

Gig Harbor City Council Meeting

**October 13, 2003
7:00 p.m.**



"THE MARITIME CITY"

**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
October 13, 2003 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

PUBLIC HEARING: Hazen Annexation Request.

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 22, 2003.
2. Correspondence / Proclamations: a. Emergency Preparedness b. QwestDex, Inc.
3. Liquor License Renewals; Maritime Mart, JT's Original BBQ, Finholm's Market, Gig Harbor Chevron.
4. Approval of Payment of Bills for October 13, 2003.
Checks #41293 through #41480 in the amount of \$428,196.31.
5. Approval of Payroll for the month of September.
Checks #2807 through #2865 and direct deposits in the amount of:
\$247,802.62.

OLD BUSINESS:

1. Resolution – Hazen Annexation (03-02).
2. Second Reading of Ordinance – Latecomer Agreements.

NEW BUSINESS:

1. Nomination to Growth Management and Transportation Policy Board – Councilmember Derek Young.
2. First Reading of Ordinance – Vacation of Rust Street – Sorensen.
3. Sanitary Sewer Facilities Maintenance Agreement – Horizon West.
4. Extension of Closing Date – Hific Six Associates.
5. 36th / Point Fosdick Agreement for Intersection Improvements.

STAFF REPORT:

John Vodopich, Community Development Director - Park Signage.

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).

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF SEPTEMBER 22, 2003

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

CALL TO ORDER: 7:03 p.m.

PLEDGE OF ALLEGIANCE

SWEARING IN CEREMONY: Chief of Police Mitch Barker gave a brief overview of the Reserve Officer program and introduced Reserve Officer Christopher Langhelm. Mayor Wilbert performed the swearing in ceremony for Officer Langhelm.

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 8, 2003.
2. Short Term Use Agreement – Bremerton Motorsports Park.
3. Postage Meter Agreement.
4. Garage Door Openers at City Shop – Contract Authorization.
5. WWTP Plant Upgrades – Amendment No. 1.
6. West Side Park Survey.
7. Parcel Acquisition.
8. Grandview Forest Park Tank Repainting Project.
9. Wilkinson Farm Park Survey.
10. Franklin / Prentice Street Improvement Project – Amendment No. 1.
11. Special Occasion Liquor License Approval – St. Nicholas Knights of Columbus.
12. Approval of Payment of Bills for September 22, 2003.

Checks #41147 through #41292 in the amount of \$257,722.00.

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

OLD BUSINESS:

1. Second Reading of Ordinance – Utility Rate Reduction for Low Income Seniors. David Rodenbach, Finance Director, presented this second reading of an ordinance designed to allow a rate reduction for qualified low-income seniors, and establishes an average payment plan. He explained that adjustments had been made to the ordinance from the first reading to clarify the language and to limit its application to seniors over 62 years of age. He gave an overview of the program and addressed questions regarding deferred payment, interest accrual, and the number of households that may qualify.

MOTION: Move to adopt Ordinance No. 941 as presented.
Dick / Picinich –

Councilmember Franich voiced concern regarding calculation of the annual disposable income. He recommended exclusion of capital gains from this calculation. Councilmembers discussed this concern.

Councilmember Franich suggested an amendment to the motion regarding waiver of connection fees. Council discussed the difference between utility connections for new construction versus for the customer who finds it necessary to connect an existing structure.

AMENDED MOTION: Move to amend the original motion adopting Ordinance No. 941 by eliminating the second whereas paragraph, and the language in subsection C on page 2, and language in subsection D that refers to the collection of connection fees.
Franich / Picinich – a roll call vote was taken.

Ekberg – no; Young – no; Franich – yes; Dick – no; Picinich – yes.
The motion failed, three to two.

RESTATED MOTION: Move to adopt Ordinance No. 941 as presented.
Dick / Picinich – unanimously approved.

NEW BUSINESS:

1. Skansie Net Shed, House and Garage Painting Project. John Vodopich presented this contract to repaint the Skansie shed, house and garage. He answered questions on the significance in difference in the bid price and bonding concerns. Councilmembers also discussed the merits of painting the structures as opposed to leaving them alone. It was determined that painting would stop further deterioration of the wooden structures.

MOTION: Move to authorize the award and execution of the contract for the Skansie net shed, house, and garage painting to Metropolitan Coatings LLC in the amount of fourteen thousand six hundred seventy-seven dollars and thirty-six cents (\$14,677.36).
Picinich / Dick – unanimously approved.

2. Olympic / Hollycroft Feasibility Study. John Vodopich explained that staff was requested to investigate options for improvements to the intersection of Olympic Drive and Hollycroft by the Public Works Committee,. The feasibility study explores the option for a roundabout at this site. Councilmembers and staff discussed the placement of more roundabouts in the city.

MOTION: Move to authorize execution of the Consultant Services Contract with Skillings-Connolly, Inc. for a feasibility study in the amount not to exceed (\$17,958.51).
Dick / Picinich – unanimously approved.

3. Resolution – Rust Street Vacation. John Vodopich explained that the city received a request to vacate a portion of Rust Street adjacent to the Sorensen property. He explained that the first step in the process is to set a date for a public hearing to consider the petition. He recommended a date of Monday, October 13th be set as the date.

Sherrie Bonsell, 9608 Jacobson Lane, Gig Harbor, WA. Ms. Bonsell asked whether the city had any interest in public access to the property on Rust Street. Mark Hoppen explained that there is no legal interest.

MOTION: Move to adopt Resolution No. 615 as presented.
Young / Picinich – unanimously approved.

4. First Reading of Ordinance – Latecomer Agreements. John Vodopich presented this agreement regarding the collection of latecomers' agreements. He explained that this codifies the state statutes and incorporates a formal process to provide for the authorization of these agreements. This will return for a second reading at the next meeting.

5. Dedication of Trail – Plat of Mallards' Landing. John Vodopich explained that one condition of approval of the Concomitant Agreement for the Tallman Annexation and condition of approval for the plat of Mallard's Landing provided for the creation of a trail system throughout the property and that the improvements be dedicated to the city. The city attorney recommended that this be accomplished through a Bill of Sale with no funds exchanging hands.

Scott Wagner, PO Box 492, Gig Harbor. Mr. Wagner asked whether the intent was for the city to own the property because he thought it was originally set up as an easement. Councilmember Dick explained that the easement has already been conveyed, and that the Bill of Sale is for the improvements on the easement to show that there are no encumbrances. Mr. Wagner commended staff members Rob White, Dave Brereton, and Pat lolavera for their flexibility and time spent on this eight-year process. He added that the members of the Tallman Family are excited about the possibility of a formal dedication ceremony.

The Mayor praised the efforts and said that a dedication ceremony would be scheduled. Councilmember Ekberg echoed the Mayor's comments.

MOTION: Move to approve the Bill of Sale as presented.
Picinich / Ekberg – unanimously approved.

STAFF REPORTS:

GHPD – August Stats. No verbal report given as stats, but Chief Barker noted that the Gig Harbor Police Department made public today the investigative file on the Brame case.

COUNCIL COMMENTS / MAYOR'S REPORT:

Councilmember Young reminded fellow Councilmembers and staff of the upcoming Regional AWC Conference on October 22, 2003.

ANNOUNCEMENT OF OTHER MEETINGS:

Budget Worksessions: November 3rd and 4th, 6:30 p.m.

ADJOURN:

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

CD recorder utilized:
Disc #1 Tracks 1 – 13

Gretchen Wilbert, Mayor

Molly Towslee, City Clerk

The City of Gig Harbor Strives for Greater Emergency Preparedness

Wildfires, earthquakes and hurricanes around the world, increased crime, and natural disasters that regularly occur in this region remind us it's time for **Gig Harbor residents to focus on emergency planning in our own community.**

*Do YOU know what to do when ...
The streets are covered with ice, or
The ground begins to shake and the bridge is closed, or
The lights flicker, dim and go out, or
You see a stranger lurking near your neighbor's window?*

Or

You are a small business with six employees who are unable to get home due to a disaster?

If you are like the rest of us you begin to think: "I should know what to do. I should have a plan..." Well, **plan now** to attend a meeting in Gig Harbor to learn how to take those "should have" steps to prepare for emergencies. Two meetings are planned to tell you about a program called **Pierce County Neighborhood Emergency Team (PC-NET).**

October 29th	Harbor Ridge Middle School	7 to 9 PM
November 19th	Gig Harbor Civic Center	7 to 9 PM

Plan to attend one of these meetings and hear from city officials and members of Pierce County Emergency Management and the Sheriff's department talking about how you and your neighbors can help each other after a disaster.. You will hear from folks from some of our own neighborhoods who have already formed PC-NET teams. There will be plenty of time for questions. Currently there are six Gig Harbor PC-NET teams. Our goal is to have teams blanket the city!

Preparedness is not just for neighborhoods. Businesses, large and small, also need to have plans in place to cope with disasters. A special meeting geared for business needs will be held on

January 29th	Gig Harbor Civic Center	7 to 9 PM
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Local emergency officials recommend that we should plan to be self sufficient for at least three days following a major disaster, such as an earthquake. **It is estimated that regular emergency services will be unable to respond to most calls during those first 3 days. The PC-NET program helps neighbors respond in ways that will save lives and reduce property damage during this crucial 3-day period.**

Another component of PC-NET is the Neighborhood Action Team (NAT) that meets to discuss crime prevention and other techniques to make each neighborhood a safer place to live. Working with a member from the Pierce County Sheriff's department, neighbors learn to be more aware and what to do with information to help our local police

department reduce crime. Crime prevention and homeland security activities are part of the NAT members' training.

PC-NET works in partnership with the American Red Cross and the Peninsula Emergency Preparedness Committee (PEP-C) to see that families living throughout the Gig Harbor area are prepared to face emergencies

Mark your calendars. Urge your neighbors to join you. You can make a difference if you have a plan.

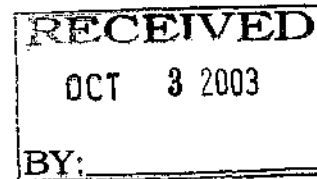
QwestDex, Inc.
Recycling Dept.
13920 SE Easgate Way
Bellevue, Wa 98005

Phone Number (800) 440-2189
(425) 614-2123
Fax Number (425) 614-2381
Email diana.leland@dexmedia.com

QwestDex 

September 30, 2003

Ms. Gretchen Wilbert
Mayor
City of Gig Harbor-Community Development
3105 Judson St.
Gig Harbor, WA 98335



Dear Gretchen:

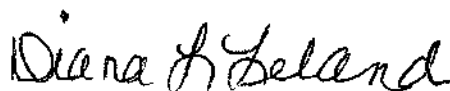
I am excited to be working with community leaders again this year to promote the local recycling options for outdated QwestDex telephone directories (OTD) available in Tacoma, Puyallup and the surrounding area. This community information is provided free by QwestDex to assist in providing residents and businesses with direction on how and where to recycle their outdated phone books.

During the delivery of the new QwestDex directory, we will compliment your local recycling options through bookmarks inserted into the front of the new directories, messages contained on the new books' delivery bags, information contained within the books, notices on our web site, business / community direct mail pieces and press releases. In addition, we are pleased to be distributing an entertaining TV and radio public service announcement to local media as well. We believe this multi-notice promotional approach will increase consumer participation for OTD recycling over past years' involvement, as well as help increase the overall recycling rates within your community.

The new QwestDex Tacoma and Puyallup White and Yellow Page directories are tentatively scheduled to start delivery on December 29, 2003 and run through February 12, 2004. We will be communicating information to residents and businesses so they know how and where to recycle their outdated phone book. **Please review the recycling options, on the attached page, that are within your scope of authority for accuracy.**

If you have any changes, additional OTD recycling opportunities you would like us to promote, or questions, please contact me no later than October 9, 2003 at 1-800-440-2189. **If I do not hear back from you by October 9, I will assume the options included in this letter are correct and will move forward with promotional activities for the Pierce County area.**

Thanks for your time & support in keeping the Tacoma, Puyallup and the surrounding area clean through providing recycling options for outdated phone books!



Diana L. Leland
Recycling Manager

Enclosure

In Your Curbside Recycling Container

throughout Pierce county including the following communities: DuPont, Eatonville, Edgewood, Fife, Fircrest, Gig Harbor, Lakewood, Milton, Orting, Puyallup, Roy, Ruston, South Prairie, Stellacoom, Sumner, Tacoma, University Place and Wilkeson and Feral Way in King County.

Community Coordinated Drop-Off Sites

Location	Address	City
Anderson Island Drop Box	9607 Steffenson Road	Anderson Island
Purdy Transfer Station	14515 54th Avenue	Gig Harbor
Key Center Drop Box Transfer Station	5900 block on Key Peninsula Highway	Lakebay
Lakewood Refuse and Recycling Drop-Off Site	3869 94th SW	Lakewood
City of Puyallup Recycling Drop-off Site (City of Puyallup Residents only)	Corner of 5th SW & 15th SW	Puyallup
Hidden Valley Recycling Center	17925 Meridian Street E.	Puyallup
Prairie Ridge Drop Box Transfer Station	Corner of Prairie Ridge & South Prairie Road	South Prairie
JMK Fibers	1440 Port of Tacoma Road	Tacoma
Pierce County Refuse Recycling Drop-off Site	13502 Pacific Avenue	Tacoma
Tacoma Landfill Recycling Center	3510 So. Mullen Street	Tacoma
Tacoma Recycling	2318 So. Tacoma Way	Tacoma
University Place Refuse and Recycling Drop-off Site	2815 Rochester	University Place

For drop off site hours of operation or additional information:

Outside the city limits of Tacoma, contact the Pierce County Solid Waste Division at 253-798-2179 or visit www.piercecountywa.org/recycle - click on link to Recycling & Disposal Resource Guide

Within the City limits of Tacoma contact 253-591-5544 or visit www.cityoftacoma.org.

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE:10/03/03

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20040131

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 KAE & SOOK CORPORATION	MARITIME MART 7102 STINSON GIG HARBOR WA 98325 0000	078669	GROCERY STORE - BEER/WINE
2 JT'S ORIGINAL LOUISIANA BAR-B-	JT'S ORIGINAL LOUISIANA BAR-B-QUE 4116 HARBORVIEW DR GIG HARBOR WA 98332 0000	078469	BEER/WINE REST - BEER/WINE OFF PREMISES
3 HARBORVIEW GROCERY INC	FINHOLM'S MARKET AND GROCERY 8812 N HARBORVIEW DR GIG HARBOR WA 98335 0000	351392	GROCERY STORE - BEER/WINE
4 SNC INVESTMENTS, L.L.C.	GIG HARBOR CHEVRON 5006 PT FOSDICK DR NW GIG HARBOR WA 98335 0000	072786	GROCERY STORE - BEER/WINE



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBER'S
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PUBLIC HEARING - RESOLUTION ACCEPTING HAZEN ANNEXATION
PETITION (ANX 03-02)
DATE: OCTOBER 13, 2003

INFORMATION/BACKGROUND

The City Council met with the initiators of a 'Notice of Intention to Commence Annexation Proceedings' on June 23, 2003 with regards to a proposed annexation of property located east of Soundview Drive and north of 64th Street. At that time, the Council voted to authorize circulation of the annexation petition subject to the certain conditions including adoption of pre-annexation Single-Family Residential (R-1) zoning; modification of the geographic boundaries of the area proposed for annexation; and a requirement that the property owners assume a proportionate share of the City's indebtedness. The Council subsequently approved the modified legal description and map on August 11, 2003.

The City received a petition for annexation on August 14, 2003, which was subsequently certified by the Pierce County Office of the Assessor-Treasurer and Pierce County Auditor on September 3, 2003 as being legally sufficient.

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

Notice of this public hearing was posted in three conspicuous places within the area proposed for annexation on September 24, 2003; was mailed to all property owners of record both within the annexation area and within three hundred feet (300') of the area proposed for annexation; and published in the Peninsula Gateway on October 1 and 8, 2003.

POLICY CONSIDERATIONS

None.

FISCAL IMPACT

None.

RECOMMENDATION

I recommend that the Council approve the resolution accepting the annexation petition for the Hazen Annexation (ANX 03-02) and further refer it to the Pierce County Boundary Review Board for consideration.

**CITY OF GIG HARBOR
RESOLUTION NO. _____**

A RESOLUTION OF THE CITY OF GIG HARBOR, RELATING TO ANNEXATION AND ZONING, PROVIDING THE CITY COUNCIL'S ACCEPTANCE OF THE ANNEXATION PETITION FOR APPROXIMATELY ELEVEN (11) ACRES OF PROPERTY LOCATED IN THE 2800 BLOCK OF 64TH STREET, EAST OF SOUNDVIEW DRIVE AND NORTH OF 64TH STREET LOCATED IN PIERCE COUNTY (ANX 03-02), DECLARING THE CITY COUNCIL'S INTENT TO ADOPT PROPOSED ZONING REGULATIONS FOR THE ANNEXATION AREA AND REFERRING THE PETITION FOR ANNEXATION TO THE BOUNDARY REVIEW BOARD.

WHEREAS, on June 4, 2003, the City of Gig Harbor received a Notice of Intent to Annex approximately 8.39 acres of property in the 2800 block of 64th street, east of Soundview Drive and north of 64th Street Located in Pierce County, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully set forth in full; and

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

WHEREAS, on June 23, 2003, the City Council met with the initiators of the petition voted to authorize circulation of the annexation petition subject to certain conditions including adoption of pre-annexation Single-Family Residential (R-1) zoning; modification of the geographic boundaries of the area proposed for annexation thereby increasing the size of the annexation are to approximately eleven (11) acres; and that the property owners assume a proportionate share of the City's indebtedness; and

WHEREAS, on August 11, 2003, the City Council voted to accept the corrected legal description and map based on comments received from the Pierce County Boundary Review Board on July 18, 2003; and

WHEREAS, on August 14, 2003, a petition for annexation of the property described in Exhibit A was received by the City; and

WHEREAS, on September 3, 2003, the petition for annexation was certified by the Pierce County Office of the Assessor-Treasurer and the Pierce County Auditor, as being legally sufficient, and as containing the signatures of the owners of a majority of the acreage of the area proposed for annexation and the signatures of a majority of the registered voters in the area described in Exhibit A; and

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

WHEREAS, the City of Gig Harbor Comprehensive Plan, adopted in November, 1994, established a land use map designation for this area as Urban Residential Low Density, along with pertinent goals and objectives, to guide the development of the annexation area over the next twenty years; and

WHEREAS, the proposed pre-annexation Single-Family Residential (R-1) zoning of the property described in Exhibit A as Single-Family Residential (R-1) is consistent with the City of Gig Harbor Comprehensive Land Use Plan designation as Urban Residential Low Density; and

WHEREAS, the Gig Harbor Council has provided its intent to annex property in the 2800 block of 64th street, east of Soundview Drive and north of 64th Street Located in Pierce County, contingent upon the following conditions:

- A. Assumption by the property owners of their proportionate share of the City of Gig Harbor's indebtedness; and

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

WHEREAS, on October 13, 2003, the City Council, following a public hearing on the annexation petition, the voted to City Council approve the proposed pre-annexation Single-Family Residential (R-1) zoning for the area and the annexation, subject to Boundary Review Board approval; now, therefore,

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

Section 1. The Gig Harbor City Council hereby declares its intent to authorize and approve the annexation of property in the 2800 block of 64th street, east of Soundview Drive and north of 64th Street Located in Pierce County, as described in Exhibit A, attached hereto, as part of the City of Gig Harbor, contingent upon compliance with the following conditions:

- A. Pursuant to the terms of the annexation petition, the property in the 2800 block of 64th street, east of Soundview Drive and north of 64th Street Located in Pierce County, as described in Exhibit A, shall be assessed and taxed at the same rate and on the same basis as property within the City, including assessments for taxes and payment of any bonds issued or debts contracted prior to or existing as of the date of annexation; and
- B. All property within the area described in Exhibit A shall be zoned as Single-Family (R-1) in accordance with the Gig Harbor Municipal Code, Title 17.

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

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

RESOLVED by the City Council this 13th day of October 2003.

APPROVED:

MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____

**FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
RESOLUTION NO.**

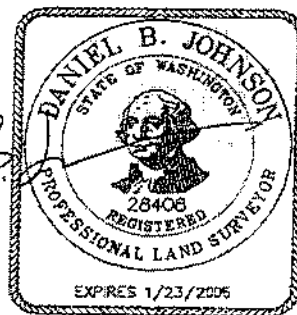
Exhibit A
HAZEN ANNEXATION (ANX 03-02)

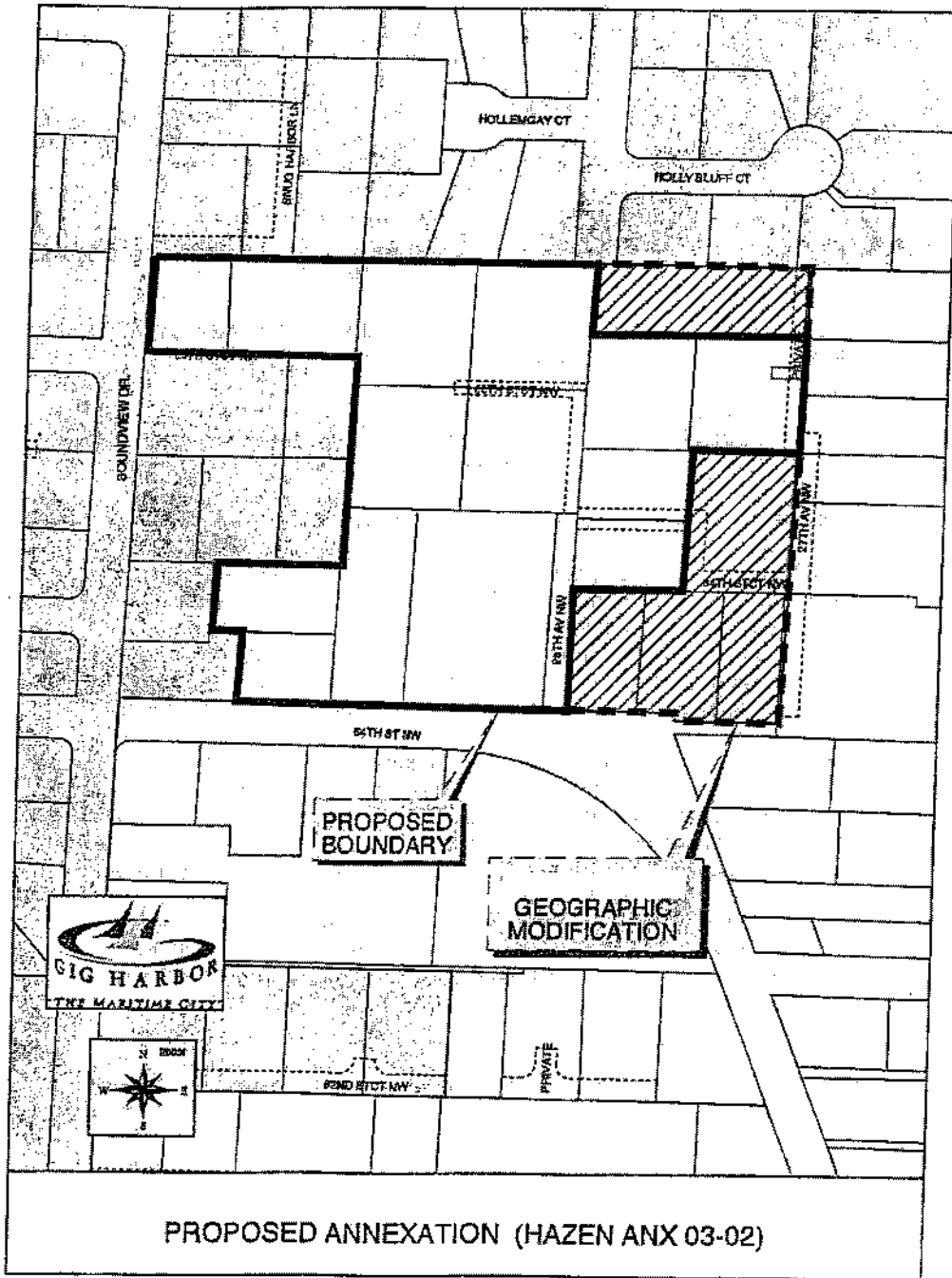
LEGAL DESCRIPTION
of
PROPOSED ANNEXATION TO GIG HARBOR
for
Joe & Linda Hazen

A parcel of land in the Southwest Quarter of the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M., in Pierce County, Washington, described as follows:

Commencing at the Southwest Corner of the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M., in Pierce County, Washington; thence S 88°48'46" E along the south line of said southeast quarter, 200.64 feet; thence N 2°27'47" E, 30.00 feet to the north margin of 64th Street NW and the TRUE POINT OF BEGINNING; thence N 2°27'47" E, 104.03 feet; thence N 88°48'46" W, 49.93 feet; thence N 2°27'47" E, 96.02 feet; thence S 88°48'46" E, 179.96 feet; thence N 2°27'47" E, 294.94 feet to the southeast corner of Short Plat 79-531; thence N 88°48'46" W, 300.00 feet to the easterly margin of Soundview Drive; thence N 2°27'47" E along said margin, 135.00 feet; thence S 88°48'46" E, 930.00 feet; thence S 2°27'47" W, 630.00 feet to the north margin of 64th Street NW; thence N 88°48'46" W, along said margin, 760.03 feet to the True Point of Beginning.

Daniel B.
6/24/03







COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: SECOND READING OF AN ORDINANCE - LATECOMER
AGREEMENTS, ADDING A NEW CHAPTER 13.35 GHMC
DATE: OCTOBER 13, 2003

INFORMATION/BACKGROUND

The City may contract with owners of real estate for the construction of certain utility facilities within City limits or within ten miles of the City's corporate limits, to connect such facilities to the public water or sewer system and serve the area in which the real estate is located (chapter 35.91 RCW). It is appropriate that we incorporate a formal process for the approval of such contracts, or latecomer agreements in the City's code.

The City Attorney has drafted the proposed Ordinance for consideration by the Council.

RECOMMENDATION

I recommend that the Council approve the Ordinance as presented.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LATECOMER REIMBURSEMENT OF THE COSTS OF DEVELOPER-INSTALLED SEWER AND WATER EXTENSIONS; DESCRIBING THE METHOD FOR DETERMINING THE PRO RATA SHARE TO BE PAID BY LATECOMERS; ESTABLISHING DEFINITIONS, LIMITATIONS ON LATECOMER AGREEMENTS, APPLICATION REQUIREMENTS, FEES, DEADLINE FOR SUBMISSION, AND DESCRIBING THE PROCESS FOR COUNCIL APPROVAL OF A LATECOMER AGREEMENT; ADDING A NEW CHAPTER 13.35 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City may contract with owners of real estate for the construction of certain utility facilities within City limits or within ten miles of the City's corporate limits, to connect such facilities to the public water or sewer system and serve the area in which the real estate is located (chapter 35.91 RCW) and

WHEREAS, the City Council desires to incorporate a formal process for the approval of such contracts, or latecomer agreements in the City's code; and

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

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting's of September 22 and October 13, 2003; Now, Therefore,

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

Section 1. A new chapter 13.35 is hereby added to the Gig Harbor Municipal Code, to read as follows:

**Chapter 13.35
LATECOMER AGREEMENTS
FOR WATER AND SEWER**

Sections:

- | | |
|------------------|---|
| 13.35.010 | Purpose. |
| 13.35.020 | Definitions. |
| 13.35.030 | Limitations on Latecomer Agreement. |
| 13.35.040 | Effect of Latecomer Agreement. |
| 13.35.050 | Fees – application. |
| 13.35.060 | Deadline for Submission of Application. |
| 13.35.070 | Administrative Fees and Recording Costs. |

- 13.35.080 Method for Determining Fair Pro Rata Share.**
- 13.35.090 Cost of Construction to be Examined by City Engineer.**
- 13.35.100 Approval and Acceptance of Water and/or Sewer Facilities.**
- 13.35.101 No Requirement for Execution of Latecomer Agreement.**

13.35.010 Purpose. The purpose of this chapter is to implement chapter 35.91 RCW, and to describe the process for a developer to request the execution of a latecomer agreement with the City Council, so that the developer may be reimbursed by other property owners for the cost of installation of an extension for water and/or sewer facilities.

13.35.020 Definitions. The definitions set forth in this section shall apply throughout this chapter:

A. "Cost of construction" means the cost incurred by the developer for design, acquisition for right-of-way and/or easements, permit and plan review fees, construction (including materials and installation), as required in order to create and install the water and/or sewer facilities in accordance with all applicable laws, ordinances and standards, including the City's public works standards. The cost of construction shall be documented in writing by the developer on final invoices or other documents showing the amounts paid by the owner. The City will not accept written estimates in determining the cost of construction. In the event of a disagreement between the City and the developer concerning the cost of the water and/or sewer facilities, the City Engineer's determination shall be final.

B. "Developer" means a property owner or authorized agent of the property owner who has constructed a water and/or sewer extension, and desires to execute a latecomer agreement with the City.

C. "Engineer" means the City Engineer or his/her designated representative.

D. "Latecomer ('s) Agreement" means a written contract between the City and a Developer(s) providing for the partial reimbursement of the cost of constructing the water and/or sewer facilities. The Latecomer Agreement shall be a standard agreement approved as to form by the City Attorney.

E. "Latecomer" means a property owner not a party to a duly executed and recorded Latecomer Agreement, who seeks to connect to the water and/or sewer extension constructed under the Latecomer Agreement, by making payment to the City of his or her pro rata share of the cost of construction within the timeframe established in the Agreement.

F. "Water and/or Sewer Facilities" means storm, sanitary or combination sewers, force mains, pumping stations and disposal plants, water mains, hydrants, reservoirs, or appurtenances.

13.35.030 Limitations on Latecomer Agreement. The City Council may execute a Latecomer Agreement for water and/or sewer facilities with a property owner who constructs water and/or sewer facilities as long as the following are met:

A. The water and/or sewer facility to be constructed by the Developer must be consistent with the City's latest adopted version of the comprehensive plan. The water and/or sewer facility to be constructed by the Developer must be within the City or within ten miles from the City corporate limits, connecting with the City public water or City sewerage system to serve the area in which the real estate owned by the Latecomers is located.

B. The Latecomer Agreement must provide for a period of not to exceed fifteen years for the reimbursement of the Developer and his/her assigns by the Latecomer who did not contribute to the actual cost of such water and/or sewer facilities and who subsequently taps into or uses the same.

C. The Latecomer Agreement must require that the Latecomer pay his or her fair pro rata share of the cost of the construction of the water and/or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto.

D. The Latecomer Agreement shall be effective as to any owner of real estate not a party unless such Latecomer Agreement has not been recorded in the office of the Pierce County Auditor prior to the time that the latecomer taps into or connects to said water and/or sewer facilities.

13.35.040 Effect of Latecomer Agreement. No person, firm or corporation shall be granted a permit or be authorized to tap into, or use any such water and/or sewer facilities or extensions thereof during the period of time set forth in a recorded Latecomer Agreement without first paying to the City, in addition to any and all other costs and charges assessed for such tap, or use or for the water and/or sewer facilities constructed in connection therewith, the amount required by the Latecomer Agreement. Whenever any tap or connection is made into a water and/or sewer facility subject to a Latecomer Agreement, without such payment having first been made, the City may remove, or cause to be removed, such unauthorized tap or connection and all connecting tile or pipe located in the facility right of way and dispose of unauthorized material so removed without any liability whatsoever.

13.35.050. Fees – application. An application for a latecomer agreement shall be made on a form provided by the City, accompanied by:

A. A non-refundable application fee of \$250.00 plus \$25.00 for every separate parcel proposed to be encumbered by the Latecomer Agreement or a non-refundable fee equal to 6% of the total estimated cost of the Latecomer Agreement, whichever is greater;

B. Record drawings stamped by a Washington State Licensed Engineer or Land Surveyor and a Bill of Sale;

C. Itemized and quantified list of costs of construction, prepared, stamped and signed by a Washington State Licensed Civil Engineer.

D. An 18" x 24" scaled drawing stamped by either a Washington State Licensed Civil Engineer or Land Surveyor showing the water and/or sewer facility size, location and the proposed areas potentially encumbered for this Latecomer Agreement, including dimensions, County identification number of each tax parcel therein, the size of the parcel, useful elevations as necessary by the City for determining benefit, all existing utility services and appurtenances. The map must also include the method proposed to be used by the Developer to determine the assessment, *i.e.*, frontage square footage and zone end termini.

E. An 18" x 24" vicinity map showing tax lot numbers and dollar amounts assessed on each lot. Also, a separate legal description for each individual tax parcel potentially encumbered for the Latecomer Agreement.

13.35.060 Deadline for Submission of Application. An application for a Latecomer Agreement must be submitted to the City within ninety (90) days after: (a) the City notifies the owner that the water and/or sewer facilities constructed by the Developer are acceptable to the City for City operation and maintenance; and (b) the Developer has posted a two-year maintenance bond. Failure by the Developer to submit a complete application prior to this deadline constitutes a waiver of the ability to request execution of a Latecomer Agreement with the City.

13.35.070 Administrative Fees and Recording Costs. In addition to the fair pro rata charge imposed by the Latecomer Agreement, the City shall charge a fee of five (5) percent of the amount collected from a Latecomer to cover the City's administrative costs of collecting and dispersing reimbursed amounts. Collected Latecomer Agreement fees disbursed to the Developer shall be less the five (5) percent charge. The Developer shall pay all costs of recording the Latecomer Agreement with the Pierce County Auditor's Office, as required by law (RCW 65.08.170).

13.35.080 Method for Determine Fair Pro Rata Share. The Developer may propose any method for determining the fair pro rata share, for example, the method of assessment permitted for local improvement district assessment, including, but not limited to the front-foot method, the zone end termini method, and square footage method. The City may, in its discretion, determine the method of assessment used to calculate the Latecomer Fee and the City's decision on the method of assessment shall be final. The fair pro rata share of the cost of the water and/or sewer facilities attributable to the Developer's property shall be deducted from the cost of construction.

13.35.090 Cost of Construction to be Examined by City Engineer. The cost of construction of the water and/or sewer facilities shall be examined by the City

Engineer, prior to the City Council meeting on the Latecomer Agreement. The City Engineer shall provide a recommendation to the Council as to his examination of the cost of construction, the method of assessment, the Latecomer reimbursement area, or any other matter connected to the Latecomer Agreement.

13.35.100 Approval and Acceptance of Water and/or Sewer Facilities by City. All water and/or sewer facilities proposed to be accepted for City ownership and maintenance (and later subject to a Latecomer Agreement), must be located on City-owned property or the necessary easements must be dedicated to the City prior to execution of a Latecomer Agreement, such that the City may operate, maintain, demolish, reconstruct, improve or expand the water and/or sewer facilities in the future.

13.34.101 No Requirement for Execution of Latecomer Agreement. Nothing in this chapter shall be construed as requiring the City to enter into a Latecomer Agreement with a Developer. Nothing in this chapter requires the City to enter into a Latecomer Agreement ninety one (91) days after the City formally accepts the water and/or sewer facilities for ownership and maintenance.

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

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

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ___ day of _____, 2003.

CITY OF GIG HARBOR

GRETCHEN A. WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

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

SUMMARY OF ORDINANCE NO. ____

of the City of Gig Harbor, Washington

On _____, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. ____, the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LATECOMER REIMBURSEMENT OF THE COSTS OF DEVELOPER-INSTALLED SEWER AND WATER EXTENSIONS; DESCRIBING THE METHOD FOR DETERMINING THE PRO RATA SHARE TO BE PAID BY LATECOMERS; ESTABLISHING DEFINITIONS, LIMITATIONS ON LATECOMER AGREEMENTS, APPLICATION REQUIREMENTS, FEES, DEADLINE FOR SUBMISSION, AND DESCRIBING THE PROCESS FOR COUNCIL APPROVAL OF A LATECOMER AGREEMENT; ADDING A NEW CHAPTER 13.35 TO THE GIG HARBOR MUNICIPAL CODE.

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

APPROVED by the City Council at their meeting of _____, 2003.

MOLLY TOWSLEE, CITY CLERK



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ORDINANCE FOR RUST STREET VACATION - SORENSEN
- FIRST READING
DATE: OCTOBER 13, 2003

INTRODUCTION/BACKGROUND

On September 22, 2003, Council approved a resolution setting October 13, 2003 as the date to hear public testimony regarding the requested street vacation initiated by Mr. and Mrs. Douglas Sorensen. The city received a letter on August 7, 2003 from Mr. and Mrs. Sorensen, petitioning the city to vacate a portion of Rust Street in accordance with GHMC 12.14.002C.

Specifically, the request is for the vacation of the south 30 feet of the Rust Street right-of-way abutting Lots 1-4, Block 5, Plat of the Town of Ardena, Parcel No. 2260000200, currently held by the city. Research on this right-of-way found that this portion of Rust Street 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 Rust Street is barred by lapse of time and the city has no interest in the street. In order to ensure that this portion of Rust Street 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.

FISCAL CONSIDERATIONS

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

RECOMMENDATIONS

I recommend that the existing ordinance, as presented or as amended, be approved by the City Council at the second reading.

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
GIG HARBOR, WASHINGTON, VACATING A PORTION OF
RUST STREET, LYING EAST OF NORTH HARBORVIEW
DRIVE AND WEST OF WHEELER AVENUE.**

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

WHEREAS, the portion of Rust Street subject to this vacation request was created in the Plat of the Town of Artena, recorded in the records of Pierce County in 1891; and

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

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

WHEREAS, the City Council passed Resolution No. 615 initiating the procedure for the vacation of the referenced street and setting a hearing date; and

WHEREAS, after the required public notice had been given, the City Council conducted a public hearing on the matter on October 13, 2003, and at the conclusion of such hearing determined that the aforementioned right-of-way vacated by operation of law and lapse of time; Now, Therefore,

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

Section 1. The City Council finds that this unopened portion of the platted Rust Street right-of-way has vacated by lapse of time and operation of law under the Laws of 1889-90, Chapter 19 (Relating to County Roads), Section 32, p. 603, as Amended By Laws of 1909, Chapter 90, Section 1, p. 189, repealed in 1936 by the Washington State Aid Highway Act (Laws of 1936, Chapter 187, p. 760). This portion of Rust Street, lying East of North Harborview Drive and West of Wheeler Avenue, abutting the north property frontage of Parcel No. 2260000200, attached hereto as legally described in Exhibit A and incorporated by this reference and as shown on the aerial Ortho photo as depicted on Exhibit B.

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

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

Section 4. This ordinance shall take effect five days after passage and publication as required by law.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this _____ day of _____, 2003.

CITY OF GIG HARBOR

By: _____
Gretchen Wilbert, Mayor

ATTEST/AUTHENTICATED:

By: _____
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney:

By: _____
Carol A. Morris

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

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

On _____, 2003 the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the summary of text of which is as follows:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
GIG HARBOR, WASHINGTON, VACATING A PORTION OF
RUST STREET, LYING EAST OF NORTH HARBORVIEW
DRIVE AND WEST OF WHEELER AVENUE IN GIG
HARBOR, WASHINGTON.**

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

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

APPROVED by the City Council at their regular meeting of _____, 2003

BY: _____
MOLLY M. TOWSLEE, CITY CLERK

9409 N. Harborview Dr.
Gig Harbor, WA 98332
August 7, 2003

Mr. Mark Hoppen
City Administrator
3510 Grandview Street
Gig Harbor, WA 98335

Dear Mr. Hoppen:

We, Douglas H. and Jeanette M. Sorensen (husband and wife), are petitioning the City of Gig Harbor to vacate the portion of Rust Street that is adjacent to our property, tax parcel no. 2260000200.

The legal description for our property is as follows:

Lots 1 through 4, inclusive, in Block 5 of Plat of the Town of Artena, according to Plat recorded in Book 5 of Plats at page 58, in Gig Harbor, Pierce County, Washington.

TOGETHER with that portion of vacated Otter Street adjoining, which upon vacation, attached to said premises by operation of law.

Situate in the City of Gig Harbor, County of Pierce, State of Washington.

The legal description for the Rust Street vacation is as follows:


That portion of the south half of vacated Rust Street in the Northwest Quarter of the Northwest Quarter of Section 5, Township 21 North, Range 2 East, W.M. abutting Lots 1 through 4, Block 5, Artena Addition, according to the plat thereof on file in Volume 5 of Plats, Page 68, records of Pierce County, Washington.

Situate in the City of Gig Harbor, County of Pierce, State of Washington.

Attached is a portion of the original plat of the Town of Artena showing the requested vacation area.

Enclosed is a check to the City of Gig Harbor for \$150 to cover the required fee.

Sincerely,


Douglas H. Sorensen


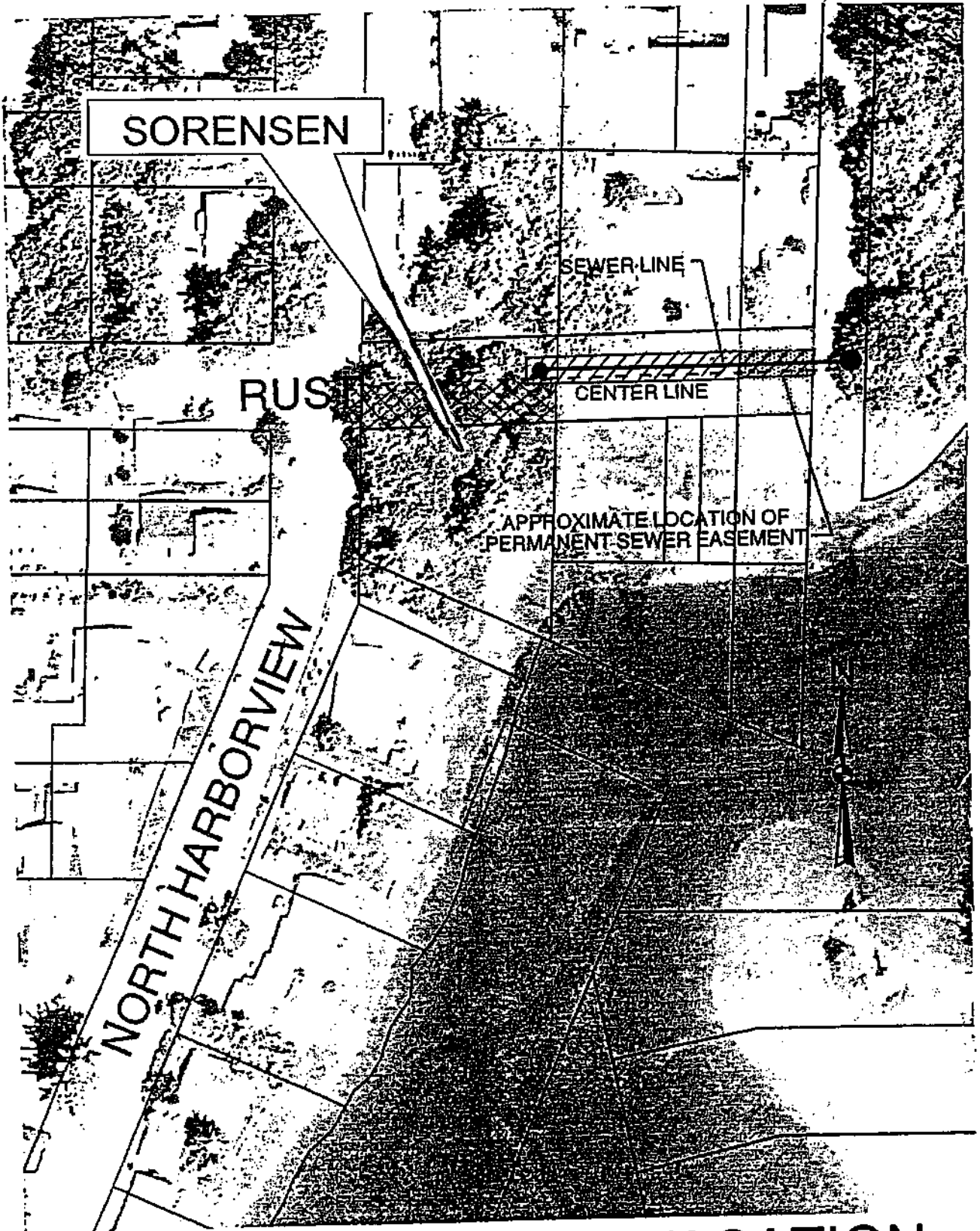

Jeanette M. Sorensen

EXHIBIT A



SORENSEN STREET VACATION

EXHIBIT B



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: SANITARY SEWER FACILITIES MAINTENANCE AGREEMENT
- PLAT OF HORIZON WEST, 57 LOTS
DATE: OCTOBER 13, 2003

INTRODUCTION/BACKGROUND

A condition of approval of the Utility Extension Agreement for the plat of Horizon West, Active Construction, Inc. is required to execute a Maintenance Agreement. This agreement will ensure the sanitary sewer system will be constructed, operated and maintained in accordance with the approved plans and all applicable rules and regulations. The sanitary sewer system is located within private property, and the city will not be responsible for the operation and maintenance of this system. This agreement provides the city a nonexclusive right of entry onto those portions of the property in order to access the sanitary sewer system for inspection and to reasonably monitor the system for performance, operational flows, defects, and conformance with all applicable rules and regulations.

The city's standard Sanitary Sewer Facilities Maintenance Agreement and has been drafted and approved by Carol Morris, City Attorney.

Council approval of this agreement is requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend that City Council approve this agreement.

AFTER RECORDING, RETURN TO:

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

Document Title: **SANITARY SEWER FACILITIES EASEMENT AND
MAINTENANCE AGREEMENT**

Grantor: Active Construction, Inc.

Grantee: City of Gig Harbor

Legal Description: *See Main Parcel Legal Description Exhibit A*

*The complete legal description may be found on page 8 of the
document.*

Property Tax Parcel No.: 0122254076

Reference No. of Documents Assigned or Released: _____

**SANITARY SEWER FACILITIES EASEMENT
AND MAINTENANCE AGREEMENT**

PAGE 2 OF 15

This Sanitary Sewer Facilities Easement and Maintenance Agreement is made this 23rd day of May, 2003, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Active Construction, Inc., residing at 11302 Burnham Drive, NW, Gig Harbor, Washington (hereinafter the "Owner").

RECITALS

WHEREAS, Owner is the owner of fee title or a substantial beneficial interest in certain real property located in Gig Harbor, Washington, commonly described as Horizon West Plat (street address) 11302 Burnham Drive, NW, (hereinafter the "Property") and legally described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

WHEREAS, in connection with the Owner's proposed development of the Property, the City has required and the Owner has constructed a private sanitary sewer system on the Property; and

WHEREAS, such sanitary sewer system is described and shown on a construction drawing(s) prepared by the engineering firm of Apex Engineering, PLLC, dated 5/21/03 (hereinafter the "Plans"), for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, as a condition of project approval, and/or due to the nature of the development, the sanitary sewer system on the Property is private, and will not be the responsibility of and/or owned, operated and maintained by the City; and

WHEREAS, the private sanitary sewer will eventually be connected to the City's sanitary sewer system and the City desires an easement to definitively establish the permissible location of the City's access on the Property described in Exhibit A, for the purposes described in this Agreement; and

WHEREAS, as a result of said private ownership and responsibility for operation and maintenance, including repair, rehabilitation, replacement, alterations and/or modifications, the parties have entered in to this Easement and Maintenance Agreement, in order to ensure that the sanitary sewer system will be constructed, operated and maintained in accordance with the approved Plans and all applicable rules and regulations;

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

TERMS

Section 1. Affected Property. The real property subject to this Agreement is legally described in Exhibit A.

Section 2. Definitions. As used in this instrument:

A. The word "plat" refers to the Horizon West 57 lots, and any other plat or plats, including short plats, covering all real property which may hereafter be made subject to the

provisions of this instrument by a written instrument signed by the Owner, its successors and assigns in accordance with this Agreement.

B. The word "lot" refers to a lot shown on any plat defined herein, but shall not include any parcel designated as a "tract" on a plat. "Lot" shall include any parcel of land that is separately subjected to this instrument without having been subdivided into two or more parcels by a plat recorded subsequent to the recording of this instrument.

C. The word "Owner" or "Owners" refers to the entity, whether an individual, corporation, joint venture or partnership which is an owner in fee simple or of a substantial beneficial interest (except for mineral estate) in all or any portion of the property in the Plat or the Property. A "substantial beneficial interest" shall include both legal and equitable interests in the Property.

D. The words "Owners' Association" refer to a nonprofit corporation which may be formed for the purpose of operating and maintaining the facilities described in Exhibit B on the Property, which may be independently conveyed by the Owner or its successors and assigns to an Owners' Association, and to which the Owners' Association may provide other services in order to benefit the owners of property within the plat or the Property.

Section 3. Maintenance Obligations. The Owner, its successors, assigns and/or owners of an after-acquired interest in the Property, hereby covenant and agree that they are jointly and severally responsible for the installation, operation, perpetual maintenance, of a sanitary sewer system on the Property, as shown on the Plans attached hereto as Exhibit B. The sanitary sewer system shall be operated, maintained and preserved by the Owner in accordance with the Plans and all applicable ordinances, codes, rules and regulations. The sanitary sewer system shall be preserved in conformance with the Plans until such time as all parties to this Agreement, including the City, agree in writing that the sanitary sewer system should be altered in some manner or eliminated. In the event the sanitary sewer system is eliminated as provided hereinabove, the Owner shall be relieved of operation and maintenance responsibilities. No such elimination of the sanitary sewer system will be allowed prior to the Community Development Director's written approval.

Section 4. Notice to City. The Owner shall obtain written approval from the Director prior to performing any alterations or modifications to the sanitary sewer system located on the Property described in Exhibit A. No part of the sanitary sewer system shall be dismantled, revised, altered or removed, except as provided hereinabove, and except as necessary for maintenance, including repair, rehabilitation, replacement, alterations, and/or other modifications.

Section 5. Easement for Access. The Owner hereby grants and conveys to the City a perpetual, non-exclusive easement, under, over, along, through and in the Property, as such Easement is legally described in Exhibit C, attached hereto and incorporated herein by this reference. This Easement is granted to the City for the purpose of providing the City with ingress and egress in order to access the sanitary sewer system on the Property for inspection, and to reasonably monitor the system for performance, operational flows, defects, and/or conformance with applicable rules and regulations. In addition, the City may use this Easement to exercise its rights as described in Section 8 herein.

Section 6. Assignment to an Owners' Association. In the event that an Owners' Association is formed under a Declaration of Covenants, Conditions and Restrictions which includes all of the Property in Exhibit A, the Owner may assign responsibility for installation and perpetual maintenance of the sanitary sewer system to such Owners' Association for so long as the Owners' Association remains in existence and upon the conditions that the Owners' Association assumes all of the obligations, liabilities, covenants and agreements of the Owner under this Agreement. Such assignment of the Owner's

PAGE 4 OF 5

obligations shall be in a duly executed instrument in recordable form, and for so long as such assignment remains effective, the Owner shall have no further responsibility or liability under this Agreement.

Section 7. Conveyances. In the event the Owner shall convey its substantial beneficial or fee interest in any property in the Plat, any lot, or the Property, the conveying Owner shall be free from all liabilities respecting the performance of the restrictions, covenants and conditions in this Agreement; PROVIDED, HOWEVER, that the conveying Owner shall remain liable for any acts or omissions during such Owner's period of ownership of such Property.

Section 8. Rights of the City of Gig Harbor.

A. Execution of this Agreement shall not affect the City of Gig Harbor's present or future interest or use of any public or private sanitary sewer system. If the City determines that maintenance is required for the sanitary sewer system, and/or there is/are illegal connection(s) to or discharges into the sanitary sewer system, the Community Development Director or his/her designee shall give notice to the Owner(s) of the specific maintenance and/or changes required, and the basis for said required maintenance and/or changes. The Director shall also set a reasonable time in which the Owner(s) shall perform such work. If the maintenance required by the Director is not completed within the time set by the Director, the City may perform the required maintenance. Written notice will be sent to the Owner(s), stating the City's intention to perform such maintenance, and such work will not commence until at least five (5) days after such notice is mailed, except in situations of emergency. If, at the sole discretion of the Director, there exists an imminent or present danger to the sanitary sewer system, the City's facilities or the public health and safety, such five (5) day period will be waived, and the necessary maintenance will begin immediately.

B. In order to assure the proper maintenance of the Owner's sanitary sewer system, and to ensure there will be no damage to the City's sanitary sewer system, the City of Gig Harbor shall have the right as provided below, but not the obligation, to maintain the system, if the Owner(s) fail to do so, and such failure continues for more than five (5)-days after written notice of the failure is sent to the responsible parties. However, no notice shall be required in the event that the City of Gig Harbor determines that an emergency situation exists in which damage to person or property may result if the situation is not remedied prior to the time required for notice.

C. If the City provides notice in writing, but the Owner or Owners' Association fails or refuses to perform any maintenance or operational duties as requested by the City, the City's employees, officials, agents or representatives may enter the Property and undertake the necessary maintenance, repair or operational duties to the City's satisfaction. The City's ability to enforce this provision is subject further to the City's right to impose materialmen's and/or laborer's liens and to foreclose upon any and all properties owned by the Owner(s).

D. If the City exercises its rights under this Section, then the Owner(s) or Owners' Association shall reimburse the City on demand for all reasonable and necessary expenses incurred incident thereto. In addition, the City is hereby given the right, power and authority acting in the name of the Owner's Association to exercise and enforce on behalf of the Association and at the Association's cost, the assessment of dues and charges for such costs and to enforce the Association's lien right for any assessments, dues and charges as herein specified. The City shall also be permitted to collect the costs of administration and enforcement through the lien attachment and collection process as is permitted under chapter 35.67 RCW, or any other applicable law.

E. In addition to or in lieu of the remedies listed in this Section, if the Owners or Owner's Association, after the written notice described in Section 8A above, fails or refuses to perform the

PAGE 5 OF 15

necessary maintenance, repair, replacement or modifications, the City may enjoin, abate or remedy such breach or continuation of such breach by appropriate proceedings, and may bring an action against the violator for penalties under the Gig Harbor Municipal Code.

Section 9. Indemnification of City. The Owner(s) agree to defend, indemnify and hold harmless the City of Gig Harbor, its officials, officers, employees and agents, for any and all claims, demands, actions, injuries, losses, damages, costs or liabilities of any kind or amount whatsoever, whether known or unknown, foreseen or unforeseen, fixed or contingent, liquidated or unliquidated, arising from an alleged defect in the design of the sanitary sewer system as installed by the Owner(s), or arising by reason of any omission or performance under this Agreement by the Owner(s), its successors and assigns, and/or Owners' Association, of any of the obligations hereunder.

Section 10. Rights Subject to Permits and Approvals. The rights granted herein are subject to permits and approvals granted by the City affecting the Property subject to this Easement and Maintenance Agreement.

Section 11. Terms Run with the Property. The promises, conditions, covenants and restrictions contained herein shall constitute a covenant or equitable servitude, the burden and benefit of which shall run with the land and bind successive owners with equitable or legal interests in the Property. Accordingly, by its acceptance of a deed or other instrument vesting a substantial beneficial interest in all or any lot, or other portion of the Property or the Plat in such Owner, each Owner shall covenant to be bound by all the obligations incumbent upon an Owner as set forth herein, and shall be entitled to all rights and benefits accruing to an Owner hereunder. This Agreement shall be recorded in the Pierce County Assessor's Office, and shall serve as notice to holders of after-acquired interests in the Property.

Section 12. Notice. All notices require or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified U.S. Mail, return-receipt requested, and shall be deemed delivered on the sooner of actual receipt on three (3) days after deposit in the mail, postage prepaid, addressed to the City or the Owner at the addresses set forth below:

To the City:

City Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

To the Declarant:

Active Construction, Inc.
Walter H. Smith
P.O. Box 191
Gig Harbor, WA 98335

Section 13. Severability. Any invalidity, in whole or in part, of any provision of this Easement and Maintenance Agreement shall not affect the validity of any other provision.

Section 14. Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

Section 15. Governing Law, Disputes. Jurisdiction of any dispute over this Easement and Maintenance Agreement shall be solely with Pierce county Superior Court, Pierce County, Washington.

This Easement and Maintenance Agreement shall be interpreted under the laws of the State of Washington. The prevailing party in any litigation arising out of this Easement and Maintenance Agreement shall be entitled to its reasonable attorneys' fees, costs, expenses and expert witness fees.

Section 16. Integration. This Easement and Maintenance Agreement constitutes the entire agreement between the parties on this subject matter, and supersedes all prior discussions, negotiations, and all other agreements on the same subject matter, whether oral or written.

IN WITNESS WHEREOF, the parties have caused this Easement and Maintenance Agreement to be executed this _____ day of _____, 2003.

THE CITY OF GIG HARBOR

OWNER : ACTIVE CONSTRUCTION, INC.

By: _____
Its Mayor

By: Walter H. Smith
Its President
Print Name: Walter H. Smith

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Walter H. Smith 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 Owner of Active Construction, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: May 27, 2003



Judith M. Elliott-Weiss
Notary Public in and for the
State of Washington,
Title: Contract Admin.
My appointment expires: 3/12/04

Exhibit A
MAIN PARCEL
LEGAL DESCRIPTION

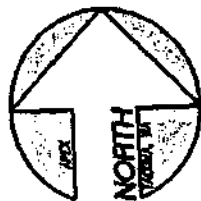
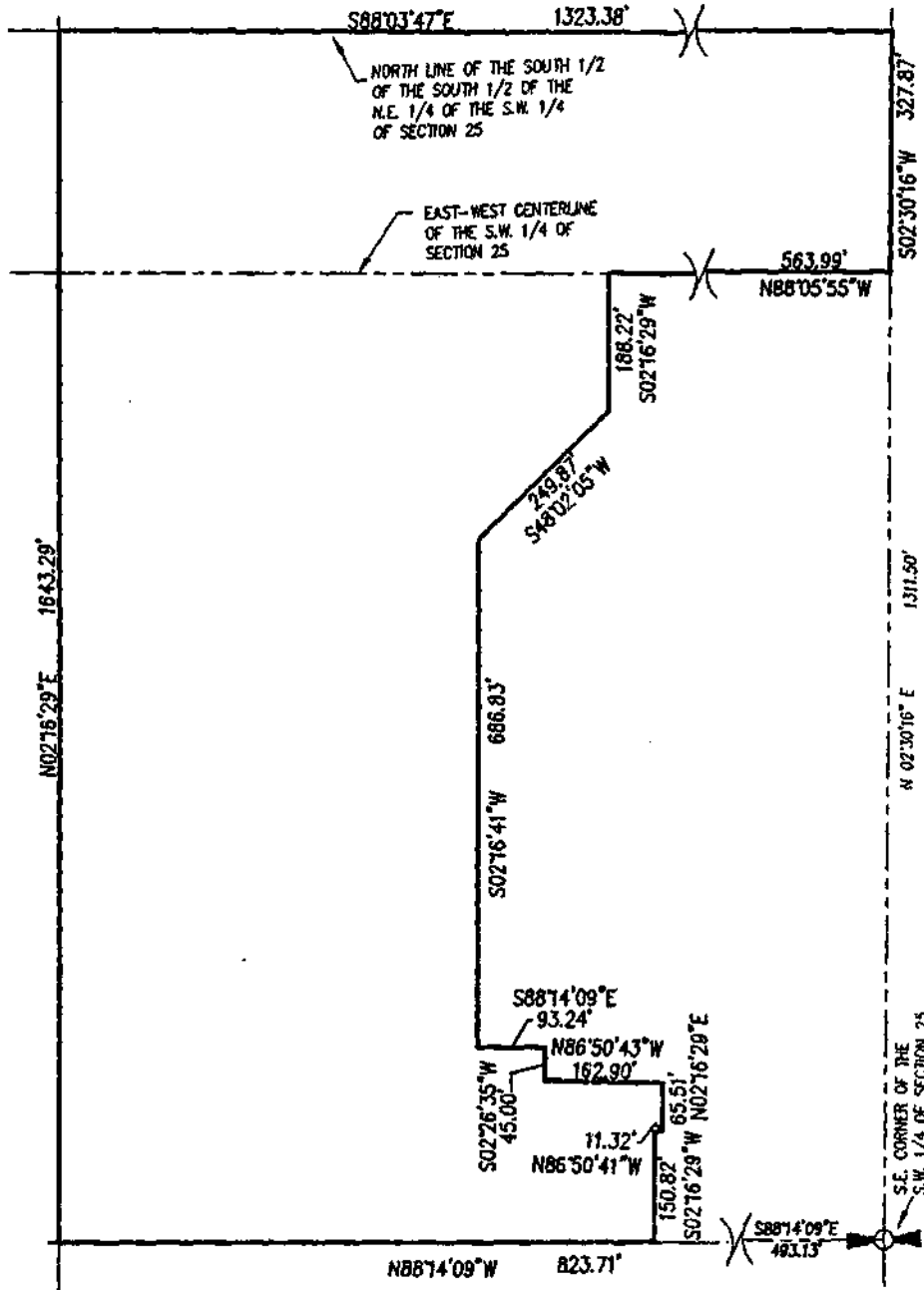
A PARCEL OF LAND WITHIN THE SOUTHWEST QUARTER OF SECTION 25 TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER, OF THE SOUTHWEST QUARTER, OF SAID SECTION 25; THENCE NORTH 88°14'09" WEST ALONG THE SOUTH LINE THEREOF 493.13 FEET TO THE POINT OF BEGINNING;
THENCE, CONTINUE ALONG THE SAID SOUTH LINE, NORTH 88°14'09" WEST 823.71 FEET TO THE WEST LINE, OF THE EAST HALF, OF THE SAID SOUTHWEST QUARTER;
THENCE NORTH 02°16'29" EAST, ALONG THE SAID WEST LINE, 1,643.29 FEET TO THE NORTH LINE, OF THE SOUTH ONE HALF, OF THE SOUTH ONE HALF, OF THE NORTHEAST ONE QUARTER, OF THE SOUTHWEST ONE QUARTER, OF SAID SECTION 25;
THENCE SOUTH 88°03'47" EAST, ALONG THE SAID NORTH LINE, 1,323.38 FEET TO THE NORTH-SOUTH CENTERLINE OF SAID SECTION 25;
THENCE SOUTH 02°30'16" WEST ALONG THE SAID NORTH-SOUTH CENTERLINE 327.87 FEET TO THE EAST-WEST CENTERLINE OF THE SOUTHWEST ONE QUARTER OF SAID SECTION 25;
THENCE NORTH 88°05'55" WEST 563.99 FEET;
THENCE SOUTH 02°16'29" WEST 188.22 FEET;
THENCE SOUTH 48°02'05" WEST 249.87 FEET;
THENCE SOUTH 02°16'41" WEST 686.83 FEET;
THENCE SOUTH 88°14'09" EAST 93.24 FEET;
THENCE SOUTH 02°26'35" WEST 45.00 FEET;
THENCE SOUTH 86°50'43" EAST 162.90 FEET;
THENCE SOUTH 02°16'29" WEST 65.51 FEET;
THENCE NORTH 86°50'41" WEST 11.32 FEET;
THENCE SOUTH 02°16'29" WEST 150.82 FEET, TO THE POINT OF BEGINNING.

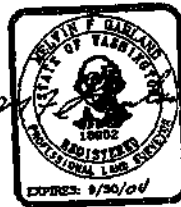
DJC
I:\15311\docs-rpts\Drafts\DJC15311_061003 Main Parcel Legal



BOUNDARY EXHIBIT A



SCALE 1" = 200'
APEX JOB NO. 15311

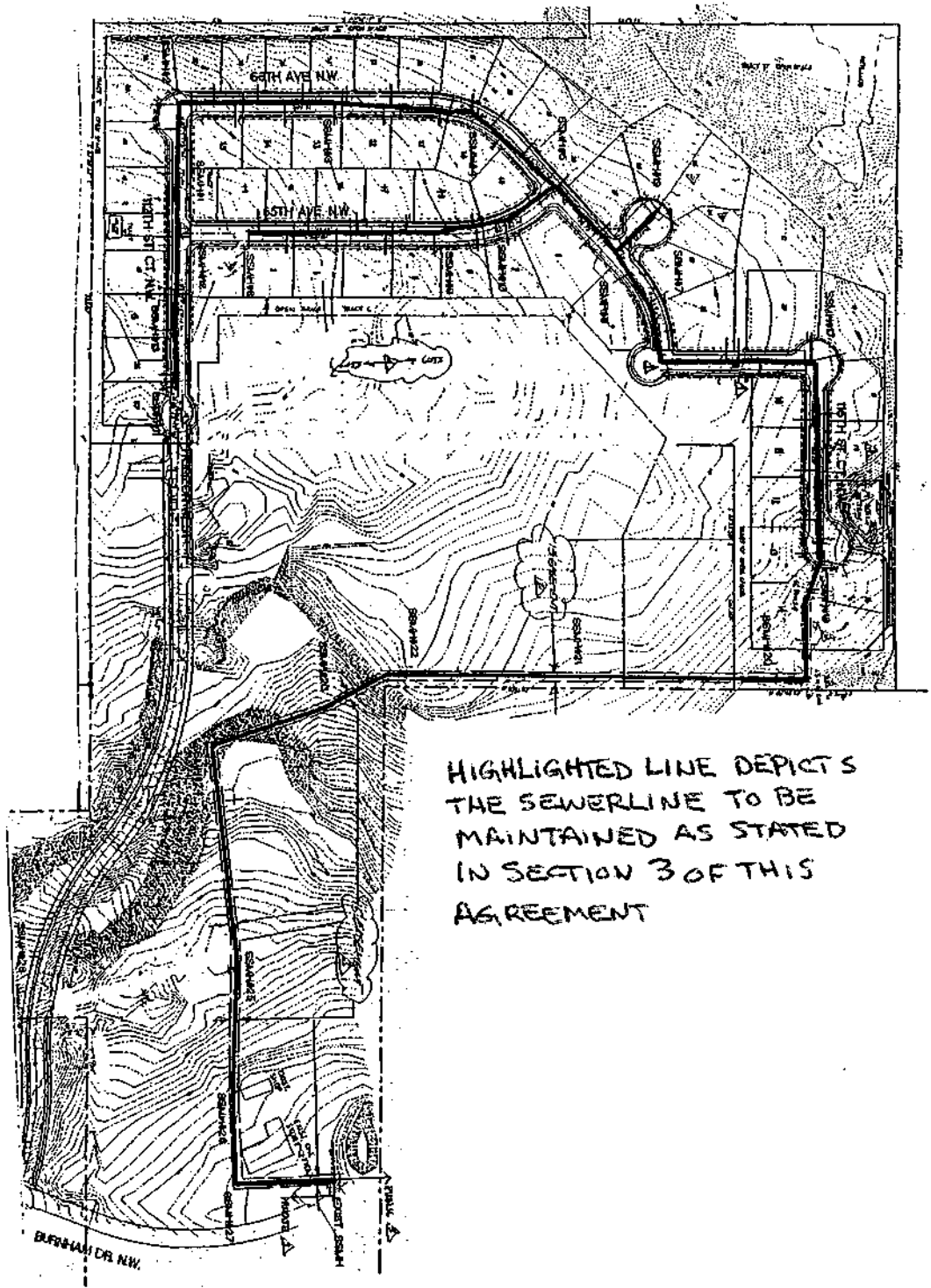


Apex

Engineering P.L.L.C.

2601 South 35th, Suite 200
Tacoma, Washington 98409-7475
(253) 473-4494 FAX: (253) 473-0599

SANITARY SEWER DRAWING FOR HORIZON WEST PLAT



HIGHLIGHTED LINE DEPICTS
THE SEWERLINE TO BE
MAINTAINED AS STATED
IN SECTION 3 OF THIS
AGREEMENT

Exhibit C
UTILITY EASEMENT
LEGAL DESCRIPTION

A STRIP OF LAND IN THE SOUTH ONE HALF OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 25;
THENCE NORTH 02°30'16" EAST 515.49 FEET ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 25; THENCE SOUTH 87°29'44" EAST 974.67 FEET TO THE WESTERLY MARGIN OF BURNHAM DRIVE NORTHWEST AND THE POINT OF BEGINNING OF THE CENTERLINE OF A STRIP OF LAND, 15.00 FEET IN WIDTH, THE SIDE LINES OF WHICH TERMINATE AT THE WESTERLY MARGIN OF BURNHAM DRIVE NORTHWEST;
THENCE SOUTH 00°16'57" EAST 205.86 FEET;
THENCE SOUTH 89°30'35" WEST 187.81 FEET;
THENCE NORTH 86°42'51" WEST 281.40 FEET;
THENCE SOUTH 84°54'21" WEST 399.97 FEET;
THENCE NORTH 16°19'12" WEST 258.58 FEET;
THENCE NORTH 26°21'40" WEST 120.32 FEET;
THENCE NORTH 02°30'35" EAST 855.04 FEET;
THENCE NORTH 88°00'19" WEST 168.68 FEET;
THENCE NORTH 64°22'13" WEST 57.97 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT A" AND THE BEGINNING OF THE CENTERLINE OF A STRIP OF LAND, 51.00 FEET IN WIDTH, THE SIDE LINES OF WHICH TERMINATE AT A LINE WHICH BEARS NORTH 03°41'49" WEST;
THENCE SOUTH 86°18'11" WEST 46.73 FEET;
THENCE NORTH 88°04'39" WEST 360.00 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT B";
THENCE SOUTH 02°16'41" WEST 309.86 FEET;
THENCE NORTH 87°42'40" WEST 10.64 FEET TO THE BEGINNING OF A 260 FOOT RADIUS CURVE, THE CENTER POINT OF WHICH BEARS SOUTH 02°17'20" WEST;
THENCE ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 43°55'52", A DISTANCE OF 199.35 FEET;
THENCE SOUTH 48°21'27" WEST 34.85 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT C";
THENCE CONTINUING SOUTH 48°21'27" WEST 179.72 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT D";
THENCE CONTINUING SOUTH 48°21'27" WEST 120.44 FEET TO THE BEGINNING OF A 260 FOOT RADIUS CURVE, THE CENTER POINT OF WHICH BEARS SOUTH 41°38'33" EAST;

THENCE ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $46^{\circ} 04' 46''$, A DISTANCE OF 209.10 FEET;
THENCE SOUTH $02^{\circ} 16' 41''$ WEST 499.41 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT E";
THENCE SOUTH $88^{\circ} 14' 09''$ EAST 256.01 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT F";
THENCE CONTINUING SOUTH $88^{\circ} 14' 09''$ EAST 256.01 FEET;
THENCE SOUTH $86^{\circ} 50' 41''$ EAST 105.23 FEET AND THE TERMINUS OF THIS CENTERLINE DESCRIPTION;

TOGETHER WITH THE FOLLOWING STRIP OF LAND 15.00 FEET IN WIDTH, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED "POINT A"; THENCE NORTH $04^{\circ} 17' 44''$ EAST 58.38 FEET TO ITS TERMINUS, EXCEPT ANY PORTION ALREADY DESCRIBED HEREIN;

TOGETHER WITH THE FOLLOWING STRIP OF LAND 15.00 FEET IN WIDTH, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED "POINT B"; THENCE NORTH $18^{\circ} 06' 01''$ WEST 63.96 FEET TO ITS TERMINUS, EXCEPT ANY PORTION ALREADY DESCRIBED HEREIN;

TOGETHER WITH THE FOLLOWING STRIP OF LAND 51.00 FEET IN WIDTH, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED "POINT C"; THENCE NORTH $41^{\circ} 38' 35''$ WEST 141.00 FEET TO ITS TERMINUS, EXCEPT ANY PORTION ALREADY DESCRIBED HEREIN;

TOGETHER WITH THE FOLLOWING STRIP OF LAND 80.00 FEET IN WIDTH, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED "POINT E"; THENCE SOUTH $37^{\circ} 11' 09''$ WEST 51.00 FEET TO ITS TERMINUS, EXCEPT ANY PORTION ALREADY DESCRIBED HEREIN;

TOGETHER WITH THE FOLLOWING STRIP OF LAND 51.00 FEET IN WIDTH, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED "POINT F"; THENCE NORTH 02°16'41" EAST 570.07 FEET TO THE BEGINNING OF A 260 FOOT RADIUS CURVE, THE CENTER POINT OF WHICH BEARS NORTH 87°14'19" WEST; THENCE ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 43° 55'14", A DISTANCE OF 199.31 FEET; THENCE NORTH 41°38'33" WEST 24.33 FEET TO THE AFOREMENTIONED "POINT D" AND ITS TERMINUS, EXCEPT ANY PORTION ALREADY DESCRIBED HEREIN.

DJC

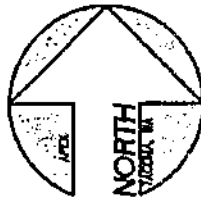
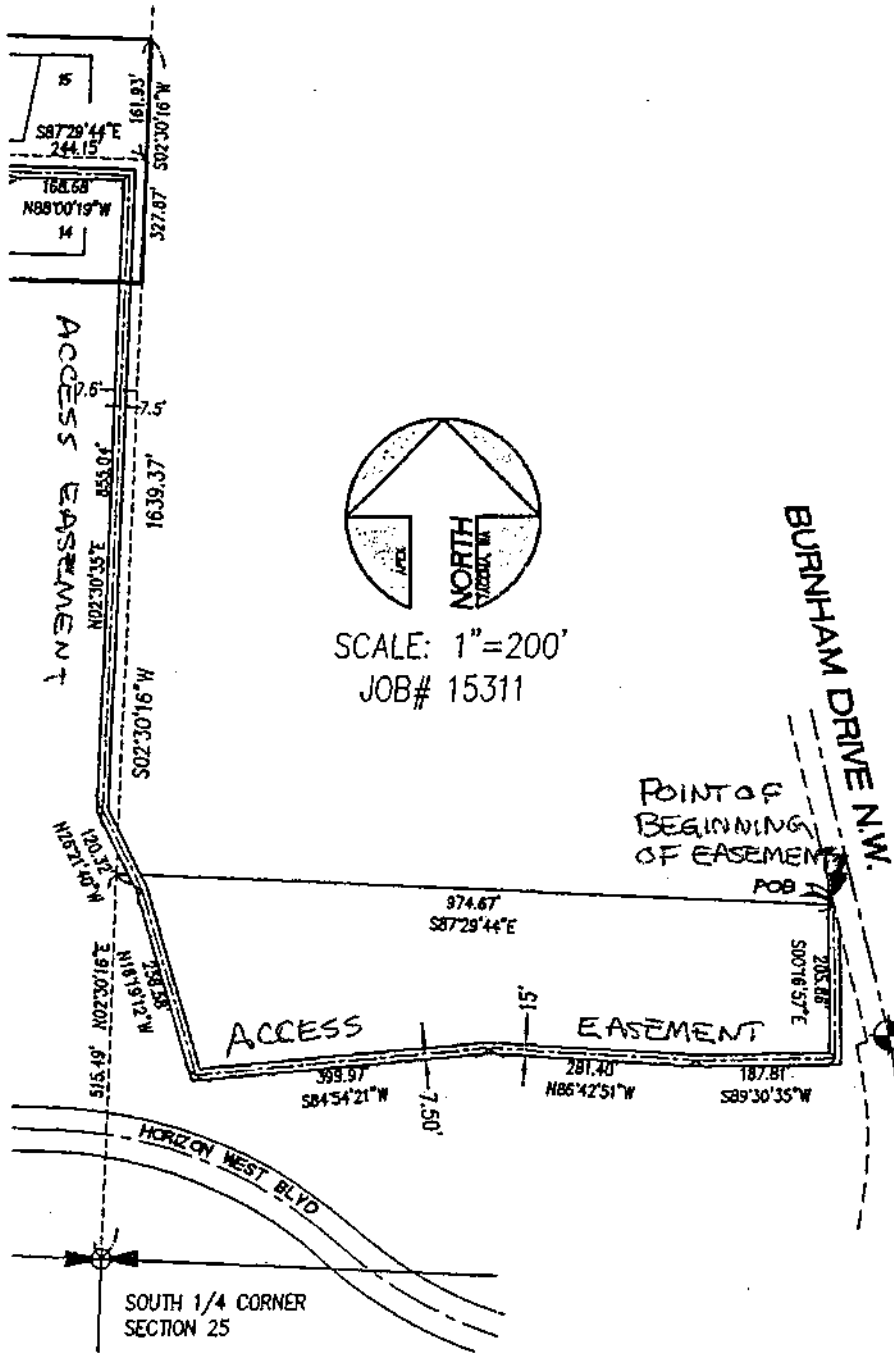
I:\5111\Docs-rps\Legal\Stamped\15111_mfg061103 Utility Easement



EXHIBIT C
SANITARY EASEMENT

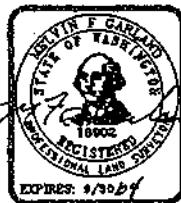
PAGE 14 OF 15

SEE SHEET 2 OF 2 FOR CONTINUATION



SCALE: 1"=200'
JOB# 15311

SHEET 1 OF 2



Apex
Engineering

2601 South 35th, Suite 200
Tacoma, Washington 98409-7479
(253) 473-4494 FAX: (253) 473-0599



'THE MARITIME CITY'

3510 GRANDVIEW STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136 • WWW.CITYOFGIGHARBOR.NET

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: EXTENSION OF CLOSING DATE – HIFIC SIX ASSOCIATES
DATE: OCTOBER 8, 2003

INFORMATION/BACKGROUND

Due to wetlands assessment currently in progress, the closing date to the purchase and sales agreement with Hific Six Associates needs to be extended to October 30. The closing date extension was signed in order to fix the date and retain the terms of the purchase and sale agreement, but requires Council ratification.

RECOMMENDATION

I recommend approval of the extension.

ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated MAY 2003
between WHITE SIX ASSOCIATES ("Seller")
and CITY OF OIG HARBOR ("Buyer")
concerning: PARCEL NUMBERS 02-21-17-1-47 & 02-21-17-1068 (the Property).

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS:

THE BUYERS AND SELLERS AGREE TO EXTEND THE CLOSING DATE TO OCTOBER 30, 2003 TO FACILITATE THE CLOSING OF THIS SALE.

ALL OTHER TERMS AND CONDITIONS TO REMAIN.

LEGAL ATTACHED BELOW

THE NORTH 13 ACRES OF THE SOUTH 26 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON.

EXCEPT THE WEST 666 FEET THEREOF.

ALSO EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 13 ACRES OF THE SOUTH 26 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, THENCE ALONG THE EAST LINE OF SAID NORTH 13 ACRES OF SAID SOUTH 26 ACRES, NORTH 82 DEGREES 04 MINUTES 11 SECONDS EAST 308 FEET TO THE TRUE POINT OF BEGINNING, THENCE CONTINUING NORTH 82 DEGREES 04 MINUTES 11 SECONDS EAST 221.06 FEET TO A POINT ON THE NORTH LINE OF SAID NORTH 13 ACRES OF SAID SOUTH 26 ACRES, THENCE ALONG SAID NORTH LINE, NORTH 89 DEGREES 20 MINUTES 04 SECONDS WEST 225 FEET, THENCE SOUTH 89 DEGREES 04 MINUTES 11 SECONDS WEST 222 FEET, THENCE SOUTH 89 DEGREES 27 MINUTES 10 SECONDS EAST 225 FEET TO THE TRUE POINT OF BEGINNING.

SITUATE IN THE CITY OF OIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

AGENT (COMPANY) Pierce NW Reg BY: J. J. [Signature]

ALL OTHER TERMS AND CONDITIONS of this Agreement remain unchanged.

BUYER: City of Oig Harbor / M. E. [Signature] Date: 9/25/03
BUYER: [Signature] Date: _____

SELLER: [Signature] 9/17/03
SELLER: [Signature] 9/17/03
SELLER: [Signature] 9/17/03
SELLER: [Signature] 9-17-03

ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated JUNE 2003 1
between HIPIC SIX ASSOCIATES ("Seller") 2
and CITY OF GIG HARBOR ("Buyer") 3
concerning: PARCEL NUMBERS 02-21-17-3-47 & 02-21-17-3049 ("the Property"). 4

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS: 5

THE BUYERS AND SELLERS AGREE TO EXTEND THE CLOSING DATE TO OCTOBER 30, 2003 TO 6
FACILITATE THE CLOSING OF THIS SALE. 7

ALL OTHER TERMS AND CONDITIONS TO REMAIN. 8

LEGAL ATTACHED BELOW 9

THE NORTH 13 ACRES OF THE SOUTH 26 ACRES OF THE SOUTHWEST QUARTER OF THE 10
SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE
WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON.

EXCEPT THE WEST 665 FEET THEREOF.

ALSO EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 13 ACRES OF THE SOUTH 26
ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17,
TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY,
WASHINGTON, THENCE ALONG THE EAST LINE OF SAID NORTH 13 ACRES OF SAID SOUTH
26 ACRES, NORTH 02 DEGREES 04 MINUTES 12 SECONDS EAST 208 FEET TO THE TRUE
POINT OF BEGINNING, THENCE CONTINUING NORTH 02 DEGREES 04 MINUTES 12 SECONDS
EAST 221.86 FEET TO A POINT ON THE NORTH LINE OF SAID NORTH 13 ACRES OF SAID
SOUTH 26 ACRES, THENCE ALONG SAID NORTH LINE, NORTH 88 DEGREES 25 MINUTES 04
SECONDS WEST 226 FEET, THENCE SOUTH 02 DEGREES 04 MINUTES 12 SECONDS WEST 222
FEET, THENCE SOUTH 88 DEGREES 27 MINUTES 10 SECONDS EAST 226 FEET TO THE TRUE
POINT OF BEGINNING.

SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON. 23

AGENT (COMPANY) Premier NW Prop BY: [Signature] 24
25

ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged. 26
27

Initials: BUYER: [Signature] Date: _____ SELLER: _____ Date: _____ 28
BUYER: _____ Date: _____ SELLER: _____ Date: _____ 29



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
SUBJECT: 36TH/POINT FOSDICK AGREEMENT FOR INTERSECTION IMPROVEMENTS
DATE: OCTOBER 13, 2003

INTRODUCTION/BACKGROUND

The settlement conditions from the January 16, 2001 settlement agreement between the City and the State requires the Washington State Department of Transportation (WSDOT) to construct an exclusive left turn lane for southbound to eastbound travel from Point Fosdick Drive to 36th Avenue, installation of a traffic signal when traffic signal warrants are met, and the acquisition of right of way for the left turn lane. Completion of the improvements is required prior to the opening of the new Tacoma Narrows Bridge. Exhibit "A" summarizes the settlement conditions.

As a result of several Public Works Committee meetings, it was the unanimous consensus of the committee to make recommendation to the City Council to proceed with the construction of a modern day roundabout at this intersection.

Under the terms of this agreement, the originally proposed left turn and signal intersection improvements and right of way acquisition will not be completed by the State. In consideration for this deferral, the City will now be the lead agency responsible for the design, right of way acquisition, SEPA, construction, and inspection of the roundabout at this intersection. In consideration of this change, the City will receive a lump sum payment of three hundred and thirty thousand dollars (\$330,000.00) from WSDOT.

This agreement further stipulates if the City does not award a contract for construction of a roundabout on or before September 5, 2005, the City shall return the money to WSDOT, unless the parties agree to extend this deadline through a supplemental agreement.

The City Attorney and the City Engineer have reviewed this agreement and approval of this agreement is recommended.

FISCAL CONSIDERATIONS

The City will receive a one-time lump sum payment from the WSDOT in the amount of three hundred and thirty thousand dollars (\$330,000.00).

RECOMMENDATION

I recommend that the Council move for approval of the 36TH/POINT FOSDICK AGREEMENT FOR INTERSECTION IMPROVEMENTS with the Washington State Department of Transportation as presented.

United **INFRASTRUCTURE**
WASHINGTON, INC.

to Mark Hoppen, City Manager – Gig Harbor
from Tom Horkan, Project Manager *Jef*
re Tacoma Narrows Bridge Project - City of Gig Harbor Street Improvements
date September 25, 2000
copies file

Pursuant to our meeting on June 30, 2000 at the City of Gig Harbor I have outlined below my understanding of the verbal agreement we reached regarding street improvements within the City of Gig Harbor (City) to be completed by the Tacoma Narrows Bridge Project (Project). These commitments will be assigned by UIW to the Tacoma Narrows Bridge Nonprofit Corporation (TNBNPC) at financial closing of the Project. The improvements and mentioned schedule rely on the Project proceeding without undue delays that may impact project financing. Before the end of the year and financial closing, it would be advisable to memorialize our understanding in a formal agreement.

Construction elements that will be completed by the TNBNPC will be included in the fixed price design-build agreement to be entered into between UIW and Tacoma Narrows Constructors (TNC). Commitments beyond the construction duration (2001-2005) will remain with the TNBNPC until final resolution or retirement of the project debt.

- The Project will complete improvements to the Point Fosdick\36th Avenue intersection to allow an exclusive left turn lane for southbound to eastbound travel from Point Fosdick to 36th Avenue. This work will be completed before commencement of tolling of the Tacoma Narrows Bridge Project (expected in 2005).
- When traffic signal warrants are met for the installation of a traffic signal at the intersection of Point Fosdick and 36th, the Project will participate in installation. The extent of participation will be reflective of expected impact on the intersection from tollpayer traffic and available City funds from development activity contributions to the intersection betterment and signalization.
- If right of way acquisition is required to construct the exclusive left turn lane at the Point Fosdick and 36th Avenue intersection (as outlined in Item #1), the Project will financially participate to the extent required to install left turn lane. Additional right of way required to meet City goals of landscaping, pedestrian travel, and throughput capacity will be the responsibility of the City. The City will perform all right of way acquisition services for the intersection improvements.

EXHIBIT "A"

Page 2
September 25, 2000

We also discussed other elements of the State Route 16 improvements that will occur outside the limits of the Tacoma Narrows Bridge Project. Issues relating to park and ride installation and highway access in the City of Gig Harbor limits should be directly addressed with WSDOT as they are not part of the Tacoma Narrows Bridge Project limits.

EXHIBIT "A"
Page 2

AGREEMENT GCA-3891 FOR INTERSECTION IMPROVEMENTS

THIS AGREEMENT is entered into this ____ day of _____, 2003, by and between the STATE OF WASHINGTON, Department of Transportation ("WSDOT") and the City of Gig Harbor ("CITY").

WHEREAS, the WSDOT has a design-build project known as the SR 16, Tacoma Narrows Bridge Project ("Project"); and

WHEREAS, in settlement of *City of Gig Harbor v. Fong*, No. C00-5575 FDB (W.D. Wash.), the parties entered into a Settlement Agreement, dated January 16, 2001; and

WHEREAS, the parties agreed that WSDOT would include in the Project, certain proposed intersection improvements to the City for the Point Fosdick and 36th Avenue intersection, as detailed in a memo from Tom Horkan to Mark Hoppen, dated September 25, 2000 (attached hereto as Exhibit A and incorporated herein by this reference); and

WHEREAS, the agreed-upon improvements included an exclusive left-turn lane for southbound to eastbound travel from Point Fosdick to 36th Avenue, installation of a traffic signal when traffic signal warrants are met at the intersection of Point Fosdick and 36th Avenue, and the acquisition of right-of-way to the extent right-of-way is required to construct the exclusive left-turn lane; and

WHEREAS, WSDOT has included these items in the design-build agreement for the Project; and

WHEREAS, the City desires to construct a roundabout at the intersection of Point Fosdick and 36th Avenue rather than to have the WSDOT construct the agreed-upon improvements for that intersection; and

WHEREAS, United Infrastructure Washington, Tacoma Narrows Bridge Nonprofit Corporation and Federal Highway Administration, other parties to the settlement agreement, are no longer involved in the Project; Now, Therefore,

In consideration of the above, the parties agree as follows:

Section 1. The proposed intersection improvements described in Section 2 of the Settlement Agreement for the Point Fosdick and 36th Avenue intersection, as detailed in Exhibit A, will not be included in the Project.

Section 2. WSDOT agrees to pay Three Hundred Thirty Thousand Dollars (\$330,000.00) to the CITY within thirty (30) days of execution of this Agreement by the duly authorized representatives of all parties.

Section 3. The CITY will utilize its own public works and competitive bidding procedures to award a contract for the construction of a roundabout at the intersection of Point Fosdick and 36th Avenue, on or before September 5, 2005. If the City does not award a contract for the construction of this roundabout on or before September 5, 2005, the City shall return the Three Hundred Thirty Thousand Dollars (\$330,000.00) to WSDOT, unless a supplemental agreement has been executed by the parties to extend this deadline.

Section 4. The parties agree that the CITY shall be the lead agency for the construction of this roundabout. The CITY shall be responsible for reviewing the EIS for the Project, based on the construction of the roundabout, to determine whether any additional SEPA review is required. If any SEPA review is required, it shall be performed by the CITY, as well as the processing of any appeals.

Section 5. All procedures and laws applicable to the CITY'S construction of a public work shall be followed by the CITY in the CITY's construction of the roundabout, including all relevant competitive bidding and award requirements. The CITY will not be sending any bidding, construction or contract documents to any other party to review prior to awarding a contract for the construction of the roundabout.

Section 6. The CITY will supervise and inspect the construction without notification to WSDOT. Once construction of the roundabout is complete, the City Council shall have the responsibility for accepting the roundabout. Ownership of the right-of-way and roundabout improvements shall vest in the CITY. The CITY shall be responsible for repair and maintenance of the roundabout, once constructed.

Section 7. WSDOT shall remove any references to the improvements described in Section 1 from the design-build agreement for the Project. WSDOT shall be responsible for performing any acts required to comply with law or administrative rule applicable to the advertising, bidding, contract award and construction of the Project, to the extent that such law or administrative rules impose a higher or different standard than the laws or administrative rules applicable to the City's advertisement, bid, award and construction of the roundabout, notwithstanding the deletion of the intersection improvements from the design-build agreement.

Section 8. The WSDOT and the City have designated the following project managers to be the contacts for all communications under this Agreement:

WA State Department of Transportation
Linea Laird, Project Manager
3214 50th Street Court NW, Suite 302
Gig Harbor, WA 98335-8583
(253) 534-4647
Fax (253) 534-4679
e-mail lairdl@wdot.wa.gov

City of Gig Harbor
Stephen T. Misiurak, City Engineer
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170
Fax (253) 853-7597
e-mail misiuraks@cityofgigharbor.net

Section 9. Each party shall protect and hold harmless the other party from and against all claims, suits or actions arising from any intentional or negligent act or omission of that party's employees, agents and/or authorized subcontractors arising from the performance of this Agreement.

Section 10. In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington. Because this agreement is made in settlement of a case brought in United States District Court under the National Environmental Policy Act, action to enforce this agreement may also be brought in U.S. District Court, Western District of Washington.

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

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

By _____
Randall A. Hain, Region Administrator

Date: _____

APPROVED AS TO FORM:

By _____
Assistant Attorney General

Date: _____

CITY OF GIG HARBOR

By _____
Gretchen Wilbert, Mayor

Date: _____

ATTEST:

By _____
Molly Towslee, City Clerk

APPROVED AS TO FORM:

By _____
Carol A. Morris, City Attorney



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: STAFF REPORT - PARK SIGNAGE
DATE: OCTOBER 13, 2003

STAFF REPORT

Signage is needed to identify the Skansie Brothers, Donkey Creek and Jerisich Dock City parks. A local sign fabricator who designed other city signs has been contacted and provided the attached designs and price proposals.

Adequate funds are available within the 2003 Park budget for these expenditures.

Staff will proceed with the purchase of these signs as presented.



Estimate 9/29/03

To; Dave Brereton / The City of Gig Harbor

By; Toby's Signs; 253-851-9761

Specs;

52" wide x 46" high x 2" thick.

Sandblasted clear vertical grain cedar sign
with natural finish border.

Cost; 1,495.00

Tax 125.58

Total ... \$1,620.58



Estimate 9/26/03

To; Dave Brereton / The City of Gig Harbor

By; Toby's Signs; 253-851-9761

Specs;

60" wide x 40" high x 2" thick.

Sandblasted clear vertical grain cedar sign
with natural finish border.

Cost; 1,500.00

Tax 126.00

Total ... \$1,626.00



Estimate 9/29/03

To; Dave Brereton / The City of Gig Harbor

By; Toby's Signs; 253-851-9761

Specs;

52" wide x 44" high x 2" thick.

Sandblasted clear vertical grain cedar sign
with natural finish border.

Cost; 1,430.00

Tax 120.12

Total ... \$1,550.12