bid quotation amount of nineteen thousand three hundred eighty-eight and no cents (\$19,388.00), not including state sales tax.

**AGREEMENT FOR CONSTRUCTION SERVICES
BETWEEN GIG HARBOR AND CALIBER CONCRETE CONSTRUCTION, INC.**

THIS AGREEMENT, is made this _____ day of _____, 200____, by and between the City of Gig Harbor (hereinafter the "City"), and Caliber Concrete Construction, Inc., a Washington corporation, located and doing business at P.O. Box 1881, Milton WA 98354(hereinafter "Contractor").

WHEREAS, the City desires to hire the Contractor to perform the work and agrees to perform such work under the terms set forth in this Agreement; and

WHEREAS, in the process of selection of the Contractor and award of this contract, the City has utilized the procedures in RCW 39.04.155(3);

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

I. Description of Work. The Contractor shall perform all work as described below, which is attached hereto and incorporated herein by this reference, in a workman-like manner according to standard construction practices. The work shall generally include the furnishing of all materials and labor necessary to install approx 586 lineal feet of curb, gutter and sidewalk on Stinson Avenue. The Contractor shall not perform any additional services without the express permission of the City.

II. Payment.

A. The City shall pay the Contractor the total sum of Nineteen Thousand Three Hundred Thirty Eight and no cents (\$19,338.00), not including Washington State sales tax, for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for these tasks, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed change order.

B. After completion of the work, the City shall pay the full amount of an invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Contractor 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 - owner relationship will be created by this Agreement. As the Contractor is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of the Contractor shall be, or shall be deemed to be the employee, agent, representative or subcontractor of the City. In the performance of the work, the Contractor 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 subcontractors of the Contractor. The Contractor will be solely and entirely responsible for its acts and for the acts of the Contractor's agents, employees,

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Rev: September 22, 2004

CAM48197.1AGR/00008.900000

representatives and subcontractors 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 Contractor performs hereunder.

IV. Duration of Work. The City and the Contractor agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement by both parties. The Contractor shall perform all work required by the Agreement on or before October 30, 2004. The indemnification provisions of Section IX shall survive expiration of this Agreement.

V. Prevailing Wages. Wages paid by the Contractor shall be not less than the prevailing rate of wage in the same trade or occupation in Pierce County as determined by the industrial statistician of the State Department of Labor and Industries and effective as of the date of this contract.

Before any payment can be made, the Contractor and each subcontractor shall submit a "Statement of Intent to Pay Prevailing Wages" to the City, which has been approved by the State Department of Labor and Industries. Each voucher claim (invoice) submitted by the Contractor for payment of work shall have an "Affidavit of Wages Paid", which states that the prevailing wages have been paid in accordance with the pre-filed "Statement(s) of Intent to Pay Prevailing Wages".

VI. Termination.

A. Termination Upon City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon five (5) days written notice to the Contractor.

B. Termination for Cause. If the Contractor refuses or fails to complete the tasks described in Exhibit A, to complete such work by the deadline established in Section IV, or to complete such work in a manner satisfactory to the City, then the City may, by written notice to the Contractor, give notice of its intention to terminate this Agreement. On such notice, the Contractor shall have five (5) days to cure to the satisfaction of the City or its representative. If the Contractor fails to cure to the satisfaction of the City, the City shall send the Contractor a written termination letter which shall be effective upon deposit in the United States mail to the Contractor's address as stated below.

C. Excusable Delays. This Agreement shall not be terminated for the Contractor's inability to perform the work due to adverse weather conditions, holidays or mechanical failures which affect routine scheduling of work. The Contractor shall otherwise perform the work at appropriately spaced intervals on an as-needed basis.

D. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for services satisfactorily performed by the Contractor to the effective date of termination, as described in a final invoice to the City.

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

VIII. Indemnification. The Contractor shall indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, and shall pay for all costs, 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 Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONTRACTOR'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 provisions of this section shall survive the expiration or termination of this Agreement.

IX. Insurance.

A. The Contractor 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 Contractor's own work including the work of the Contractor's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Contractor 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

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

D. The City of Gig Harbor shall be named as an additional insured on the Contractor'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 Contractor's insurance policies.

- E. It is the intent of this contract for the Contractor's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Contractor'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 Contractor 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 Contractor's coverage.

The Contractor shall procure and maintain for the duration of this Agreement, comprehensive general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its employees, agents or subcontractors. The cost of such insurance shall be borne by the Contractor. The Contractor shall maintain limits on such insurance in the above specified amounts: The coverage shall contain no special limitations on the scope of protection afforded the City, its officials, officers, employees, agents, volunteers or representatives.

The Contractor agrees to provide the City with certificates of insurance evidencing the required coverage before the Contractor begins work under this Agreement. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. The City reserves the right to require complete, certified copies of all required insurance policies at all times.

X. Entire Agreement. The written provisions and terms of this Agreement, together with all exhibits attached hereto, all bids specifications and bid documents 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.

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

XII. Work Performed at the Contractor's Risk. The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Contractor's own risk, and the

Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Contractor for use in connection with the work.

XIII. Warranties. The Contractor hereby warrants that it is fully licensed, bonded and insured to do business in the State of Washington as a general contractor. Caliber Construction, Inc. will warranty the labor and installation of materials for a one (1) year warranty period.

XIV. 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 Contractor.

XV. Assignment. Any assignment of this Agreement by the Contractor without the written consent of the City shall be void.

XVI. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

XVII. 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.

XVIII. 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 provisions' true intent or meaning. The City 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 Contractor under any of the provisions of this Agreement which cannot be resolved by the City's determination in a reasonable time, or if the Contractor 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, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party shall be reimbursed by the other party for its costs, expenses, and reasonable attorney's fees incurred in any litigation arising out of the enforcement of this Agreement.

FROM : CITY OF GIG HARBOR

FAX NO. : 253-853-7597

Sep. 22 2004 03:29PM P7

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

Caliber Construction, Inc.

THE CITY OF GIG HARBOR

By: [Signature]
Its president

By: _____
Its Mayor

Notices should be sent to:

<p>Caliber Construction, Inc. PO Box 1881 Milton, WA 98354 (253) 927-0707</p>	<p>City of Gig Harbor Attn: John P. Vodopich, AICP Community Development Director 3510 Grandview Street Gig Harbor, Washington 98335 (253) 851-6170</p>
---	---

Approved as to form:

By: _____
City Attorney

Attest:

By: _____
Molly M. Towselee, City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

DATED: _____

Notary Public in and for the
State of Washington,
Residing at _____
My appointment expires: _____

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

I certify that I know or have satisfactory evidence that _____ 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**, 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,
Residing at: _____
My appointment expires: _____

Exhibit A

PROPOSAL

CALIBER
CONCRETE CONSTRUCTION INC.

P.O.Box 1881
MILTON, WA 98354

PATTERNED CONCRETE
OF SEATTLE
CALIBCC115CA

(253) 927-0707
(253) 850-7741
FAX (253) 927-0706

9/20/2004

PROPOSAL SUBMITTED FOR CITY OF GIG HARBOR PUBLIC WORKS DEPARTMENT	PHONE (253) 851-6170	FAX (253) 853-7597
STREET	JOB NAME STINSON AVENUE	
CITY, STATE, ZIP ATTN: SONIA BILLINGSLEY	JOB LOCATION GIG HARBOR, WA.	

ITEM	QUANTITY	DESCRIPTION	PRICE	UNIT	AMOUNT
	APPROX: 586 LF	CURB AND GUTTER WITH 5' 6" CONCRETE SIDEWALK	33.00	LF	\$ 19,338.00
	586 LF	CURB AND GUTTER	10.50	LF	6,153.00
INCLUDES PERFORMANCE BOND. EXCLUDES: SUBGRADE, LAYOUT, AND TRAFFIC CONTROL. PAYMENT BY FIELD MEASURE.					

<p align="center">ACCEPTANCE OF PROPOSAL</p> <p>THE ABOVE PRICES, SPECIFICATIONS AND CONDITIONS ARE SATISFACTORY AND ARE HEREBY ACCEPTED. YOUR ARE AUTHORIZED TO DO THE WORK AS SPECIFIED. PAYMENT WILL BE MADE AS OUTLINED ABOVE.</p> <p>DATE OF ACCEPTANCE _____</p>	<p>AUTHORIZED SIGNATURE <i>Kathy Quate Weber</i></p> <p>NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN <u>30</u> DAYS.</p>
---	---



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: RESOLUTION NO. 630 – SET PUBLIC HEARING DATE
- PRENTICE AVENUE STREET VACATION REQUEST
DATE: SEPTEMBER 27, 2004

INTRODUCTION/BACKGROUND

The City received a letter on February 27, 2002 from Mr. Nick Tarabochia, owner of the abutting property at 9407 Woodworth, petitioning the City to vacate portions of Prentice Avenue in accordance with GHMC 12.14.002C.

Specifically, the request is for the vacation of the west 30 feet of the Prentice Avenue right-of-way currently held by the City, and abutting the eastern property frontage of parcel #981500022-1. Research on this right-of-way found that this portion of Prentice Avenue was platted in Pierce County in 1891 and was not opened or improved by 1905, therefore it automatically was vacated by operation of law in 1896. The City's ability to open this portion of Prentice Avenue is barred by lapse of time and the City has no interest in the street. In order to ensure that this portion of Prentice Avenue is placed on tax rolls and the ownership is formally recorded, the property owner has requested that the City vacate the street under GHMC 12.14.

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

As defined in 12.14 GHMC a resolution must be passed by the Council setting a time and date for a public hearing on the proposed street vacation.

FISCAL CONSIDERATIONS

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

RECOMMENDATIONS

I recommend that the Council pass the resolution setting Monday, October 11, 2004 at 7:00 P.M. as the date for the public hearing on the proposed street vacation of Prentice Avenue.

RESOLUTION NO. 630

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, TO INITIATE THE PROCEDURE FOR THE VACATION OF A PORTION OF PRENTICE AVENUE LYING BETWEEN WOODWORTH AVENUE AND PEACOCK HILL AVENUE

WHEREAS, Mr. Nick J. Tarabochia, desires to initiate the procedure for the vacation of the portion of Front Street, originally created in the plat called Extension to the City of Gig Harbor, recorded in 1891 in Book 6 of Plats at Page 74 in Pierce County, Washington.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Gig Harbor, Washington:

Section 1. A public hearing upon said street vacation shall be held in the council chambers of Gig Harbor City Hall on Monday, October 11, 2004, at 7:00 p.m., at which hearing all persons interested in said street vacation are invited to appear.

Section 2. The City Clerk is directed to post notices of the hearing in three public places and on the street to be vacated and to mail notices to all owners of any property abutting the portion of street to be vacated, pursuant to RCW 35.79.020.

PASSED this ____th day of September, 2004.

Gretchen A. Wilbert, Mayor

ATTEST:

Molly M. Towslee, City Clerk

RCPI # 43337
TB 1 SC. DC

NICK J. TARABOCHIA

P.O. Box 1607
Gig Harbor, WA 98332
Mobile (253) 549-6733
Office (253) 851-5721
tara@harboret.com

FEB 2 2002

February 21, 2002

Mr. John P. Vodopich AICP
Director of Planning and Building Services
3125 Judson Street
Gig Harbor, WA 98335

RE: Vacation of a portion of front street right-of-way(s)

Dear Mr. Vodopich,

This letter serves as an official request to vacate a 33-foot wide strip of front street right-of-way abutting my property at 9407 Woodworth Ave. in the city of Gig Harbor. This right-of-way along with my property were created from the plat called "Extension to the city of Gig Harbor" record in 1891 in book 6 of plats at page 74 in Pierce County, Washington. These portions of Front Street abutting my property at parcel number 981500-022-1 have never been used as street(s). In fact, most of it lies on a steep hillside.

Under the City of Gig Harbor's Municipal Code 12.14.018.C, which sites the "vacations of streets and alleys subject to 1889-90 Laws of Washington, Chapter 19, Section 32 (Non-user statue)", that portion of Front Street right-of-way abutting my parcel has adversely become mine legally since this right-of-way was never used for its original purpose.

In light of this information, I wish to request that portion of the Front Street abutting my property be vacated. See attached drawings depicting the original location of the subject portion of Front Street right-of-way(s) in relation to my parcels.

Thank you for your assistance.

Sincerely,

Nick J. Tarabochia

enclosure

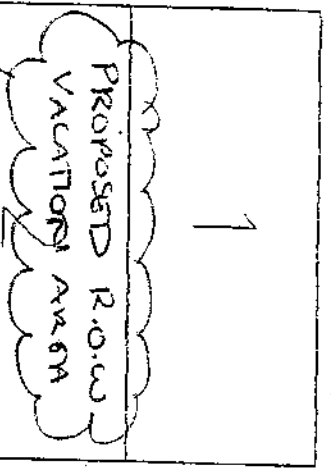
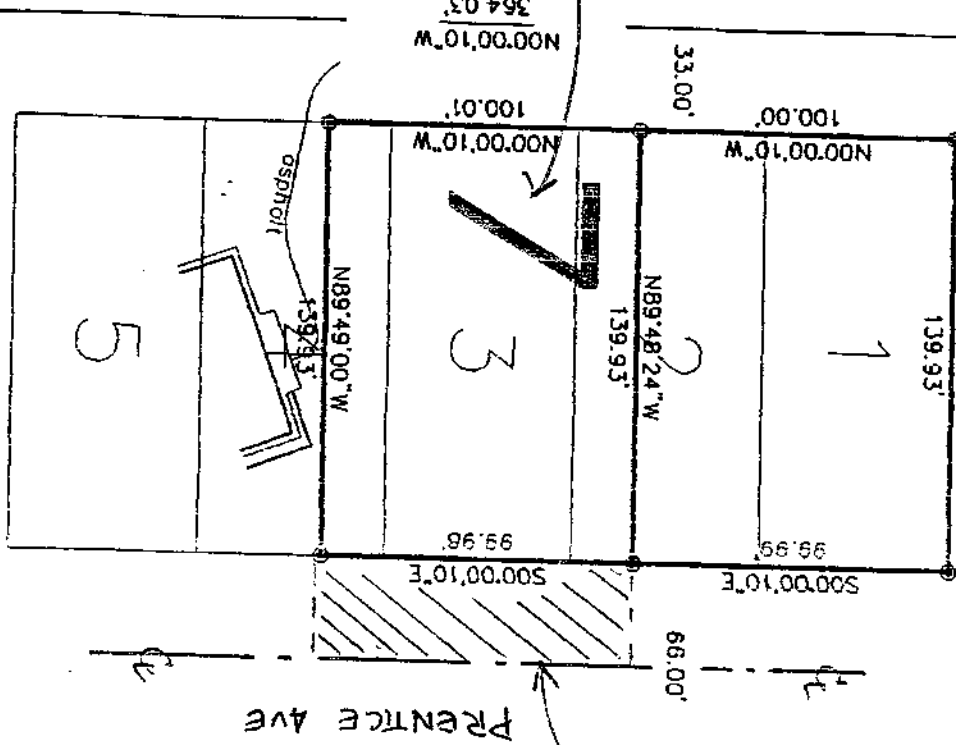
cc: Mark Hoppen, City Administrator

WHITE ST. (SUTHERLAND)

589'48"06"E
418.86'

32.00'

FLORENCE ST. (WOODWORTH AVE.)



Rock Hill Ave

NORTON ST. (BENSON)

N89'49"37"W
418.86'



GRAPHIC SCALE



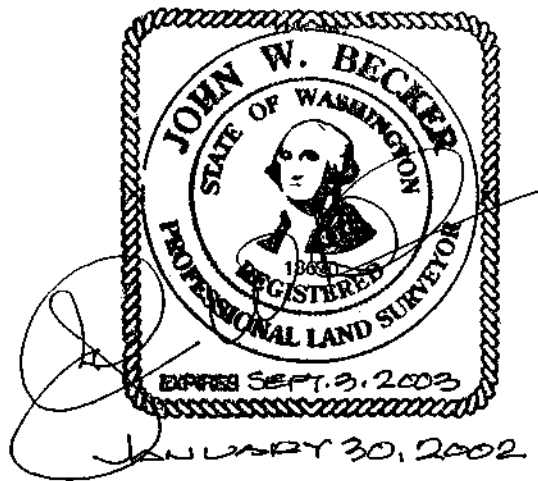
(IN FEET)
1 inch = 60 ft.

PROPOSED
LEGAL DESCRIPTION

RIGHT-OF-WAY THAT WILL ATTACH TO TARABOCHIA ADJOINER FOLLOWING
VACATION OF A PORTION OF PRENTICE AVENUE
GIG HARBOR, WASHINGTON

THAT PORTION OF THE WEST HALF OF PRENTICE AVENUE (FORMERLY
CHESTER STREET) AS DEPICTED ON THE PLAT OF WOODWORTH'S ADDITION
TO GIG HARBOR, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 5 OF
PLATS, PAGE 66, RECORDS OF PIERCE COUNTY, WASHINGTON, LYING
BETWEEN THE EASTERLY PRODUCTION OF THE SOUTH LINE OF THE NORTH
40 FEET OF LOT 2, BLOCK 7 OF SAID PLAT, AND THE EASTERLY
PRODUCTION OF THE SOUTH LINE OF THE NORTH 20 FEET OF LOT 4,
BLOCK 7, SAID PLAT OF WOODWORTH'S ADDITION TO GIG HARBOR.

ALL BEING SITUATE IN THE NORTHEAST QUARTER OF SECTION 6,
TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY,
WASHINGTON.



PREPARED BY AABL, INC.
AABL JOB NO. 201494.50
January 30, 2002

20149450leg.doc



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: CONTRACT RENEWAL - LAND USE HEARING EXAMINER SERVICES
DATE: SEPTEMBER 21, 2004

BACKGROUND

The Council authorized a two year contract renewal in August 2002 for Michael R. Kenyon to continue providing services as Hearing Examiner to the City. This contract is due to expire on September 30, 2004.

Staff has been very pleased with the service Mr. Kenyon has been providing as Hearing Examiner over the past two years. Mr. Kenyon is thoughtful and timely with respect to decisions he is charged with issuing.

The proposed contract has no rate increase for 2005. It includes a \$10.00 rate increase beginning in 2006, for a rate of \$195.00 per hour for the duration of the contract. The contract also states that the City shall not be required to reimburse Mr. Kenyon for his mileage expense to and from the City. The previous contract provided for a reimbursement at \$0.345 per mile. Except for rate adjustments, the contract terms and language is like the 2002 - 2004 contract.

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

FISCAL IMPACT

Adequate funds have been included in the 2005 budget for the provision of Hearing Examiner services.

RECOMMENDATION

I recommend that the City Council move approval of the renewal of the contract for Land Use Hearing Examiner Services with Mr. Michael R. Kenyon for the period of October 1, 2004 through September 30, 2006 as presented.

LAND USE HEARING EXAMINER

EMPLOYMENT AGREEMENT

THE PARTIES

The parties to this Agreement are Michael R. Kenyon, of Kenyon Disend, PLLC, 11 Front Street South, Issaquah, WA 98027, hereinafter referred to as "Hearing Examiner," 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 Land Use Hearing Examiner and the Hearing Examiner agrees to perform the Hearing Examiner duties as provided by state statute and city ordinance. The City desires to contract with an attorney for the position of Hearing Examiner, and the Hearing Examiner warrants that he is an attorney, licensed by the State of Washington, and a member in good standing of the Washington State Bar.

AGREEMENT

The parties hereto agree as follows:

- A. Performance of Duties. The Hearing Examiner shall at all times faithfully, and to the best of his/her ability and experience, perform all of the duties that are required of him/her pursuant to the expressed and implicit terms of this agreement and pursuant to the rules of professional ethics. The provisions of chapter 17.10 of the Gig Harbor Municipal Code and RCW 35A.63.170 are incorporated into the agreement as fully as if set forth therein.
- B. Compensation. The City shall compensate the Hearing Examiner for handling all hearings and administrative duties related thereto for the City of Gig Harbor as follows:
 1. For services rendered after September 1, 2004, the Examiner shall provide services to the City at an hourly rate of one hundred eighty-five dollars (\$185.00) for his performance of the duties described herein, including reasonable travel time not to exceed two hours for each round trip between the Examiner's regular place of employment and Gig Harbor. For services rendered after January 1, 2006, the Examiner shall provide such services at an hourly rate of one hundred ninety-five dollars (\$195.00).
 2. The City shall reimburse the Examiner for his costs involved in photocopying, mailing, and telephone expenses incurred in the performance of his duties as Examiner. The City shall not be required to reimburse the Examiner for his mileage expense to and from Gig Harbor and the Examiner's regular place of employment.

3. The Hearing Examiner 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, unless there is a dispute. In the event of a dispute, the City shall pay the amount not in dispute, and the parties shall resolve the matter pursuant to Section I herein.
- C. Liability Insurance. The City shall provide and maintain public officials liability insurance covering the Hearing Examiner for the discharge of his official duties at limits consistent with levels of coverage maintained for other city public officials and employees. The Hearing Examiner shall maintain professional liability insurance or other insurance as necessary to satisfy his/her obligations under this Agreement.
- D. Hearing Examiner Pro Tem. In the event of a conflict or disqualification, scheduling difficulties, or in any situation in which the use of a Hearing Examiner Pro Tem is required, the Hearing Examiner may assign cases to a Hearing Examiner Pro Tem after following the procedures set forth in this section. At least two weeks in advance of any hearing in which the Hearing Examiner Pro Tem is required, the Hearing Examiner shall propose candidates for the position of Hearing Examiner Pro Tem to the Mayor and Planning Director with a brief explanation of the need for the use of the Hearing Examiner Pro Tem, who shall be members of good standing of the Washington State Bar Association, and subject to approval by the Mayor. The Mayor may decide not to approve the use of an Examiner Pro Tem, and request that the hearing be rescheduled to a time that would allow the Hearing Examiner's attendance. Alternatively, the Mayor may decide to authorize the use of another Hearing Examiner by separate contract. Salary of Hearing Examiners Pro Tem shall be paid by the Hearing Examiner, after billing the City for the work performed by the Hearing Examiner Pro Tem.
- E. Qualifications and Independent Contractor Status.
1. Throughout the term of this Agreement, the Hearing Examiner, and all Hearing Examiners Pro Tem, shall be attorneys licensed by the State of Washington and members in good standing with the Washington State Bar.
 2. The independent contractor status of the Hearing Examiner and Hearing Examiners Pro Tem shall be governed by this Agreement. The Hearing Examiner and Hearing Examiners Pro Tem are independent contractors and shall provide professional services to the City pursuant to this Agreement. Neither the Hearing Examiner nor the Hearing Examiners Pro Tem are employees of the City, and all 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 Hearing Examiner nor the Hearing Examiners 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 Hearing Examiner and Hearing Examiners Pro Tem shall be solely and entirely responsible for their acts during the performance of this Agreement. The Hearing Examiner and Hearing

Examiners Pro Tem shall be subject to the rules of conduct of the relevant personnel policies of the City and the Code of Professional Conduct.

In addition, it is recognized that the Hearing Examiner and Hearing Examiners Pro Tem will provide work and services for other clients in their independent law practices. The Hearing Examiner and Hearing Examiners 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 Hearing Examiner is a public official of the City of Gig Harbor. The Hearing Examiner agrees to indemnify, defend and hold the City harmless for any and all claims or liabilities of any nature for any acts or omissions of the Hearing Examiner, intentional or otherwise, that are outside of the scope of his official duties as described herein.
- G. Term. This agreement shall commence on October 1, 2004 and terminate on September 30, 2006, unless earlier terminated as provided in this section and section H. This agreement may be terminated by the City or the Hearing Examiner with or without cause by providing a thirty (30) day written notice of termination to the other party.
- H. Nonexclusive Contract. This shall be a nonexclusive contract. The City reserves the right to appoint additional Hearing Examiners, to contract for additional hearing examiner services in the future, or to terminate this Agreement as provided for in Section G above. Nothing herein shall be interpreted to prohibit such future appointments. Nothing in this Agreement shall guarantee renewal of this Agreement, its level of payment, nor the level of cases forwarded to the Hearing Examiner in the future, regardless of whether the Hearing Examiner shall be within the term 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 Hearing Examiner, which cannot be resolved by the City's determination in a reasonable period of time, or if the Hearing Examiner 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:

Hearing Examiner: Michael R. Kenyon
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
(425) 392-7090

City: Steve Osguthorpe
Planning & Building Services Manager
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-8136

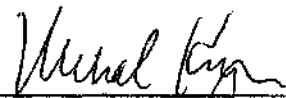
M. Waiver and Modification. No waiver or modification of this agreement shall be valid unless in writing and duly executed by both parties. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed to be a waiver or relinquishment of said Agreement provision, and the same shall remain in full force and effect.

DATED this _____ of _____, 2004.

CITY OF GIG HARBOR

KENYON DISEND, PLLC

Gretchen Wilbert, Mayor



Michael R. Kenyon,
Land Use Hearing Examiner

ATTEST:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN VODOPICH, AICP
SUBJECT: SURVEY MONUMENTATION SERVICES
CONSULTANT SERVICES CONTRACT
DATE: SEPTEMBER 27, 2004

INTRODUCTION/BACKGROUND

The Public Land Survey Office of the Department of Natural Resources (DNR) requires that all new survey monumentation be registered with DNR. Several recent City roadway improvement projects are subject to this requirement. Monumentation registration with the DNR will ensure these monuments are protected against destruction in perpetuity.

POLICY CONSIDERATIONS

David Evans and Associates, Inc. is able to meet all of the City's standard insurance provisions for professional services contracts.

FISCAL CONSIDERATIONS

This work was identified in the 2004 street capital budget, Item No. 18, and \$10,000 was budgeted to fund this expenditure.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with David Evans and Associates, Inc. for survey work in the amount not to exceed ten thousand dollars and zero cents (\$10,000.00).

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

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and David Evans and Associates, Inc., a corporation organized under the laws of the State of Washington, located and doing business at 3700 Pacific Highway East, Suite 311, Tacoma, Washington 98424 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the construction survey services for the survey monumentation work 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 Services, dated September 21, 2004, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

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

TERMS

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Ten Thousand Dollars and no cents (\$10,000.00) 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 December 31, 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
Randy Anderson
David Evans & Assoc., Inc.
3700 Pacific Highway East, Ste. 311
Tacoma, WA 98424
(253) 922-9780

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

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this 21st day of September, 2004.

CONSULTANT
By: Randy Anderson
Its Principal
SR ASSOCIATE 9/21/04

CITY OF GIG HARBOR
By: _____
Mayor

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

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

L:\Pubworks\CONTRACTS & AGREEMENTS (Stand...
Rev: 6/12/02

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 Randy Anderson 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 SENIOR ASSOCIATE of DAVID EVANS AND ASSOCIATES, INC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9/21/04



Renee Genett

RENEE GENETT

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

King County

My Commission expires: 5/16/07

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

TASK 1--SURVEY MONUMENT REMOVAL AND RESETTING WORK TASK 2--GENERAL ON-CALL SURVEY SERVICES WORK

EXHIBIT A

SCOPE OF SERVICES

David Evans and Associates, Inc. (DEA) is pleased to provide this Scope of Services to the City of Gig Harbor (CITY) for survey services. Task 1 work is specific in scope and involves the setting or resetting of survey monuments in compliance with the requirements and regulations of the Washington State Department of Natural Resources (DNR). Task 2 involves performing general survey work for the CITY on an on-call basis.

The total cost for Task 1 and Task 2 work for the duration of this agreement will not exceed \$10,000.00.

Task 1 Work Description

The Public Land Survey Office of the DNR requires that a form entitled "Application for Permit to Remove or Destroy a Survey Monument" be completed and submitted to the DNR before a survey monument is removed or destroyed by any activity. Thereafter a second form entitled "Completion Report for Monument Removal or Destruction" is completed and submitted to DNR providing them with information regarding the new survey monument that was set to replace the originally destroyed monument. DNR requires that both of these forms be sealed and signed by a professional land surveyor registered in the State of Washington.

Municipal activities such as road, storm drainage, and sewer projects undertaken by the City of Gig Harbor that would destroy an existing survey monument need to comply with these DNR regulations.

When so notified by the CITY that work is to occur that will destroy a survey monument, DEA will set temporary reference points for resetting the survey monument(s) after the construction work is completed. DEA will complete the initial application paperwork required by DNR and submit it to the Public Land Survey Office on behalf of the City. DNR requires a minimum of 48 hours of processing time to review and approve the application and return it to the applicant.

After the project is completed DEA will set a new monument meeting CITY standards. DEA will then submit a completion report and submit it to DNR on behalf of the CITY. DEA will provide the CITY with a copy of all paperwork submitted to and received from DNR.

Also included would be the registering of survey monuments that have recently been set by the CITY for road or other municipal projects and not yet registered with DNR.

Task 2 Work Description

This work would involve performing general survey and base mapping work on an on-call basis for the CITY. Work on this task would be done at the direction of the CITY. Work would be done on a time and expense basis as per the rate sheet attached as Exhibit B. When requested DEA would provide a cost estimate and schedule to the CITY before commencing with the work. All work would be done under the supervision and direction of a professional land surveyor.

This work may include additional survey work, setting of property corners, reviewing or preparing property legal descriptions, filing Records of Surveys, preparing topographic and base survey maps, construction staking, and similar work for the CITY.

ADDITIONAL SERVICES

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

SERVICES PROVIDED BY THE CITY AND CONDITIONS OF WORK

- The CITY will obtain permission to access onto adjoining private properties or on easement areas or rights- of-way not belonging to the City of Gig Harbor if necessary.
- The CITY will provide DEA with plans showing the location of the survey monument(s) that will be destroyed in electronic format whenever possible.
- The CITY is aware that DNR requires a minimum of 48 hours to review and approve the application to destroy the original survey monument. The CITY will notify DEA a minimum of six (6) business days prior to the destruction of the survey monument to reference the location of the survey monument and complete the application paperwork to be submitted to DNR. The CITY is aware that DEA has no control over the processing time taken by DNR and destruction of the monument should not occur until approval is granted by DNR.
- The CITY will provide all needed traffic control for DEA's survey effort to reference the location of the original survey monument and to reset the monument after the construction work is completed.

SCHEDULE OF RATES AND ESTIMATED HOURS

DEA will work on this project by the hour on an on-call basis as requested by the CITY. The hourly rates are shown on the attached Exhibit B. Whenever possible work on this

project will be coordinated with other survey done by DEA for the CITY to improve work efficiency and reduce survey crew travel time.

REIMBURSABLES

- Fees for reprographics and postage
- Mileage
- Brassies or other type monuments and other materials necessary to complete the work as requested by the CITY
- Registering fees if applicable

PROJECT SCHEDULE

DEA is available to begin work within 48 hours after written authorization of this Scope of Work is received from the CITY.

GIGHARSURVEY-1.doc
9/21/2004

DAVID EVANS AND ASSOCIATES, INC.
 3700 PACIFIC HIGHWAY EAST
 TACOMA, WA 98424

CITY OF GIG HARBOR
 SURVEY MONUMENT REMOVAL AND RESETTING WORK
 GENERAL ON-CALL SURVEY WORK
 EXHIBIT B
 SCHEDULE OF RATES

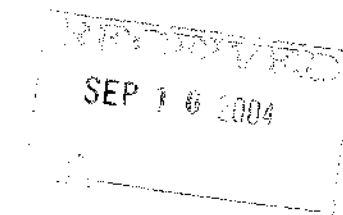
	Project Manager	Office/Clerical	Survey Manager/PLS	Survey Technician	CAD Technician	2-Person Survey Crew	Task Sums
	\$ 130.00	\$ 43.50	\$ 137.15	\$ 79.05	\$ 76.20	\$ 130.00	
ALL WORK ON THIS PROJECT WILL BE DONE BY THE HOUR ON AN ON-CALL BASIS AS REQUESTED BY THE CITY OF GIG HARBOR. HOURLY RATES SHOWN ON THIS EXHIBIT ARE CURRENT AS OF 9/04.							
THE TOTAL COST FOR ALL WORK FOR THE DURATION OF THIS AGREEMENT WILL NOT EXCEED \$10,000.00.							
ESTIMATED COST							
EXPENSES							
Mileage at \$.36 per mile							
Brassies, Monument Cases and Covers and other materials charged at direct costs							
Reprographics/Postage at direct costs							
TOTAL PROJECT COST							

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

14 of 14

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
 (BY ZIP CODE) FOR EXPIRATION DATE OF 20041231

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 THAI HUT INC.	THAI HUT THAI & ASIAN CUISINE 4116 HARBORVIEW DR GIG HARBOR WA 98332 1080	078469	BEER/WINE REST - BEER/WINE
2 GIG HARBOR GASOLINE LLC	CENTRAL 76 3718 56TH ST GIG HARBOR WA 98335 0000	081604	GROCERY STORE - BEER/WINE
3 FRED MEYER STORES, INC.	FRED MEYER #601 5500 OLYMPIC DR BLDG B GIG HARBOR WA 98335 0000	076448	GROCERY STORE - BEER/WINE
4 HARVESTER GIG HARBOR, INC.	HARVESTER RESTAURANT 5601 SOUNDVIEW DR GIG HARBOR WA 98335 0000	366707	SPIRITS/BR/WN REST LOUNGE +
5 QUALITY FOOD CENTERS, INC. DBA	QUALITY FOOD CENTERS / QFC #886 3110 JUDSON AVE GIG HARBOR WA 98335 0000	362719	GROCERY STORE - BEER/WINE



Attention:

Enclosed is a listing of liquor licensees presently operating establishments in your jurisdiction whose licenses expire on DECEMBER 31, 2004. Applications for renewal of these licenses for the upcoming year are at this time being forwarded to the current operators.

As provided in law, before the Washington State Liquor Control Board shall issue a license, notice regarding the application must be provided the chief executive officer of the incorporated city or town or the board of county commissioners if the location is outside the boundaries of an incorporated city or town.

Your comments and recommendations regarding the approval or disapproval for the enclosed listed licensees would be appreciated. If no response is received, it will be assumed that you have no objection to the reissuance of the license to the applicants and locations listed. In the event of disapproval of the applicant or the location or both, please identify by location and file number and submit a statement of all facts upon which such objections are based (please see RCW 66.24.010{8}). If you disapprove then the Board shall contemplate issuing said license, let us know if you desire a hearing before final action is taken.

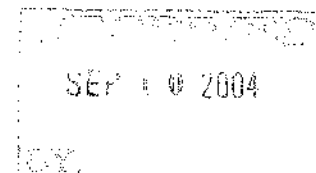
In the event of an administrative hearing, you or your representative will be expected to present evidence in support of your objections to the renewal of the liquor license. The applicant would presumably want to present evidence in opposition to the objections and in support of the application. The final determination whether to grant or deny the license would be made by the Board after reviewing the record of the administrative hearing.

If applications for new licenses are received for persons other than those specified on the enclosed notices, or applications for transfer of licenses are received by the Board between now and DECEMBER 31, 2004, your office will be notified on an individual case basis.

Your continued assistance and cooperation in these licensing matters is greatly appreciated by the Liquor Control Board.

LORRAINE LEE, Director
Regulatory Services
Enclosures

MAYOR OF GIG HARBOR
3110 GRANDVIEW ST
GIG HARBOR, WA 98335





COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: STEVE OSGUTHORPE, AICP
PLANNING & BUILDING MANAGER *S.O.*
SUBJECT: WORKSESSION ON DESIGN MANUAL UPDATE
DATE: SEPTEMBER 27, 2004

At the September 20th worksession, the Council decided to discuss a continued worksession schedule at the next regularly scheduled Council meeting on September 27, 2004. The staff has therefore prepared the following worksession schedule for the Council's consideration:

Third Worksession:	October 4, 2004
Fourth Worksession:	October 18, 2004
Fifth Worksession:	November 15, 2004

The staff recommends that the Council target the November 15th worksession as an anticipated final worksession. If Council review is not completed at that time, the staff will recommend that the Council identify any remaining specific areas of concern prior to any additional meetings. That would allow us to maintain focused and paced discussions of any remaining issues.



COMMUNITY DEVELOPMENT DEPARTMENT

August 26, 2004

Deborah Olson
PO Box 1967
Gig Harbor, WA 98335

Re: Business License Application for Olson Ventures, Inc.

You have submitted an application for a business license for the above referenced business. This application was routed to the planning division to review for compliance with the zoning code and I wanted to take this opportunity to provide you with some information pertaining to your business.

The owners of the Burnham Drive Commercial Park recently requested a rezone of that property. The rezone has been given approval by the City of Gig Harbor, but the rezone has not yet been finalized. The Council is set to finalize the rezone on the September 13, 2004 Council meeting. The zoning on a particular site determines the uses allowed on that property. Therefore, I am informing you of this rezone because your type of business is not listed as a permitted use in the new zone. You will not be required to terminate your business provided it is established prior to the effective date of the rezone. However, your business will become a nonconforming use and will be governed as such by the City of Gig Harbor. As a nonconforming use you will not be allowed to expand, in area or volume, the business within the Commercial Park. In addition, you could not move your business from one location in the park to another. I have enclosed all of the regulations regarding nonconformities from the Gig Harbor Municipal Code (Chapter 17.68 GHMC). I have also included the sections of code on the uses allowed in the current zone (Mixed Use District Overlay, Chapter 17.91 GHMC) and the uses allowed in the soon-to-be finalized zone (Employment District, Chapter 17.45 GHMC).

Another option may exist for you once the rezone occurs. The Gig Harbor Municipal zone allows you to request an interpretation from the Community Development Director on whether your business (insurance restoration, carpet cleaning, duct cleaning business) is consistent with the principal uses allowed in the Employment District. If an interpretation is made in your favor, your use would be considered a permitted use, and would no longer be nonconforming. I have enclosed the section of code regarding this issue (GHMC Section 17.66.050 (A)(2)). If you would like to follow this course of action, you should make the request for interpretation to John P. Vodopich, Community

Development Director. You should include information about your business and business practices and discuss why your use is consistent with the uses allowed in the Employment District.

If you have any questions relating to this information, please give me a call at (253) 851- 6170 or email me at sittsj@cityofgigharbor.net. As your proposed business is consistent with the current zoning at the property, I have given planning approval for the license and have forwarded it onto the next department for review. You will be contacted when the review process is complete.

Sincerely,



Jennifer Sitts
Associate Planner

L:\Correspondence\BL- Olson Ventures Rezone.doc

Chapter 17.45

EMPLOYMENT DISTRICT (ED)

Sections:

- 17.45.010 Intent.
- 17.45.020 Permitted uses.
- 17.45.030 Conditional uses.
- 17.45.040 Performance standards.

17.45.010 Intent.

The employment district provides for the location of high quality design development and operational standards for technology research and development facilities, light assembly and warehousing, associated support service and retail uses, business and professional office uses, corporate headquarters and other supporting enterprises. The employment district is intended to be devoid of nuisance factors, hazards and potentially high public facility demands. Retail uses are not encouraged in order to preserve these districts for major employment opportunities and to reduce the demand for vehicular access. (Ord. 707 § 1, 1996).

17.45.020 Permitted uses.

The following uses are permitted in an employment district:

- A. Research and development facilities;
- B. Light assembly and warehousing;
- C. Light manufacturing;
- D. Service and retail uses which support and are ancillary to the primary uses allowed in the employment district;
- E. Professional offices;
- F. Corporate headquarters;
- G. Distribution facilities;
- H. Vocational, trade and business schools;
- I. Book and magazine publishing and printing;
- J. Financial and investment institutions;
- K. Commercial photography, cinematography and video productions facilities;
- L. Reprographic services;
- M. Computer assembly plants;
- N. Courier services;
- O. Mail and packaging facilities;
- P. Trails, open space, community centers;
- Q. Schools, public and private; and
- R. Contractor's yards. (Ord. 753 § 1, 1997; Ord. 707 § 1, 1996).

17.45.030 Conditional uses.

Subject to the requirements, standards and procedures for conditional uses set forth in Chapter

17.64 GHMC, the following uses may be permitted in an employment district:

- A. Hospitals, clinics and establishments for people convalescing from illness or operation;
- B. Senior citizen housing;
- C. Commercial child care facilities;
- D. Public utilities and public services such as libraries, electrical substations, telephone exchanges, police and fire stations;
- E. Recreational buildings and outdoor recreation;
- F. Houses of religious worship;
- G. Planned unit developments with a minimum of 65 percent of the site consisting of an employment based use; and
- H. Ministorage facilities. (Ord. 771 § 13, 1997; Ord. 707 § 1, 1996).

17.45.040 Performance standards.

All uses in the employment district shall be regulated by the following performance standards:

A. **Setbacks.** No structure shall be closer than 50 feet to any residential zone or development or closer than 20 feet to any street or property line. Parking shall not be located any closer than 35 feet adjacent to a residential zone or development, or any closer than five feet to any interior lot.

B. **Open Space.** A minimum of 15 percent of the site, excluding setbacks, shall remain in open space, with either retained natural vegetation or new landscaping.

C. **Landscaping.** All uses shall conform to the landscaping requirements established in Chapter 17.78 GHMC. All required yards shall be landscaped in accordance with the landscaping requirements of Chapter 17.78 GHMC. Yards adjacent to residential zones or development shall include a 35-foot-wide dense vegetative screen.

D. **Lot Area.** There is no minimum lot area for this district.

E. **Height.** The maximum height of a building shall not exceed 35 feet.

F. **Lot Coverage.** There is no maximum lot area coverage except as needed to meet setback, open space and landscaping requirements.

G. **Off-Street Parking.** Off-street parking and loading areas meeting the requirements of Chapter 17.72 GHMC shall be provided.

H. **Exterior Mechanical Devices.** All HVAC equipment, pumps, heaters and other mechanical/electrical devices shall be screened from view from all public right-of-way.

I. **Outdoor Storage of Materials.** Outdoor storage of materials and supplies, except for authorized