

Gig Harbor City Council Meeting



**March 25, 2002
7:00 p.m.**

**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
March 25, 2002 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE

PUBLIC HEARING:

1. Street Vacation – Rust Street – Barta.
2. Street Vacation – Rust Street – Rohwer.
3. Street Vacation – Sutherland Street/Prentice Avenue – Bucher.

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 Meetings of March 11, 2002.
2. Proclamations/Correspondence: Proclamation - Strategic Information Management Month.
3. Update of Personnel Regulations.
4. Special Occasion Liquor License – Gig Harbor Sports Boosters.
5. Liquor License Assumption – Gig Harbor Chevron.
6. Agreement for Purchase and Installation of Fluid Distribution System at City Maintenance Facility.
7. Storm Water Facilities Maintenance Agreement(s) and Restrictive Covenant – Home Depot and SHDP Associates LLC.
8. Consultant Services Contract - Water Quality Monitoring - Cosmopolitan Engineering Group.
9. Approval of Payment of Bills for March 25, 2002.
Checks #35601 through #35731 in the amount of \$954,845.10

OLD BUSINESS:

1. Second Reading of Ordinance - Amendment to Title 19 of the GHMC - Procedure for Closed Record Appeal Hearings.

NEW BUSINESS:

1. Authorization for the Use of Uniforms and Off Duty Employment Agreement.
2. First Reading of Ordinance - Street Vacation – Rust Street – Barta.
3. First Reading of Ordinance - Street Vacation – Rust Street – Rohwer.
4. First Reading of Ordinance - Street Vacation – Sutherland Street/Prentice Avenue – Bucher.
5. Sportsman's Club Evaluation Contract - Kramerone, Inc.
6. Consultant Services Contract – Robert Rohrbach
7. LeBlanc Sewer Request.

STAFF REPORTS:

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

ANNOUNCEMENT OF OTHER MEETINGS:

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.3 1.110(i).

ADJOURN:

v

GIG HARBOR CITY COUNCIL MEETING OF MARCH 11, 2002

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

CALL TO ORDER: 7:03 p.m.

PLEDGE OF ALLEGIANCE

PUBLIC HEARING:

Amendment to Title 19 of the GHMC - Procedure for Closed Record Appeal Hearings. The Mayor opened the public hearing at 7:04. John Vodopich, Director of Community Development, presented this reintroduction and first reading of proposed amendments to Title 19. He explained that these amendments would remove the City Council from the Closed Record Appeal hearing process on Type III project applications, and add a process for reconsideration of the Hearing Examiner's Decision.

Carol Morris, Legal Counsel, explained that there was a typographical error on page five, which would be corrected at the next reading of the ordinance.

There were no public comments and the Mayor closed the public hearing at 7:05 p.m.

CONSENT AGENDA:

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

1. Approval of the Minutes of City Council Meetings of February 25, 2002.
2. Proclamations/Correspondence: none.
3. Special Occasion Liquor License – Navy League.
4. Approval of Payment of Bills for March 11, 2002.
Checks #35460 through #35600 in the amount of \$258,245.80.
5. Approval of Payroll for the month of February:
Checks #1304 through #1360 in the amount of \$202,087.75.

MOTION: Move to approve the Consent Agenda as presented.
Ruffo/Ekberg - unanimously approved.

OLD BUSINESS:

1. Reintroduction and First Reading of Ordinance - Amendment to Title 19 of the GHMC - Procedure for Closed Record Appeal Hearings. Councilmember Owel said that the amendments regarding reconsideration of the Hearing Examiner's Decision addressed concerns at that point in time when the application had gone before the Hearing Examiner, but that she would like a method by which to address concerns regarding staff decisions before an application was forwarded to the Hearing Examiner. John Vodopich said that in the future, all Type II administrative decisions would be forwarded to Councilmembers as a matter of policy.

Carol Morris clarified several items in the ordinance at the request of Councilmember Franich. This will return at the next meeting for a second reading.

Councilmember Picinich left the meeting at this time.

NEW BUSINESS:

1. Donkey Creek Park Presentation – J.A. Brennan, Landscape Architect. Pat Iolavera, Senior Planner gave an overview of the directives from Council in regards to the Donkey Creek Park property. She explained that several public hearings and Stakeholder meetings had been held with the consultants and various technical teams to discuss options for the park. She added that discussions regarding the creek would also continue with the adjacent property owner, Julian Schmidke.

She then introduced Jim Brennan, project lead and principal from J.A. Brennan Associates, and Alice Lancaster, from URS, who has performed the in-stream analysis. Pat concluded her presentation by explaining that 90% of the demolition documents had been completed and were awaiting review by the Public Works Department, and then the job would be put out to bid.

Jim Brennan – J.A. Brennan Associates. Mr. Brennan gave a recap of the alternative design concepts that had been developed and presented during public meetings. He shared what had been learned through the process of listening to what the public liked or disliked about the various options. He explained that this process led to a preferred master plan that incorporated these comments.

Alice Lancaster, URS. Ms. Lancaster briefly described the in-stream concepts that had been developed for the property in an attempt to restore the natural habitat. She explained that these plans are in response to public interest.

Pat and both Consultants answered questions from Councilmembers. Pat explained that the next phase would be to meet with the Parks Committee to begin the process of phasing the project and funding options.

The presentation boards were moved to the conference room, where members of the audience were invited to view the information and ask questions.

A short recess was announced at 8:05 p.m. The regular session began again at 8:13 p.m.

2. Transportation Plan Presentation – The Shea Group. John Vodopich introduced this presentation on the update to the 20-year Transportation Plan. He said that back in 1994 the city adopted a Comprehensive Plan in response to the State Growth Management Act, which included a transportation element. Since that time, the city has experience both an increase in population and economic growth, leading to the need for an update to the transportation plan. He introduced Susan Graham and David Skinner from The Shea Group, to present the changes.

Susan Graham, The Shea Group. Ms. Graham reminded Council that changes to the draft plan began in 1998, and it has taken several years to reach this point. She explained that changes

include reorganizing the plan to facilitate future revisions, the addition of an entire chapter of transportation facilities of statewide significance, and incorporation of comments from other regulatory agencies. She said that the most important changes are the acknowledgement of the desire for the preservation of the downtown area, the issues surrounding the Narrows Bridge project, and revenue forecasts.

Both Ms. Graham and Mr. Skinner answered Council's questions about the plan.

John Vodopich introduced members of the Public Works staff, Dave Brereton, Director of Operations and Marco Malich, Supervisor, who were present in the audience. John directed Council's attention to the color photo of the Finholm Viewclimb Restroom recently installed. He added that he appreciated the talents of the public works staff and thanked them for their efforts.

3. Sanitary Sewer Facility Maintenance Agreement and Restrictive Covenant – Alastra Court. John Vodopich presented this standard easement maintenance agreement for the Alastra Court PUD and recommended approval.

MOTION: Move to approve the Sanitary Sewer Maintenance Agreement and Restrictive Covenant for Alastra Court as presented.
Ruffo/Owel – unanimously approved.

4. Easement Agreement – Alastra Court. John Vodopich explained that this was a standard watermain easement agreement for the same project.

MOTION: Move to approve the Easement Agreement for Alastra Court as presented.
Owel/Ruffo – unanimously approved.

STAFF REPORTS:

1. John Vodopich, Community Development Director, Update – Gig Harbor Sportsman's Club. John explained that an update on the progress related to the Sportsman's Club was included in the packet, emphasizing that Council had directed him to pursue the hiring of two experts; the first, an acoustical engineer, who had been hired in January; and second, a range technical advisory, to evaluate the current safety aspects of the range. He said that he had contacted the National Rifle Association, but due to concerns with their contractual language, an agreement could not be reached. He continued to explain that he had contacted two other firms and gave an overview of both proposals. He recommended selection of the firm of Kramerone, Inc. in an amount not to exceed \$7,000. Councilmember Franich voiced his concern that staff could not come to terms with the NRA. John and Carol Morris, Legal Counsel, further clarified the concerns surrounding the contract language and why an agreement could not be reached.

Dan Cook – Past-President of Gig Harbor Sportsman's Club. Mr. Cook said that the concern was whether the Gig Harbor Sportsman's Club met nationally accepted safety standards for a sportsman's club. He asked what better organization than the NRA to determine this. He offered to enter into contract with the NRA, and if it was determined that the sportsman's club did not meet the national standards, then the club would pay the NRA for the report. He continued to say

if the report found that club meets with federal standards, and then the city would reimburse the expense of the study.

Councilmember Owel explained that it was the club's prerogative to conduct their own study. Mr. Cook explained that they had already had the study done in conjunction with one done by the NRA for a proposed new site for the club. He added that the results of the report were positive.

Carol Morris explained that her directive was not only to obtain an evaluation of the existing facility, but several other factors such as altering the facility to address safety and noise concerns.

Mark Schaffer – Avalon Woods. Mr. Schaffer explained that Kramerone was used to inspect the club in Redmond and gave input into their newly adopted ordinance. He added that the NRA was a lobby group and that Kramerone would submit a better, non-biased report.

Caryl Harris – Harbor Glen. Ms. Harris said that the noise from the sportsman's club had increased over the past eight years and described the noise as obtrusive and offensive. She said that her neighbors want the peace and quiet restored. She said that the noise is interfering with their property values and use of their property.

MOTION: Move to authorize the city to hire Kramerone, Inc. in an amount not to exceed \$7000 to conduct this safety evaluation study.
Ruffo/Owel – unanimously approved.

2. GHPD – February Stats. No verbal report given.

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor Wilbert introduced Steve Careaga, who represents an organization called "Fire Donations."

Steve explained that he is a former firefighter, and that in August, he partnered with Joe Gagnon and others to begin a non-profit organization to offer financial benefits to the families of firefighters killed in the line of duty. He said that after the events of September 11th, theirs was the only website that was fire-related and had the ability to take donations. He added that they have raised over ten million dollars for the families of the 343 firefighters that were killed during the September 11th events. He explained that they recently delivered four and one-half million, along with the CD and message from Mayor Wilbert to Mayor Bloomberg's office in New York.

Mayor Wilbert said that it was appropriate on this 6-month anniversary to recognize those who lost their lives in the 9-11 incident, and the service that our two local citizens were providing. She added that she would be traveling to New York on the 11th of April and would deliver the scrapbook assembled by Lorraine Hart.

ANNOUNCEMENT OF OTHER MEETINGS: None.

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.3 1.110(i).

MOTION: Move to adjourn to Executive Session to discuss pending litigation for approximately five minutes at 8:57 p.m.
Ekberg/Ruffo - unanimously approved.

MOTION: Move to return to regular session at 9:13.
Ruffo/Ekberg - unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 9:13 p.m.
Franich/Ruffo - unanimously approved.

Cassette recorder utilized.
Tape 645 - Side B 392 - end.
Tape 646 - Both sides.
Tape 647 - Side A 000 - end.
Tape 647 - Side B 000 - 170.

Gretchen A. Wilbert, Mayor

City Clerk

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, ARMA International, the Association for Information Management Professionals, is a not-for-profit organization whose primary purpose is education in the field of records and information management, serving more than 10,000 records and information management professionals in the United States, Canada, and other nations; and

WHEREAS, ARMA International serves both business and government organizations in this community and is sponsoring Strategic Information Management Month during the month of April 2002; and

WHEREAS, during Strategic Information Management Month, all companies, government agencies, and organizations throughout Washington are encouraged to check their records and retention schedules and clean out their file cabinets; and

WHEREAS, by performing these good business procedures, companies exert control over the information in their files and keep only their most important and active documents on site; and

WHEREAS, by eliminating file cabinets filled with inactive and obsolete documents, companies gain valuable and expensive office space, while also helping the environment by recycling quantities of used paper; and

WHEREAS, in support of the profession of records and information Management and Strategic Information Management Month, all agencies are urged to join in the records clean up; and

NOW, THEREFORE, I, Gretchen Wilbert, Mayor of the City of Gig Harbor, do hereby declare April 1st through 7th, 2002 as

NATIONAL RECORDS AND INFORMATION MANAGEMENT WEEK

in the City of Gig Harbor, and I encourage all citizens to recognize the important service performed by records and information professionals.

Gretchen A. Wilbert, Mayor

Date



Puget Sound Chapter - ARMA International

P.O. Box 1842 • Tacoma, Washington 98401-1842

March 01, 2002

Mr. Mark Hoppen, City Administrator
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335-0145

RECEIVED
MAR 14 2002
CITY OF GIG HARBOR

Dear Mr. Mark Hoppen:

The month of April 2002 is Strategic Information Management Month (SIMM) which is now in its eighth year. The first observance of this celebration, what used to be called "NRIMW", occurred many years ago. Since 1997, ARMA International, the Association for Information Management Professionals, has been celebrating SIMM annually. ARMA serves more than 10,000 information management professionals in the United States, Canada, and over 30 other nations. ARMA members include records and information managers, MIS and ADP professionals, imaging specialists, archivists, hospital administrators, legal administrators, librarians, and educators. ARMA is a not-for-profit association whose primary purpose is provided education to information professionals and to enable them to use their skills, experience and knowledge as contributors to organizational success. Whether or not you have employees who are members of ARMA International, all companies, government agencies and organizations are encouraged to participate in SIMM to emphasize the impact that records and information management has on global business.

The President of the Puget Sound Chapter of ARMA and the Chapter SIMM Chairperson would like to request a proclamation from you. Your participation in SIMM is very important not only to us, but also to the entire records and information management profession. Our chapter will be celebrating SIMM at our regularly scheduled chapter meeting on April 10, 2002 at the La Quinta Inn, Tacoma, WA. We would be very excited to have you or a representative from your office attend our event and personally present your proclamation.

We have attached a sample to assist you with the proclamation process. If you would like any additional information on SIMM or would be interested in attending our celebration, please feel free to contact Tricia Pack, SIMM Chair. We are looking forward to being able to include your office on our list of participants. In the event you or a representative from your office are unable to attend, please forward the proclamation to the address below, or contact Tricia Pack to arrange pick up.

Sincerely,

A handwritten signature in cursive script that reads "Tricia J. Pack".

Tricia J. Pack, SIMM Chairperson
Board of Directors
P.O. Box 1842
Tacoma, WA 98401-1842
253-627-1551

Sincerely,

A handwritten signature in cursive script that reads "Sue M. Lord".

Sue M. Lord
Chapter President





City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *mh*
SUBJECT: UPDATE OF PERSONNEL REGULATIONS
DATE: MARCH 13, 2002

INTRODUCTION/BACKGROUND

These proposed alterations of the city's personnel regulations adjust the city personnel policy manual to improve intra-organizational communication and work process.

POLICY CONSIDERATIONS

The inclusion of these few minor policy adjustments in the manual is a house-keeping matter. The revised *2002 City of Gig Harbor Personnel Regulations* will be produced and distributed to all employees by the end of March. All employees sign for receipt of the manual. The regulations were last updated and distributed in the year 2000.

RECOMMENDATION

Staff recommends a motion to approve the attached textual adjustments to city's personnel regulations manual.

E. TEMPORARY APPOINTMENT

Appointments to positions other than an acting or regular basis shall be considered temporary. Such temporary appointments shall be allowed when:

- 1) A substitution for a regular appointee who is absent from his or her position is necessary;
- 2) It is impossible to appoint a person to the position due to recruitment difficulties;
- 3) Budget appropriations only provide for temporary employment; and/or
- 4) A state of disaster or emergency exists.

Temporary appointees shall serve at the discretion of the City Administrator. No temporary appointment shall exceed one year in duration.

F. NEPOTISM

No spouse shall be employed by the city in a situation where one spouse would have the authority or practical power to supervise or discipline another, where one spouse is responsible for auditing the work of another, or when the spouse is going to be in a position of actual or reasonably foreseeable conflict between the employer's interests and their own. If this situation should occur, one employee must transfer to another department, or if a transfer is not available, the spouses will be given the opportunity to determine which of them will leave the organization.

G. PROBATION

An appointment or promotion to a full-time position other than law enforcement officers, shall not be regular for a period of six (6) months. An appointment to a full-time law enforcement officer position shall not be regular for a period of twelve (12) months from date of completion of Academy for entry-level officers. Probation is an extension of the selection process and failure of same as determined by the City Administrator or department manager does not constitute any right to appeal under these regulations. Employees on probation may be terminated by the City Administrator or the department manager. Upon satisfactory completion of the probationary period, the employee shall gain regular status. Unsatisfactory probationers shall be notified in writing by the department manager at any time during the probationary period. A copy of the notification shall be retained in the personnel files. Termination of a probation employee may occur for any reason that is not illegal or discriminatory.

H. ATTENDANCE

Employees shall be at their job in accordance with the rules relating to hours of work, holidays, and leaves of absence.

An employee shall not be absent from work for any reason other than those specified in these regulations, without prior arrangements with his/her supervisor.

Any unauthorized absence from work shall be an absence without pay and may be cause for disciplinary action.

I. HOURS OF WORK

The normal workweek for full-time employees, other than sewer treatment employees, shall consist of forty hours: five consecutive days Monday through Friday at eight hours. The eight-hour day does not include a 30-minute meal period. The eight-hour day does include a fifteen (15) minute coffee break in the morning and the same in the afternoon.

The normal work-week for sewer treatment employees shall consist of forty hours worked of five consecutive days of eight hours exclusive of a 30 minute meal period on the employees' own time unless mutually agreed by all parties. Concurrent agreement schedule approval by the City Administrator, Department Manager, and the employee must occur before flextime may be authorized.

J. PROMOTION

Vacancies in positions shall be filled from employees holding regular appointments in appropriate job classes on a competitive basis. If qualified personnel are not available within the city staff, applicants shall be recruited. City employees who are promoted shall successfully complete probationary period. Those who fail the probationary period shall assume any regular appointment held prior to promotion if a position remains open.

K. DEMOTION

No employee shall be demoted to a position for which he or she does not possess the minimum qualifications. An employee being demoted shall be notified two weeks prior to demotion. An employee may be demoted when: performance falls below that established for his/her particular classification; the employee becomes physically or mentally incapable of performing the duties of his/her position; in lieu of layoff; or as a form of discipline for failure to meet job requirements. A demotion may be authorized by the City Administrator for any employee who

W. PERSONNEL RECORDS

- 1) The City Administrator shall maintain a personnel record for each employee. Such record shall contain the employee's name, title of position held, the department to which assigned, salary, performance evaluations, personnel actions affecting the employee, change in employment status, training received, and such other information considered pertinent.
- 2) A medical file is also kept for each employee, which is separate from the personnel file and is kept locked. It contains information on any physical reports, medical notes or leaves, drug testing results, and accident reports or claims.
- 3) An employee has the right to review his/her file. An employee may request removal of irrelevant or erroneous information in his/her personnel file. If the City denies the employee's request to remove the information, the employee may file a written rebuttal statement to be placed in his/her file.
- 4) Personnel files are kept confidential to the maximum extent permitted by law. Except for routine verifications of employment, no information from an employee's personnel file will be released to the public, including the press, contrary to Law, without a written request for specific information submitted to the City Administrator.

X. USE OF CITY VEHICLES

City vehicles shall not be driven for personal uses. With the approval of the City Administrator, on-call employees may drive a city vehicle back and forth between work and their private residence. An employee must be eighteen years or older to drive a city vehicle.

Y. USE OF CITY CREDIT CARDS

- 1) Implementation. The Finance Director (or his/her designee) shall implement this system for the distribution, credit limits, payment of bills, authorization and control of cards, relating to the use of credit and purchasing cards by City officials, officers and employees.
- 2) Eligibility. All regular-status City employees and City officers/officials are eligible to receive a Purchasing/Credit card if authorized by their Approving Director and the Finance Director. Purchasing/Credit cards may be checked out by the Finance Department to those City

GG. VOLUNTEERS - REFRESHMENTS

The serving of coffee, other light refreshments and meals at meetings involving volunteers and other "quasi-employees" may be authorized as a limited form of compensation for people who otherwise might be entitled to monetary payment.

HH. INTERNET AND ELECTRONIC MAIL USE

Employees are responsible for using the Internet and Electronic Mail in an ethical, legal and conservative manner. All internet and e-mail communications made with city equipment are the property of the city and subject to review.

- 1) Internet and Electronic Mail access is provided to employees as a research and communication tool to help conduct city business. Employees are not to use city-owned equipment, service, information technology or other resources for personal purposes. Employees are trusted to exercise good judgment in both duration and frequency of Internet and e-mail use. The e-mail system shall not be used as a method of communicating non-essential information to city staff. The "County-wide" message feature shall be used only by the City Administrator or his/her designee.
- 2) Employees are discouraged from downloading software from the Internet. When there is clear business reason for downloading Internet software, the appropriate anti-virus detection program(s) should be used with the approval of the Information Systems Specialist.
- 3) If unsure whether materials are copyrighted, then don't use such materials without the written permission of the author.
- 4) City Internet users shall not post to newsgroups without consent from the City Administrator.

WASHINGTON STATE LIQUOR CONTROL BOARD-License Services
1025 E Union - P O Box 43075
Olympia WA 98504-3075

TO: MAYOR OF GIG HARBOR

March 11, 2002

SPECIAL OCCASION # 368424

RECEIVED
MAR 13 2002
CITY OF GIG HARBOR

GIG HARBOR H.S. SPORTS BOOSTERS
510 ROSEDALE ST
GIG HARBOR WA 98335

DATE: APRIL 6, 2002

TIME: 5:30 PM TO 11:30 PM

PLACE: GIG HARBOR YACHT CLUB, 8209 STINSON AVE., GIG HARBOR

CONTACT: LISA LARSEN 253-549-4509

SPECIAL OCCASION LICENSES

- * License to sell beer on a specified date for consumption at specific place.
- * License to sell wine on a specific date for consumption at a specific place.
- * Beer/Wine in unopened bottle or package in limited quantity for off premises consumption.
- * Spirituous liquor by the individual glass for consumption at a specific place.

If return of this notice is not received in this office within 20 days from the above date, we will assume you have no objection to the issuance of the license. If additional time is required please advise.

1. Do you approve of applicant? YES___ NO___
2. Do you approve of location? YES___ NO___
3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? YES___ NO___

OPTIONAL CHECK LIST

EXPLANATION

LAW ENFORCEMENT	_____	YES___ NO___
HEALTH & SANITATION	_____	YES___ NO___
FIRE, BUILDING, ZONING	_____	YES___ NO___
OTHER:	_____	YES___ NO___

If you have indicated disapproval of the applicant, location or both, please submit a statement of all facts upon which such objections are based.

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



NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 3/12/02

TO: CITY OF GIG HARBOR

RECEIVED
MAR 14 2002
CITY OF GIG HARBOR

RE: ASSUMPTION
From EUREKA MANAGEMENT GROUP, INC.
Dba MARKET EXPRESS

APPLICANTS:

SNC INVESTMENTS, L.L.C.

License: 072786 - 1J County: 27
UBI: 602-178-574-001-0001
Tradename: GIG HARBOR CHEVRON
Loc Addr: 5006 POINT FOSDICK DR NW
GIG HARBOR WA 98335-1715
Mail Addr: 5006 POINT FOSDICK DR NE
GIG HARBOR WA 98335-1715
Phone No.: 253-381-4658 KOONG CHO

CHO, KOONG HEE 1954-07-03 534-92-3578
CHO, MEE LEE (Spouse) 1954-04-23 534-94-4962
SHIN, HO YONG 1944-03-30 576-64-1185
SHIN, KUK HEE (Spouse) 1952-03-15 576-60-3678

Privileges Applied For:
GROCERY STORE - BEER/WINE

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

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

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PURCHASE AND INSTALLATION AGREEMENT
- FLUID DISTRIBUTION SYSTEM
DATE: MARCH 25, 2002

INTRODUCTION/BACKGROUND

A Street Operating Objective in the 2002 Budget was to purchase and install an air-powered overhead fluid distribution system for dispensing motor oil, hydraulic fluid, and automatic transmission fluid in the city's maintenance shop.

Price quotations for the fluid distribution system were requested from three contractors in accordance with the city's Small Works Roster process for the purchase of materials (Resolution 411). The price quotations are summarized below:

<u>Contractor</u>	<u>Total</u> (including sales tax)
Sound Pump and Equipment	\$ 8,939.46
SME Corporation	\$ 13,311.11
Joe Hall Construction	\$ 14,380.16

The lowest price quotation received was from Sound Pump and Equipment, in the amount of \$8,939.46, including state sales tax.

The City Attorney has reviewed and approved the contract.

Work is expected to begin in early April.

ISSUES/FISCAL IMPACT

The purchase and installation of the fluid distribution system are within the budgeted amount, as identified in Budget Objective No. 12, in the 2002 Street Operating Fund.

RECOMMENDATION

I recommend that the Council authorize the purchase and installation of the fluid distribution system from Sound Pump and Equipment, as the lowest contractor, for their price quotation proposal of eight thousand nine hundred thirty-nine dollars and forty-six cents (\$8,939.46), including state sales tax.

**AGREEMENT FOR EQUIPMENT AND INSTALLATION SERVICES
BETWEEN GIG HARBOR AND SOUND PUMP AND EQUIPMENT**

THIS AGREEMENT, is made this _____ day of _____, 200___, by and between the City of Gig Harbor (hereinafter the "City"), and Sound Pump and Equipment, a Washington corporation, located and doing business at 201 A Street NW, Auburn, Washington 98001, (hereinafter "Contractor").

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 in Exhibit A, 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 an automotive fluid distribution system at City of Gig Harbor maintenance facility.

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 eight thousand nine hundred thirty-nine dollars and forty-six cents (\$8,939.46) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the tasks described in Exhibit A, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.

B. The Contractor 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 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, 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. This Agreement shall be effective for 180 days thereafter, except that the indemnification provisions of Section VII shall survive expiration of this Agreement.

V. 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, 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.

VI. 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.

VII. 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.

VIII. 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
3. Professional Liability insurance with no less than \$1,000,000 claims made basis.

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.

IX. 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.

X. 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.

XI. 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.

XII. 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. The manufacturer's warranty is provided in Exhibit A. Sound Pump and Equipment will warranty the labor and installation of materials required for this same five (5) year warranty period

XIII. 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.

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

IV. 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.

XVI. 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.

XVII. 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.

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

Sound Pump and Equipment, Contractor

THE CITY OF GIG HARBOR

By: David E. Chadam
Its MANAGER

By: _____
Its _____

Notices should be sent to:

Sound Pump and Equipment
Attn: Dave Chavanu
210 A Street NW
Auburn, Washington 98001

City of Gig Harbor
Attn: David Breerton
Director of Operations
3105 Judson Street
Gig Harbor, Washington 98335

Approved as to form:

By: _____
City Attorney

Attest:

By: _____
Molly M. Towstec, City Clerk

**EXHIBIT A
SCOPE OF SERVICES**

ATTN: JOHN WIGGON, JR.
PUBLIC WORKS DEPARTMENT
 COMPANY: CITY OF GIG HARBOR
 ADDR: 3105 JUBOD STREET
 CITY: GIG HARBOR, WASH. 98335

DATE OF REQUEST: 2/4/02 REVISION
 TEL: 253.851.8406
 FAX: 253.851.8408
 P.O.#: _____
 DELIVERY DATE: / /

MAINT. SHOP: 5116 89th ST. N.W.

PAGE 1

QNTY	MFG-MOD #	DESCRIPTION	PRICE	X QNTY	EXTENSION
EQUIPMENT AND INSTRUCTION FOR NEW SHOP:					
*		NOTE - ORIGINALLY 165 GAL TASK PKGS - CHANGE ITEM PRODUCT WILL NOW BE IN 55 GAL DRUMS -			TASKS DELETED
3	9968	5:1 RAM STAB OIL PUMP	46.00		
3	338147-2	SUCTION TUBE FOR 55 GAL DRUM	15.00		
3	1000-88	1/2" M X F SWIVEL UNION	2.86	553.00	3 1659.00
3	7936-X	1/4" FILTER/REG W/AUTO DUMP	43.00		
3	317803-7	7' AIR COND. HOSE	12.74		
3	317813-6	6' PRODUCT COND. HOSE	19.40		
1	9979-A	400# GREASE PUMP PKG.	771.00		
1	1000-66	3/8" M X F SWIVEL UNION	1.16		
1	7936-X	1/4" FILTER/REG W/AUTO DUMP	43.00	850.50	1 850.50
1	317803-7	7' AIR COND. HOSE	12.74		
1	317882-7	7' PRODUCT COND. HOSE	21.60		
1	8078-F	50' AIR REEL PKG	227.50	1	227.50
1	8078-B	50' GREASE REEL PKG. W/ CONTROL VALVE	425.50	1	425.50
3	8078-D	50' OIL REEL PKG. W/DIGITAL METER CONTROL VALVE	564.00	564.00	3 1692.00
SUB TOTAL - EQUIPMENT ONLY					4854.50

* NOTE: CHANGES MADE FROM ORIGINAL QUOTE DATED 6/13/01

- #1 - PRODUCT IN DRUMS - NO TASKS
- #2 - PUMP SUCTION TUBE FOR DRUM - NOT TASK
- #3 - 1/4" DRUM GREASE PUMP CHANGED TO 400# DRUM (55 GAL)

EQUIPMENT TOTAL: \$ _____
 STATE TAX: \$ _____
 TOTAL: \$ _____

Sincerely,

SOUND PUMP & EQUIPMENT

**EXHIBIT A
SCOPE OF SERVICES**

ATTN: _____
 COMPANY: CITY OF GIG HARBOR
 ADDR: _____
 CITY: _____

DATE OF REQUEST: 2 / 4 / 02 REGION
 TEL: _____
 FAX: _____
 P.O.#: _____
 DELIVERY DATE: / /

Page 2

QNTY	MFG-MOD #	DESCRIPTION	PRICE	X QNTY	EXTENSION
		INSTALLATION MATERIAL:			
140'		OIL - HYDRAULIC TUBING - REQUIRED FITTINGS	571.96		} 1028.72
5'		GREASE - HYDRAULIC TUBING - REQUIRED FITTINGS			
		MOUNTING STENT, STENT NUTS, TUBING CLAMPS	172.54		
		BEAM CLAMPS, AND MOUNTING HARDWARE			
8		1/2" BALL SHUT-OFF VALVES - OIL	78.40		
2		1/2" HIGH PRESSURE SHUT OFF VALVES - GREASE	117.04		
60'		1/2" COPPER AIR LINE AND REQUIRED FITTINGS	83.78		
2		DAY MAINT RENTAL			163.20
		INSTALLATION LABOR:			
		DELIVER ALL EQUIPMENT			} 2,175.00
*		NO TACKS - PRODUCT IN DRUMS			
		INSTALL/ASSEMBLE 4 PUMPS - 3 OIL, 1 GREASE			
		INSTALL 5 OVERHEAD REELS			
		PLUMB FROM BBL'S + PUMPS TO OVERHEAD REELS			
		PLUMB AIR LINE MANIFOLD TO PUMPS			
		PLUMB AIR LINE TO OVERHEAD REEL			
		SUB TOTAL - MATERIAL + LABOR			3,361.92

* NOTES: CHANGE FROM ORIGINAL QUOTE -
 DELETE TAX "SETUP" - NO TACKS
 PRODUCT IN BBL'S. Now

INSTALLATION ADD
EQUIPMENT TOTAL: \$ 8,216.42
STATE TAX: 8.8% \$ 723.04
TOTAL: \$ 8,939.46

Sincerely,
DAVE CHAVANIL
SOUND PUMP & EQUIPMENT



EXHIBIT B

Alemite Corporation Five-Year Warranty Program

Alemite warrants to the original equipment purchaser that Alemite products listed below will be free from defects in material and workmanship for a period of five (5) years. Alemite products not listed below will be covered by their standard warranty coverage as coded in Alemite Price Lists.

This warranty covers products listed below that have been installed, operated and maintained according to Alemite Operational and Service Guidelines. Any product, covered under this program, will be repaired or replaced at Alemite's discretion at no charge to the user.

Any product that fails as a result of negligence, abuse, accident, alteration, corrosion, improper installation or maintenance, will not be covered by this warranty. Alemite disclaims any liability for consequential damages due to breach of any written or implied warranty on its products.

Covered Alemite Products

RAM Series Grease Pumps

RAM Series Oil Pumps

RAM Series Evacuation Pumps

Standard Duty Oil Pumps

Standard Duty Grease Pumps

Industrial Series Oil Pumps

Industrial Series Grease Pumps

Diaphragm Pumps

Industrial Transfer Pumps

Industrial Material Dispensing Pumps

All Alemite Series Hose Reels (excluding hoses, see hose warranty in Alemite Price Lists)

Used Oil handling products

753X Series Portable Manual Pumping Equipment

362X Series Electronic Meters

363X Series In-Line Electronic Meters

368X Series Mechanical Meters

369X Series Mechanical Preset Meters

56xx Series Moisture Separators/Filters

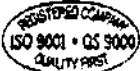
59XX Series Air-Line Lubricators

76XX Series Regulators (Excludes 7624-A and 7936)

33886X Series Filter/Regulator Packages

Fluidguard and Accuguard FIC systems

Any questions regarding this or any Alemite Warranty Policy may be directed to your local Alemite District Representative.



ALEMITE CORPORATION
7845 LITTLE AVENUE CHARLOTTE, NC 28226
PHONE 704-542-6300 EXECUTIVE FAX 704-542-6591





City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: STORM WATER FACILITIES MAINTENANCE AGREEMENT(S) AND
RESTRICTIVE COVENANT
- HOME DEPOT USE, INC. AND SHDP ASSOCIATES, LLC
DATE: MARCH 25, 2002

INTRODUCTION/BACKGROUND

The city has required private on-site storm water collection and detention facilities to be constructed along Borgen Boulevard, in connection with the Gig Harbor South development. As specified in Section 14.20.530, Gig Harbor Municipal Code (GHMC), a maintenance covenant that is recorded against the property is required for all privately maintained drainage facilities. This allows the city a nonexclusive right of entry onto those portions of the property immediately adjacent to the stormwater facilities for the purpose of inspection of the facilities, and further requires that the property owner perform his/her own regular inspection and maintenance of the facilities at the property owner's expense.

Recently, similar agreements were presented and approved by Council for the Gig Harbor North Development.

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

Council approval of the four agreements is requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend the Council's approval of these agreements.

When Recorded Return To:

Jane Rakay Nelson
Lane Powell Spears Lubersky LLP
1420 5th Ave., Suite 4100
Seattle, WA 98101

Please print or type information WASHINGTON STATE RECORDER'S COVER SHEET
(RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)	
1.	Stormwater Facilities Maintenance Agreement and Restrictive Covenant
Reference Number(s) of Documents assigned or released:	
<input type="checkbox"/>	Additional reference numbers on page no. of document
Grantor(s) (Last name first, then first name and initials)	
1.	SHDP Associates, LLC
2.	
<input type="checkbox"/>	Additional names on page no. of document
Grantee(s) (Last name first, then first name and initials)	
1.	City of Gig Harbor, Washington
2.	
<input type="checkbox"/>	Additional names on page no. of document
Legal Description (Abbreviated: i.e., lot, block, plat or section, township, range)	
<input type="checkbox"/>	Lot 1 Gig Harbor South BSP AF# 200110195002
Assessor's Property Tax Parcel/Account Number :	
<input type="checkbox"/>	Assessor's Property Tax Parcel/Account Number not yet assigned
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.	

112965.0005586306.1

STORM WATER FACILITIES MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANT

This Storm Water Facilities Maintenance Agreement and Restrictive Covenant is made this 7th day of March, 2002, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and SHDP ASSOCIATES, LLC, ~~residing at~~, a Washington limited liability company (hereinafter "Owner"), whose address is 120 N. Dayton, Suite D-9, Edmonds, WA 98020.

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 5050 Borgen Blvd., (hereinafter the "Property") and legally described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

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

WHEREAS, such drainage system is described and shown on a construction drawing prepared by the engineering firm of Pacific Land Design on February 13, 2002 (hereinafter the "Drainage System Drawing"), for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; and

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

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

TERMS

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

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

Section 3. Access. The City shall have the right to ingress and egress over those portions of the Property described in Exhibit A in order to access the drainage system for inspection, and to reasonably monitor the system for performance, operational flows or defects. (after 24-hour prior notice to Owner, except in the case of an emergency)

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

Section 5. Cost of Repairs and/or Maintenance. The Owner shall assume all responsibility for the cost of any maintenance and for repairs to the drainage system. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Owner for any work performed by the City. Overdue payments will require payment of interest by the Owner at the current legal rate as liquidated damages. pursuant to Section 4

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

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

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

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

To the City:

Public Works Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

To the Owner:

SHDP ASSOCIATES, LLC
120 W. Dayton, Suite D-9
Edmonds, WA 98002

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

Section 11. Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

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

EXHIBIT A

LOT 1 - RETAIL 1

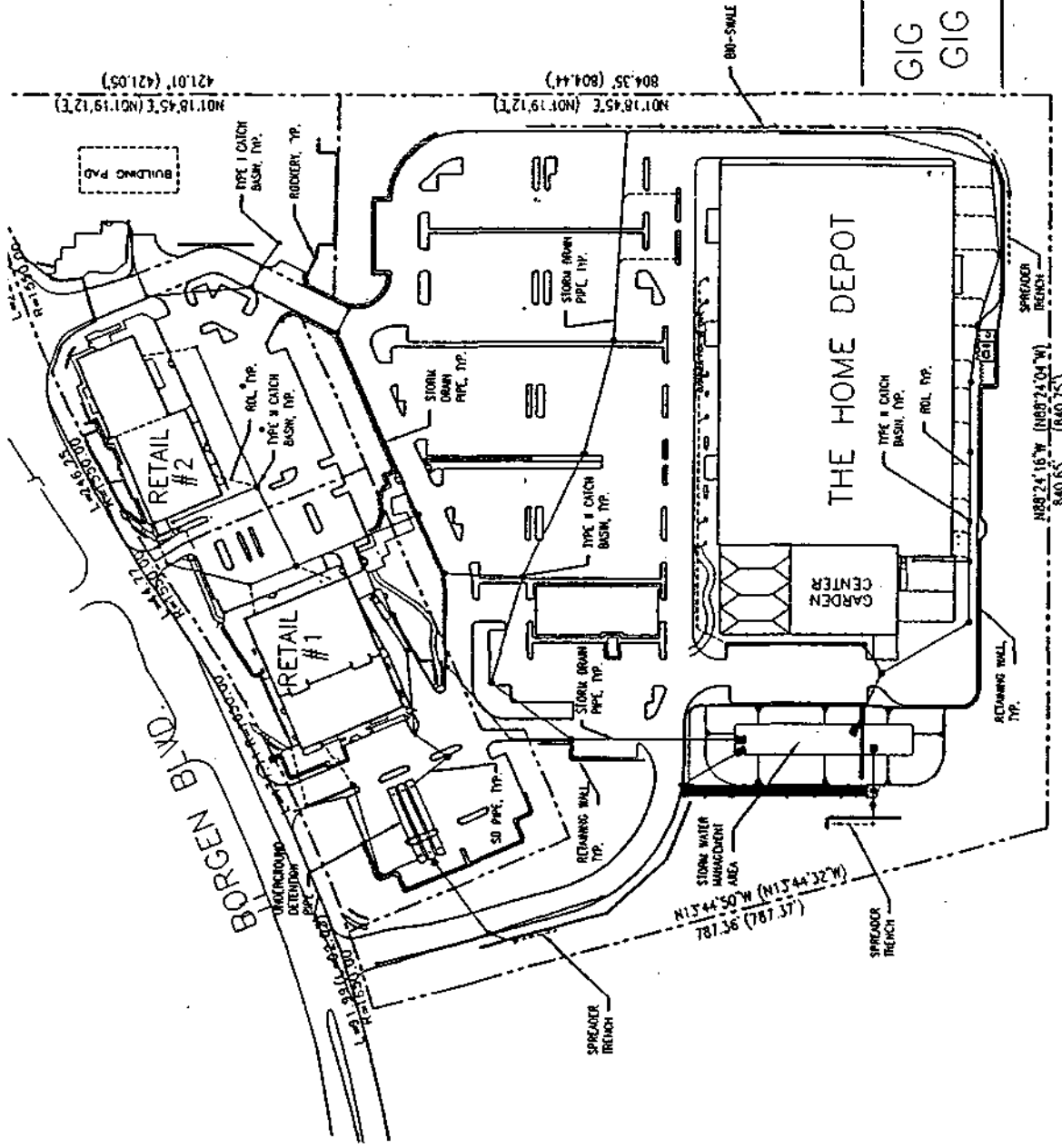
That portion of Lot 6 of the Boundary Line Adjustment filed under Recording Number 200003315004, Records of Pierce County Auditor, located within the Northwest quarter of the Northwest quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian in Pierce County, Washington, and described as follows:

Commencing at the northwest corner of said Lot 6 of the Boundary Line Adjustment at a point on the southerly right of way of Borgen Boulevard on a curve concave to the northwest from which the radius point bears North $14^{\circ}45'08''$ West 1650.00 feet; thence northeasterly along said right of way and along said curve an arc distance of 92.03 feet through a central angle of $03^{\circ}11'44''$ to the True Point of Beginning; thence continuing along said right of way and along said curve an arc distance of 431.11 feet through a central angle of $14^{\circ}58'13''$ to the beginning of a curve concave to the southeast, the radius point of which bears South $32^{\circ}55'05''$ East 1550.00 feet; thence continuing along said right of way and along said curve an arc distance of 44.77 feet through a central angle of $01^{\circ}39'18''$; thence leaving said right of way, South $30^{\circ}56'12''$ East 39.09 feet; thence South $21^{\circ}47'20''$ East 222.05 feet; thence South $68^{\circ}12'40''$ West 327.05 feet; thence South $01^{\circ}35'42''$ West 48.57 feet; thence South $68^{\circ}12'40''$ West 132.96 feet; thence North $21^{\circ}47'20''$ West 269.91 feet to the true point of beginning.

STORM DRAINAGE
MAINTENANCE PLAN
EXHIBIT B

SCALE: 1" = 200'

GIG HARBOR SOUTH RETAIL
GIG HARBOR, WASHINGTON



When Recorded Return To:

Jane Rakay Nelson
Lane Powell Spears Lubersky LLP
1420 5th Ave., Suite 4100
Seattle, WA 98101

Please print or type information WASHINGTON STATE RECORDER'S COVER SHEET
(RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. Stormwater Facilities Maintenance Agreement and Restrictive Covenant

Reference Number(s) of Documents assigned or released:

Additional reference numbers on page no. of document

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

1. SHDP Associates, LLC

2.

Additional names on page no. of document

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

1. City of Gig Harbor, Washington

2.

Additional names on page no. of document

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

Lot 2 Gig Harbor South BSP AF# 200110195002

Assessor's Property Tax Parcel/Account Number :

Assessor's Property Tax Parcel/Account Number not yet assigned

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

112965.0005586306.1

STORM WATER FACILITIES MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANT

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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 5160 Borgen Blvd., (hereinafter the "Property") and legally described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

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

WHEREAS, such drainage system is described and shown on a construction drawing prepared by the engineering firm of Pacific Land Design on February 13, 2002 (hereinafter the "Drainage System Drawing"), for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; and

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

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

TERMS

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

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

Section 3. Access. The City shall have the right to ingress and egress over those portions of the Property described in Exhibit A in order to access the drainage system for inspection and to reasonably monitor the system for performance, operational flows or defects. (after 24-hour prior notice to Owner, except in the case of an emergency)

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

Section 5. Cost of Repairs and/or Maintenance. The Owner shall assume all responsibility for the cost of any maintenance and for repairs to the drainage system. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Owner for any work performed by the City. Overdue payments will require payment of interest by the Owner at the current legal rate as liquidated damages. pursuant to Section 4

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

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

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

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

To the City:

Public Works Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

To the Owner:

SHDP ASSOCIATES, LLC
120 W. Dayton, Suite D-9
Edmonds, WA 98002

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

Section 11. Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

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

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

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement and Covenant to be executed this 7th day of March, 2002.

OWNER

SHDP ASSOCIATES, LLC

By: [Signature]

Its: MEMBER/MANAGER

APPROVED AS TO FORM:

[Signature]
City Attorney

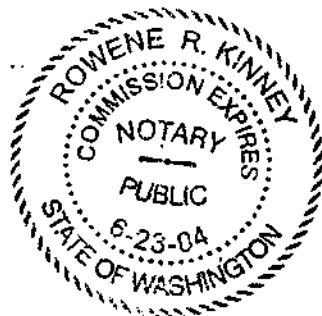
STATE OF WASHINGTON)

COUNTY OF SNOHOMISH)

ss.

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

DATED: March 7, 2002



[Signature]

Rowene R. Kinney
(print or type name)

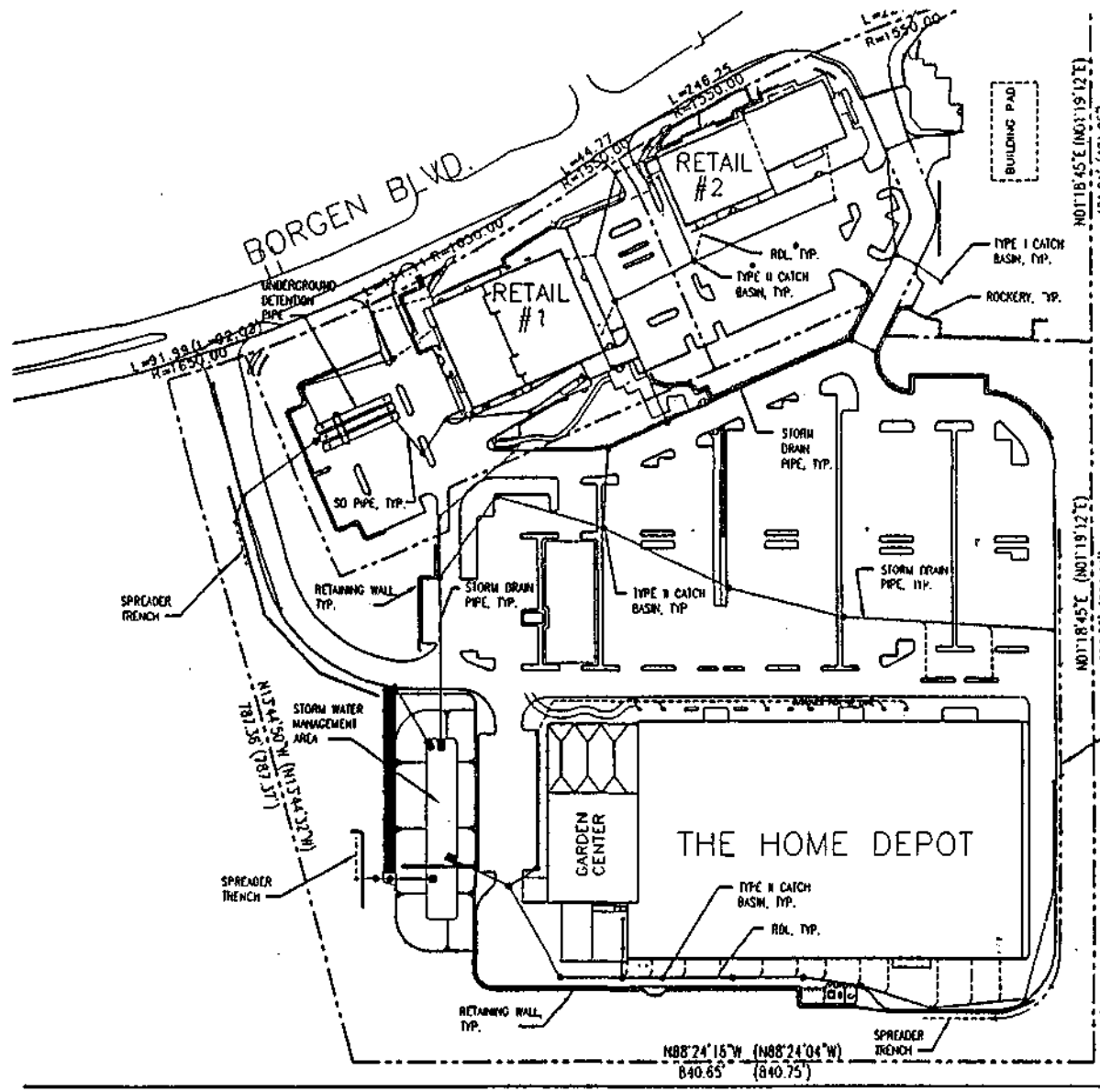
NOTARY PUBLIC in and for the
State of Washington,
residing at: EVERETT
My Commission expires: 6/23/04

EXHIBIT A

LOT 2 - RETAIL 2

That portion of Lot 6 of the Boundary Line Adjustment filed under Recording Number 200003315004, Records of Pierce County Auditor, located within the Northwest quarter of the Northwest quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian in Pierce County, Washington, and described as follows:

Commencing at the northwest corner of said Lot 6 of the Boundary Line Adjustment at a point on the southerly right of way of Borgen Boulevard on a curve concave to the northwest from which the radius point bears North $14^{\circ}45'08''$ West 1650.00 feet; thence northeasterly along said right of way and along said curve an arc distance of 523.14 feet through a central angle of $18^{\circ}09'57''$ to the beginning of a curve concave to the southeast, the radius point of which bears South $32^{\circ}55'05''$ East 1550.00 feet; thence continuing along said right of way and along said curve an arc distance of 44.77 feet through a central angle of $01^{\circ}39'18''$ to the True Point of Beginning; thence continuing northeasterly along said right of way and along said curve an arc distance of 246.25 feet through a central angle of $09^{\circ}06'10''$; thence leaving said right of way, South $66^{\circ}46'50''$ East 17.54 feet; thence South $70^{\circ}15'20''$ East 16.78 feet; thence South $44^{\circ}36'36''$ East 19.06 feet; thence South $26^{\circ}18'13''$ East 27.55 feet; thence North $74^{\circ}59'37''$ East 2.38 feet; thence South $21^{\circ}56'49''$ East 56.72 feet; thence South $21^{\circ}00'31''$ East 76.40 feet to the beginning of a 25.00 foot radius curve to the right; thence southerly along said curve an arc distance of 21.63 feet through a central angle of $49^{\circ}34'43''$; thence South $28^{\circ}34'11''$ West 95.48 feet; thence South $68^{\circ}12'40''$ West 192.29 feet; thence North $21^{\circ}47'20''$ West 222.06 feet; thence North $30^{\circ}56'12''$ West 39.09 feet to the true point of beginning.



STORM DRAINAGE
MAINTENANCE PLAN
EXHIBIT B



SCALE: 1"=200'

GIG HARBOR SOUTH RETAIL
GIG HARBOR, WASHINGTON

When Recorded Return To:

Jane Rakay Nelson

Lane Powell Spears Lubersky LLP

1420 5th Ave., Suite 4100

Seattle, WA 98101

Please print or type information WASHINGTON STATE RECORDER'S COVER SHEET
(RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. Stormwater Facilities Maintenance Agreement and Restrictive Covenant

Reference Number(s) of Documents assigned or released:

Additional reference numbers on page no. of document

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

1. SHDP Associates, LLC

2.

Additional names on page no. of document

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

1. City of Gig Harbor, Washington

2.

Additional names on page no. of document

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

Lot 3 Gig Harbor South BSP AF# 200110195002

Assessor's Property Tax Parcel/Account Number :

Assessor's Property Tax Parcel/Account Number not yet assigned

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

112965.0005\586306.1

STORM WATER FACILITIES MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANT

This Storm Water Facilities Maintenance Agreement and Restrictive Covenant is made this 7th day of March, 2002, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and SHDP ASSOCIATES, LLC, ~~residing~~ a Washington limited liability company (hereinafter "Owner"), whose address is 120 N. Dayton, Suite D-9, Edmonds, WA 98020.

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 5190 Borgen Blvd., (hereinafter the "Property") and legally described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

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

WHEREAS, such drainage system is described and shown on a construction drawing prepared by the engineering firm of Pacific Land Design on February 13, 2002 (hereinafter the "Drainage System Drawing"), for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; and

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

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

TERMS

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

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

Section 3. Access. The City shall have the right to ingress and egress over those portions of the Property described in Exhibit A in order to access the drainage system for inspection and to reasonably monitor the system for performance, operational flows or defects. (after 24-hour prior notice to Owner, except in the case of an emergency)

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

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To the City:

Public Works Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

To the Owner:

SHDP ASSOCIATES, LLC
120 W. Dayton, Suite D-9
Edmonds, WA 98002

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

Section 11. Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

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

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

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement and Covenant to be executed this 7th day of March, 2002.

OWNER
SHDP ASSOCIATES, LLC

APPROVED AS TO FORM:

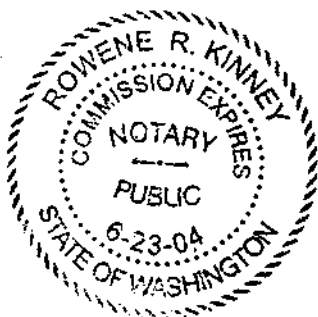
By: [Signature]
Its: MEMBER/MANAGER

City Attorney

STATE OF WASHINGTON)
 SUOHOMISH) SS.
COUNTY OF PIERCE)

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

DATED: March 7, 2002



[Signature]
ROWENE R. KINNEY
(print or type name)
NOTARY PUBLIC in and for the
State of Washington,
residing at: EVERETT
My Commission expires: 6/23/04

EXHIBIT A

LOT 3

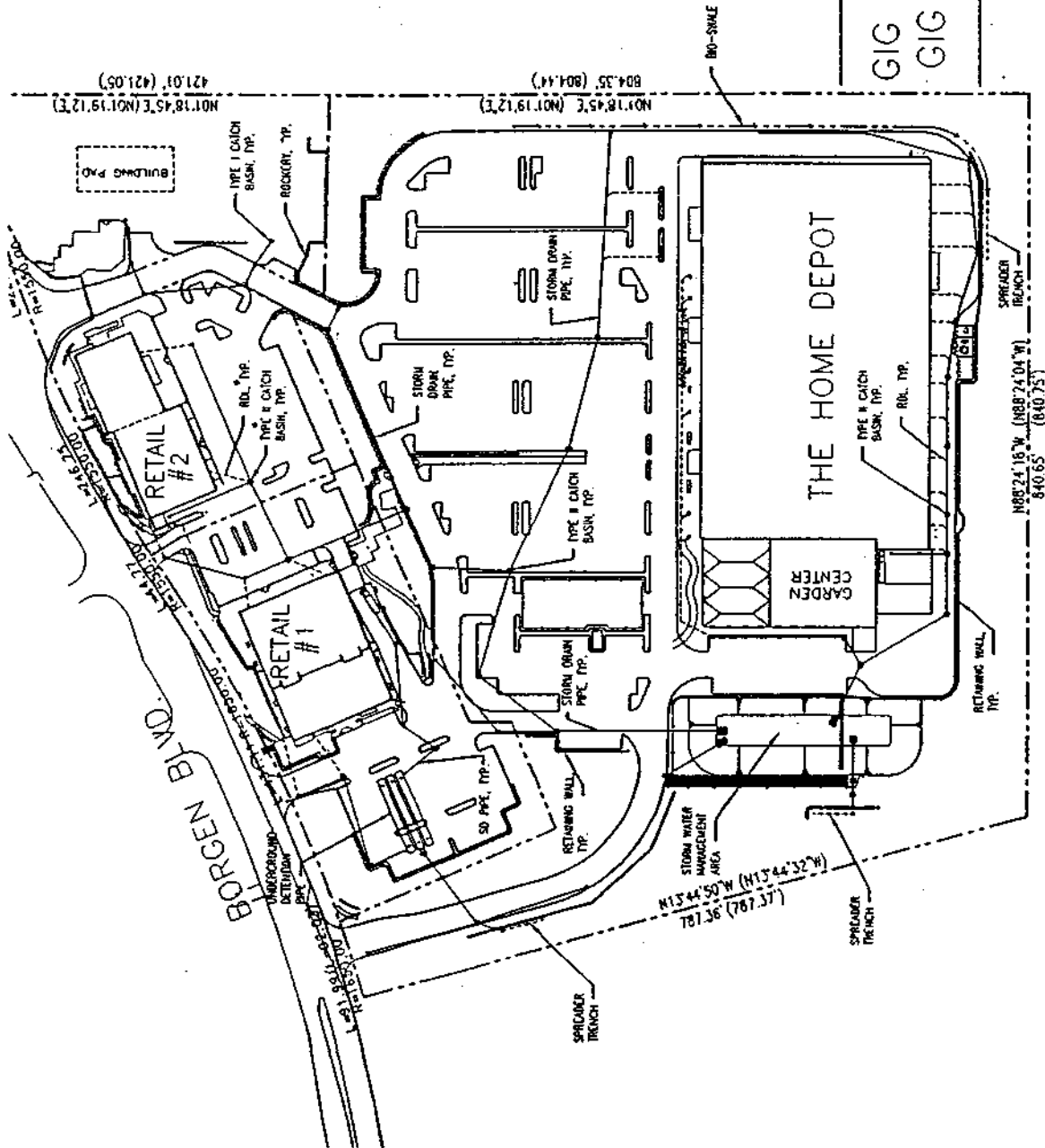
That portion of Lot 6 of the Boundary Line Adjustment filed under Recording Number 200003315004, Records of Pierce County Auditor, located within the Northwest quarter of the Northwest quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian in Pierce County, Washington, and described as follows:

Commencing at the northwest corner of said Lot 6 of the Boundary Line Adjustment at a point on the southerly right of way of Borgen Boulevard on a curve concave to the northwest from which the radius point bears North $14^{\circ}45'08''$ West 1650.00 feet; thence northeasterly along said right of way and along said curve an arc distance of 523.14 feet through a central angle of $18^{\circ}09'57''$ to the beginning of a curve concave to the southeast, the radius point of which bears South $32^{\circ}55'05''$ East 1550.00 feet; thence continuing along said right of way and along said curve an arc distance of 512.06 feet through a central angle of $18^{\circ}55'43''$ to the True Point of Beginning; thence continuing along said right of way and along said curve an arc distance of 114.02 feet through a central angle of $04^{\circ}12'52''$ to the northeast corner of said Lot 6; thence along the east line of said Lot 6, South $01^{\circ}19'12''$ West 421.05 feet; thence North $87^{\circ}09'17''$ West 237.42 feet; thence North $28^{\circ}34'11''$ East 122.67 feet to the beginning of a 55.00 foot radius curve to the left; thence northerly along said curve an arc distance of 47.59 feet through a central angle of $49^{\circ}34'43''$; thence North $21^{\circ}00'31''$ West 76.40 feet; thence North $15^{\circ}27'37''$ West 53.79 feet; thence North $74^{\circ}59'37''$ East 14.05 feet; thence North $05^{\circ}14'23''$ West 25.78 feet; thence North $25^{\circ}32'13''$ East 17.49 feet; thence North $38^{\circ}26'28''$ East 29.68 feet; thence North $62^{\circ}38'00''$ East 87.94 feet to the true point of beginning.

STORM DRAINAGE
MAINTENANCE PLAN
EXHIBIT B

SCALE: 1"=200'

GIG HARBOR SOUTH RETAIL
GIG HARBOR, WASHINGTON



When Recorded Return To:

Jane Rakay Nelson
Lane Powell Spears Lubersky LLP
1420 5th Ave., Suite 4100
Seattle, WA 98101

Please print or type information **WASHINGTON STATE RECORDER'S COVER SHEET**
(RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)	
1. Stormwater Facilities Maintenance Agreement and Restrictive Covenant	
Reference Number(s) of Documents assigned or released:	
<input type="checkbox"/>	Additional reference numbers on page no. _____ of document
Grantor(s) (Last name first, then first name and initials)	
1. Home Depot U.S.A., Inc.	
2.	
<input type="checkbox"/>	Additional names on page no. _____ of document
Grantee(s) (Last name first, then first name and initials)	
1. City of Gig Harbor, Washington	
2.	
<input type="checkbox"/>	Additional names on page no. _____ of document
Legal Description (Abbreviated: i.e., lot, block, plat or section, township, range)	
<input type="checkbox"/>	Lot 4 Gig Harbor South BSP AF# 200110195002
Assessor's Property Tax Parcel/Account Number : 400207-004-0	
<input type="checkbox"/>	Assessor's Property Tax Parcel/Account Number not yet assigned
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.	

112965.0005\586306.1

STORM WATER FACILITIES MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANT

This Storm Water Facilities Maintenance Agreement and Restrictive Covenant is made this ____ day of _____, 2002, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and HOME DEPOT U.S.A., INC., ~~residing at~~ a Delaware corporation, _____ (hereinafter "Owner"), whose address is 2455 Paces Ferry Road, N.W., Atlanta, GA 30339.

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 5120 Borgen Blvd., (hereinafter the "Property") and legally described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

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

WHEREAS, such drainage system is described and shown on a construction drawing prepared by the engineering firm of Pacific Land Design on February 13, 2002 (hereinafter the "Drainage System Drawing"), for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; and

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

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

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

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pursuant to Section 4

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

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To the City:

Public Works Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

To the Owner:

HOME DEPOT U.S.A., INC.
Attn: Legal Department
2455 Paces Ferry Road, N.W.
Atlanta, GA 30339

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

Section 11. Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

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

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement and Covenant to be executed this 7 day of March, 2002.

OWNER

HOME DEPOT U.S.A., INC., a Delaware corporation

By: 

Daniel R. Hatch
Its Sr. Corporate Counsel - Real Estate

APPROVED AS TO FORM:

City Attorney

(SEE NEXT PAGE FOR NOTARY ACKNOWLEDGEMENT)

STATE OF WASHINGTON)

) ss.

COUNTY OF PIERCE)

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

DATED: _____

(print or type name)

NOTARY PUBLIC in and for the

State of Washington,

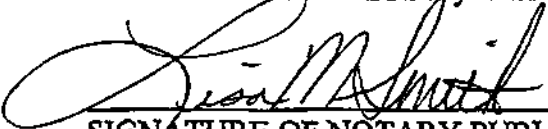
residing at: _____

My Commission expires: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On March 7, 2002, before me, Lisa M Smith
a Notary Public in and for said state, personally appeared DANIEL R. HATCH, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person whose
name is subscribed to the within instrument, and acknowledged to me that he executed the
same in his authorized capacity, and that by his signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC

(SEAL)

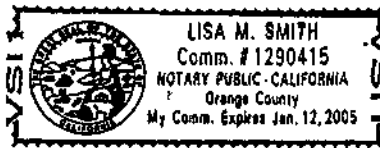


Exhibit A

Legal Description

LOT 4 OF GIG HARBOR SOUTH BINDING SITE PLAN, RECORDED IN PIERCE COUNTY, WASHINGTON ON SEPTEMBER 15, 2001, RECORDING NO. 200110195002, FORMERLY KNOWN AS:

That portion of Lot 6 of the Boundary Line Adjustment filed under Recording Number 200003315004, Records of Pierce County, Washington, located within the Northwest Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East, W.M., Pierce County, Washington, and described as follows:

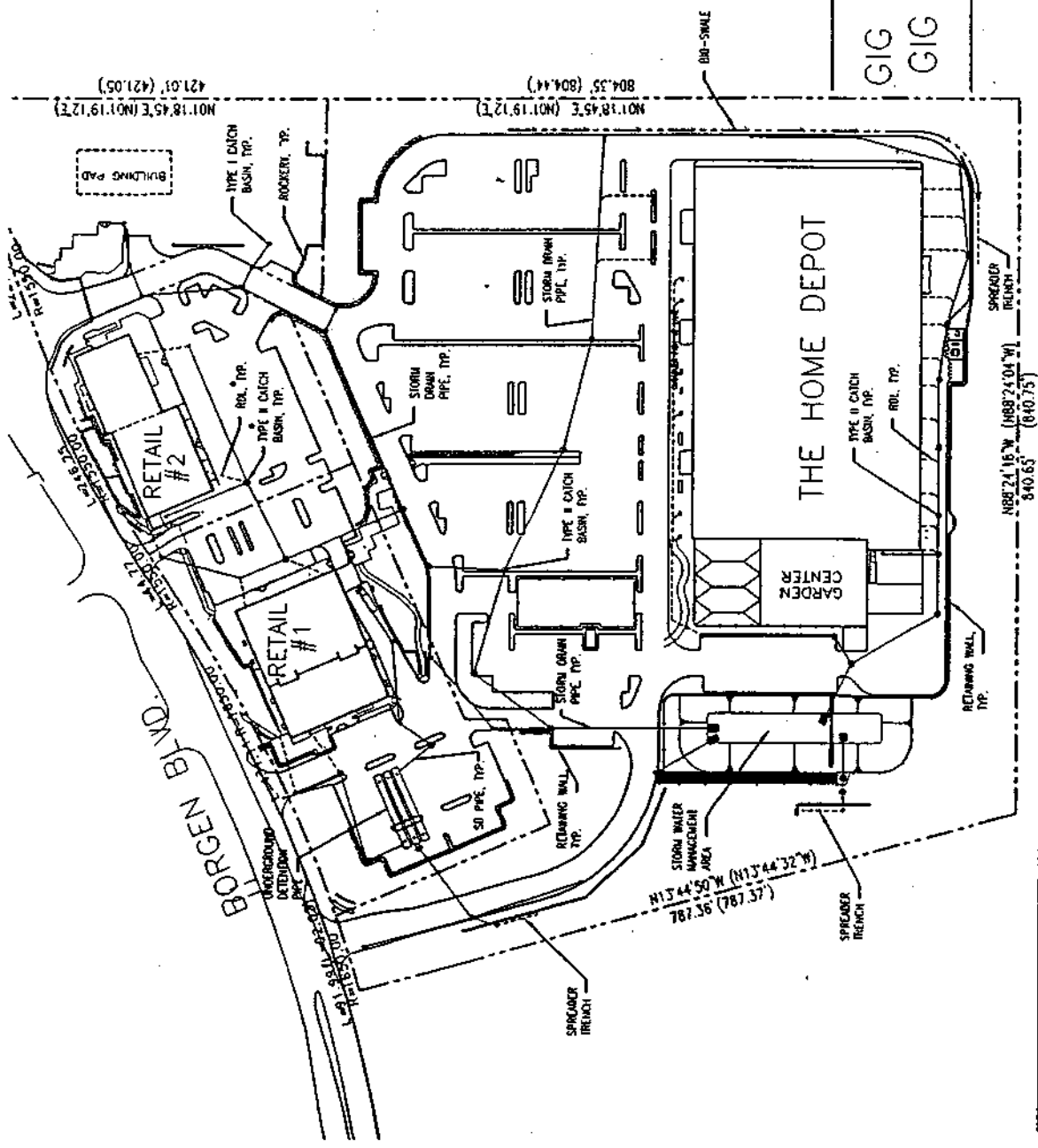
Beginning at the northwest corner of said Lot 6 of the Boundary Line Adjustment at a point on the southerly right of way of Borgen Boulevard on a curve concave to the northwest from which the radius point bears North 14° 45' 08" West 1650.00 feet; thence northeasterly along said right of way and along said curve an arc distance of 92.03 feet through a central angle of 03° 11' 44"; thence leaving said right of way South 21° 47' 20" East 269.91 feet; thence North 68° 12' 40" East 132.96 feet; thence North 01° 35' 42" East 48.57 feet; thence North 68° 12' 40" East 519.34 feet; thence North 28° 34' 11" East 95.48 feet to the beginning of a 25.00 foot radius curve to the left; thence northerly along said curve an arc distance of 21.63 feet through a central angle of 49° 34' 43"; thence North 21° 00' 31" West 76.40 feet; thence North 21° 56' 49" West 56.72 feet; thence South 74° 59' 37" West 2.38 feet; thence North 26° 18' 13" West 27.55 feet; thence North 44° 36' 36" West 19.06 feet; thence North 70° 15' 20" West 16.78 feet; thence North 66° 46' 50" West 17.54 feet to said southerly right of way of Borgen Boulevard at an intersection with a curve concave to the southeast from which the radius point bears South 22° 09' 38" East 1550.00 feet; thence easterly along said right of way and along said curve an arc distance of 221.04 feet through a central angle of 08° 10' 15"; thence leaving said right of way, South 62° 38' 00" West 87.94 feet; thence South 38° 26' 28" West 29.68 feet; thence South 25° 32' 13" West 17.94 feet; thence South 05° 14' 23" East 25.78 feet; thence South 74° 59' 37" West 14.05 feet; thence South 15° 27' 37" East 53.79 feet; thence South 21° 00' 31" East 76.40 feet to the beginning of a 55.00 foot radius curve to the right; thence southerly along said curve an arc distance of 47.59 feet through a central angle of 49° 34' 43"; thence South 28° 34' 11" West 122.67 feet; thence South 87° 09' 17" East 237.42 feet to the east line of said Lot 6; thence along said east line, South 01° 19' 12" West 804.44 feet to the southeast corner of said Lot 6; thence along the south line of said Lot 6, North 88° 24' 04" West 840.75 feet to the southwest corner of said Lot 6; thence along the west line of said Lot 6, North 13° 44' 32" West 787.37 feet to the true point of beginning.

STORM DRAINAGE
MAINTENANCE PLAN
EXHIBIT B



SCALE: 1" = 200'

GIG HARBOR SOUTH RETAIL
GIG HARBOR, WASHINGTON





City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: 2002 WASTEWATER OUTFALL AND NPDES SUPPORT STUDIES
- CONSULTANT SERVICES CONTRACT
DATE: MARCH 25, 2002

INTRODUCTION/BACKGROUND

Section S12 of the city's August 15, 1997 National Pollutant Discharge Elimination System (NPDES) permit, requires that the city test the water quality in Gig Harbor Bay two times per year at five separate locations.

Consultant services are needed to satisfy the conditions and requirements of the NPDES permit for 2002. The proposed scope of services include field and laboratory sampling and testing services, and preparation of a final water quality report for submittal to the Department of Ecology. Cosmopolitan Engineering Group was selected based on their previous work for the city, familiarity with the special water sampling and testing requirements, and working relationships with Department of Ecology staff.

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

FISCAL CONSIDERATIONS

This work was anticipated in the approved 2002 Budget. The contract amount is less than the budgeted allocation of \$20,000 as identified in the Sewer Operating Fund, Budget Objective No. 9.

RECOMMENDATION

I recommend that the Council authorize execution of the Consultant Services Contract with Cosmopolitan Engineering Group for the 2002 NPDES Permit Water Quality Studies, in an amount not to exceed Eighteen thousand eight hundred dollars and no cents (\$18,800.00).

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

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

RECITALS

WHEREAS, the City is presently engaged in fulfilling the requirements of the 2002 National Pollutant Discharge Elimination System (NPDES), and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated March 12, 2002, 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:

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 Eighteen thousand eight hundred dollars and no cents (\$18,800.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City

objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. . The parties agree that the work described in **Exhibit A** shall be completed by February 15, 2003; 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 one 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 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 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.

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. It is the intent of this contract for the Consultant'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 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 Public Works Director and the City shall determine the term or provision's true intent or meaning. The City Public Works Director 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 Public Works Director's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

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

CONSULTANT
William P. Fox, P.E.
Cosmopolitan Engineering Group
117 South 8th Street
Tacoma, Washington 98402
(253) 272-7220

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335
(253) 851-8145

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2002.

CONSULTANT
By: William P. Fox
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
CONSULTANT
William P. Fox, P.E.
Cosmopolitan Engineering Group
117 South 8th Street
Tacoma, Washington 98402
(253) 272-7220

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3125 Judson Street
Gig Harbor, Washington 98335
(253) 851-4278

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

Dated: 3-19-02

Linda M. Grutzer

Linda M. Grutzer

(print or type name)

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

Tacoma

My Commission expires: 9-18-02

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

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

My Commission expires:_____

EXHIBIT A

SCOPE OF WORK CITY OF GIG HARBOR 2002 NPDES SUPPORT STUDIES

The following tasks will be conducted to satisfy the requirements of Gig Harbor's NPDES permit condition S12 for 2002.

PLANNING AND MOBILIZATION

This task will include up-front planning and mobilization expenses to prepare for the field sampling, including:

- Update sampling plan and scheduling criteria for the two water quality sampling events
- Establish agreements with laboratories
- Prepare field equipment

WEEKLY TEMPERATURE SAMPLING

Water temperature profiles and surface pH sampling shall be conducted by the City of Gig Harbor on a weekly basis from the last week of July through September. Stations, depths, parameters, equipment and reporting shall be as established for the sampling conducted in 1998-2001. Results will be faxed to Cosmopolitan each following day.

WATER QUALITY SAMPLING

The weekly sampling results shall be used to establish the date for the "critical conditions" sampling event specified in the permit. The sampling plan update in Task 1 will establish the criteria that trigger the sampling event, including tidal conditions and time of day.

Water samples shall be obtained at the same five sample locations, depths and in the same manner as was performed in the 1997-2001 water quality monitoring. Stations 1 through 3 are marine stations in Gig Harbor and the Narrows, Station 4 is Crescent Creek, and Station 5 is the WWTP effluent. City personnel shall collect and analyze the fecal coliform sample for Station 5.

There will be two sampling events. The first will be the "critical conditions" event, which will be scheduled from the results of weekly temperature sampling. The second event will occur in the last full week of October 2002.

Stations 1 through 3 shall be sampled in each event for the field and laboratory analytes specified in Section S12.C.1 of the NPDES permit, including metals. Conductivity, temperature and depth profiles will be obtained with a Sea-Bird Model SBE-19 Seacat Profiler. Stations 4 and 5 shall be sampled for the analytes specified in Section S12.C.2. PSEP protocol shall be followed in the collection and handling of water samples. The same analytical laboratories from 1997-2001 are anticipated to be used again in 2002.

EXHIBIT A

REPORT

The results of all field studies will be prepared for submittal to Ecology as specified in the permit. The weekly monitoring data furnished by the City shall be presented as a series of temperature profiles. A narrative section will summarize the temperature and pH trends and justify the identified critical condition for the water quality sampling.

The 2002 water quality sampling results for conventional parameters shall be presented in the same table format as the 1997-2001 results. Figures showing the 2002 results in a timeline with past data shall also be presented. Metals data will be presented in separate tables with no trend analysis or graphical presentation. QA/QC for the metals data shall be presented.

Two copies of the report shall be submitted to Ecology by February 15, 2003. Two additional copies shall be submitted to the City of Gig Harbor for their records.

COSTS

Task	Cost
Planning and Mobilization	\$2,300
Weekly Temperature Sampling	0
Water Quality Sampling	12,700
Report	3,800
Total	\$18,800

**EXHIBIT B
SCHEDULE OF RATES
COSMOPOLITAN ENGINEERING 2002**

D'Aboy, James	Principal	\$40.00
Fox, William	Principal	\$40.00
Hines, Ronald	Project Eng 4	\$40.00
Helbig, William	Project Eng 4	\$40.00
Mondress, Howard	Structural Eng	\$35.00
Fowlie, Robert	Project Eng 3	\$28.85
Trohimovich, Merita	Project Eng 3	\$32.00
Edwards, Duane	Landscape Arch.3	\$26.25
Collias, Eugene	Technician	\$23.25
Merwede, Chris	Technician	\$23.25
Brewer, Ronel	Eng 1	\$25.25
Waagan, Sandra	Technician	\$25.00
Yanasak, Karen	Accounting/Admin	\$25.25
Coburn, Janice	Wordprocessor	\$25.25
Maggard, Tiffany	Admin Assistant	\$13.50

Direct Costs markup @ 15%



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ORDINANCE AMENDING THE PROCEDURES FOR CLOSED RECORD
APPEAL HEARINGS ON PROJECT PERMIT APPLICATIONS
DATE: MARCH 25, 2002

INFORMATION/BACKGROUND

At the January 14, 2002 meeting, the Council voted to direct staff to prepare revisions to Title 19 of the Gig Harbor Municipal Code. Specific changes were to amend the appeal process of Type III project applications so that appeals were directed to the courts rather than to the Council. Type III project applications include plat vacations and alterations; site plans and major site plan amendments; conditional use permits, general variances; sign permit variances; site-specific rezones; shoreline substantial development permits; shoreline variances; major amendments to planned residential developments and planned unit developments; amendments to the height restriction area map; and mobile/manufactured home parks or subdivisions.

As presently drafted, with the exception of site-specific rezones, appeals of any Type III project application would go directly to the courts. Council may want to review the list of Type III applications and ensure that it is in the best interest of the City to remove the Council from the appeal process for all Type III applications, with the exception of site-specific rezones.

A public hearing and first reading of this proposed Ordinance was held on February 11, 2002. A second reading was held on February 25, 2002 at which time the Council directed staff to revise the Ordinance to include a process for reconsideration of a Hearing Examiner's decision. At the last meeting on this draft ordinance, the City Attorney stated that the procedure might have to be included in the Hearing Examiner procedure in Title 17, necessitating a public hearing before the Planning Commission. However, after reviewing the Hearing Examiner procedure in Title 17, she now believes that the reconsideration procedure is more appropriately added to Title 19, which does not require a hearing before the Planning Commission. Such changes have been incorporated in the Ordinance now before you. An additional public hearing and reintroduction of the Ordinance as a first reading was held on March 11, 2002.

RECOMMENDATION

I recommend that the Council approve the Ordinance amending Title 19 of the Gig Harbor Municipal Code as it pertains to the closed record appeal process and the reconsideration process.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE CITY'S PROCEDURES FOR CLOSED RECORD APPEAL HEARINGS ON PROJECT PERMIT APPLICATIONS, TO PROVIDE FOR A RECONSIDERATION PROCESS FOR HEARING EXAMINER DECISIONS, ELIMINATING ALL ADMINISTRATIVE APPEALS WHICH CURRENTLY ARE HEARD BY THE CITY COUNCIL, WITH THE EXCEPTION OF APPEALS OF SITE SPECIFIC REZONES, CLARIFYING THE BURDEN OF PROOF IN APPEALS AND THE STANDARD FOR REVIEW OF APPEALS, AMENDING GIG HARBOR MUNICIPAL CODE SECTIONS 19.01.003, 19.06.003, 19.06.004, 19.06.005; ADDING A NEW SECTION 19.06.045.

WHEREAS, RCW 36.70B.060(6) provides that a local government may provide an administrative appeal for some but not all project permit decisions; and

WHEREAS, the City Council desires to amend Title 19 to eliminate all closed record appeals that currently are held by the City Council, with the exception of site specific rezones, which are defined as "project permits" (RCW 36.70B.020(4)); and

WHEREAS, the City Council desires to add a process for reconsideration of Hearing Examiner decisions, to ensure that parties of record are allowed to raise certain issues prior to the time an appeal is filed in court; and

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

WHEREAS, the Community Development Director forwarded a copy of this Ordinance to the Washington State Department of Trade and Community Development on January 31, 2002 pursuant to RCW 36.70A.106; and

WHEREAS, the City Council initially held a public hearing and considered this Ordinance during its regular City Council meeting of February 11, 2002; and

WHEREAS, the City Council further considered this Ordinance during its regular City Council meeting of February 25, 2002;

WHEREAS, the City Council further considered this Ordinance and held a public hearing during its regular City Council meeting of March 11, 2002;

WHEREAS, the City Council further considered this Ordinance during its regular City Council meeting of March 25, 2002; Now, Therefore,

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

Section 1. Section 19.01.003 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.01.003 Project permit application framework.

19.01.003(A) Project permit application framework.

PROCEDURE FOR PROCESSING APPLICATIONS

	Project Permit Applications				Legislative Action
	Type I	Type II	Type III	Type IV	Type V
Recommendation Made by:	N/A	N/A	N/A	N/A	Planning Comm.
Final Decision Made by:	Director	Director Hearing Ex.	City Council	City Council	
Notice of Application:	No	No	Yes	Yes	No

Open record
Public hearing or
Open record
Appeal hearing
Of a final
Decision:

No

Only if
Appealed,
Before Hearing
Examiner

Yes, before
Hearing Ex.

No

Yes, public
hearing before
Planning Comm.

Closed Record
Appeal/final
Decision:

No

No

No

Yes¹

Yes

19.01.003(B) Decision types.

APPLICATION TYPES

Project Permit Applications				Legislative Action
Type I	Type II	Type III	Type IV	Type V
Permitted uses not Requiring site plan Review	Short plat	Preliminary plats	Final Plats	Comprehensive amendments
Boundary line Adjustments	Sign permits	Preliminary PRD/PUD	Final PUD/PRD	Development regulations
Minor amendments To PUD/PRD	Design Review	Plat vacations and alterations	Site-specific amendments	Zoning text amendments
Special use Permits	Land clearing permits	Site Plan Major Amendments To Site Plans		Area-wide Zoning map amendments
Temporary Construction Trailer permits	Grading permits	Conditional Use permits		Annexations
	Revisions to Shoreline Management Permits	General variances Sign Permit variances		
	Administrative Variances	Shoreline Substantial development permits		
	Administrative Interpretations	Shoreline Variances		

¹ An appeal of a site-specific amendment (rezone) is heard by the City Council in a closed record appeal hearing. The City Council's decision on a final plat and final PUD/PRD is made during a regular City Council meeting. See, RCW 58.17.170.

Home occupation permit	Major amendments to PUD/PRD
Hardship Variance	Amendment to height Restriction map
Sign code	Mobile/manufactured Home park or subdivision
Modification To landscape Plans	
Minor amendments to PUD/PRD	

Section 2. Section 19.06.003 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.06.003 Standing to request reconsideration or initiate an administrative appeal.

A. Limited to Parties of Record. Only parties of record may request reconsideration or file an administrative appeal.

B. Definition. The term "parties of record," for purposes of this chapter, shall mean:

1. The applicant;
2. Any person who testified at the open record public hearing on the application;
3. Any person who submitted written comments concerning the application at the open record public hearing (excluding persons who have only signed petitions or mechanically produced form letters); and/or
4. The Gig Harbor City Council.

Section 3. Section 19.06.004 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.06.004 Request for Reconsideration and Appeals of Recommendations and Decisions.

A. Permit Decisions or Recommendations. Requests for reconsideration or appeals of a hearing body's recommendation or decision ~~or recommendation and project permit application~~ shall be governed by the following:

1. Standing. Only parties of record have standing to request reconsideration or to appeal the hearing body's decision.

2. Time to File.

a. A request for reconsideration must be filed within 10 working days of the issuance of the hearing body's written decision.

b. An appeal must be filed within ~~10~~ 15 working days of the issuance of the hearing body's written decision.

Requests for reconsideration and appeals shall be delivered to the Director by mail, by personal delivery or by fax before 5:00 p.m. on the last business day of the appeal period. Requests for reconsideration or appeals received by mail after 5:00 p.m. on the last day of the appeal period will not be accepted, no matter when such appeals were mailed or postmarked. Requests for reconsideration or appeals sent to the Director by fax will not be considered timely filed unless the person filing such request or appeal first calls the Department of Community Development to request permission to file the request or appeal by fax, and after transmission of such fax to the Department, the person immediately receives a fax back from the Department to acknowledge the Department's receipt of the request or appeal.

3. Computation of Time. For the purposes of computing the time for filing a request for reconsideration or an appeal, the day the hearing body's decision is issued shall not be counted. If the last day of the request for reconsideration or appeal deadline is a Saturday, Sunday or holiday designated by RCW 1.16.050 or by a city ordinance, then the request for reconsideration or appeal must be filed on the next business day.

4. Content of Request for Reconsideration or Appeal. Appeals and requests for reconsideration shall be in writing, be accompanied by the required appeal fee, and contain the following information:

- a. Requestor or the appellant's name, address and phone number;
- b. A statement describing the requestor or appellant's standing to appeal or request reconsideration;
- c. Identification of the application which is the subject of the request for reconsideration or appeal;
- d. Requestor or the appellant's statement of grounds for requesting the reconsideration or appeal and the facts upon which the request or appeal is based with specific references to the facts in the record. A request for reconsideration must be accompanied by a statement which describes the manner in which the request satisfies one or all of the criteria for reconsideration, as set forth in GHMC Section 19.06.045;

- e. The specific relief sought;
- f. A statement that the requestor or appellant has read the request for reconsideration or the appeal, and believes the contents to be true, following by the requestor or the applicant's signature.

5. Effect. The timely filing of a request for reconsideration or an appeal shall stay the hearing body's decision until such time as the decision on the request for reconsideration or the appeal issues or is withdrawn. Is concluded A request for reconsideration is not a prerequisite to an administrative or a judicial appeal.

6. Notice of Reconsideration Decision or Appeal. The Director shall provide mailed notice of a request for reconsideration or appeal to all parties of record as provided in GHMC Section 19.06.003.

Section 4. A new section 19.06.045 is hereby added to the Gig Harbor Municipal Code, to read as follows:

19.06.045. Grounds for Requesting Reconsideration of Decision and Procedure.

A. Decisions that may be reconsidered. A request for reconsideration may only be filed for a decision that was rendered after an open record public hearing.

B. Grounds for Reconsideration. The hearing body/officer may modify a decision subject to this section upon receipt of a request for reconsideration by a party of record for any one of the following causes materially affecting the substantial rights of such parties:

1. Grounds for disqualification of a member of the body or the officer that made the decision, when such grounds were unknown by the party of record at the time of the open record hearing.

2. Matters that were improperly excluded from the record after being offered by a party of record prior to the close of the open record hearing;

3. Evidence of material facts that were not made part of the administrative record, either because:

- a. Ministerial errors were made or inadvertent omissions occurred in the preparation of the administrative record; or

b. The party of record could not with reasonable diligence, have discovered and produced such facts prior to the close of the open record hearing.

C. Procedure. There shall be no hearing (either open record or closed record) on a request for reconsideration. The hearing body/officer shall issue a decision on the request for reconsideration within 10 working days after the request is received. The Director shall provide mailed notice of the decision to all parties of record as defined in GHMC 19.06.003.

Section 5. Section 19.06.005 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.06.005. Procedure for closed record decision/appeal.

A. Closed record appeals shall be on the record established at the hearing before the hearing body/officer whose decision is being appealed, which shall include the written decision of the hearing body/officer, a transcript or tape recording of the proceedings, and copies of any exhibits admitted into the record.

B. No new testimony or evidence will be accepted by the appeal body/officer except: (1) new information that was unknown to the parties at the time of the hearing which could not reasonably have been discovered by the parties and is necessary for a just resolution of the appeal; and (2) relevant information that, in the opinion of the appeal body/officer council, was improperly excluded by the hearing body/officer. Appellants who believe that information was improperly excluded must specifically request, in writing prior to the closed record appeal hearing, that the information be made part of the record. The request shall describe the information excluded, its relevance to the issues appealed, the reason(s) that the information was excluded by the hearing body, and why the hearing body erred in excluding the information. No reference to excluded information shall be made in any presentation to the appeal body/officer council on the merits, written or oral, until the appeal body/officer council has determined that the information should be admitted.

C. ~~1.~~ Parties to the appeal may present written and/or oral arguments to the appeal body/officer council. Argument shall describe the particular errors committed by the hearing body/officer, with specific references to the appeal administrative record. The appellant shall bear the burden to demonstrate that substantial evidence does not exist in the administrative record to support the decision of the hearing body/officer.

D. ~~2.~~ The hearing shall commence with a presentation by the director or the director's designee, of the general background of the proposed development and

the issues in dispute. After the director's presentation, the appellants shall first present oral argument, and then the other parties of record shall make their arguments. ~~Council members~~ The appeal body/officer may question any party concerning disputed issues, but shall not request information not in the administrative record.

E. 3. The ~~council~~ appeal body/officer shall determine whether there is substantial evidence in the administrative record to support the decision of the hearing body/officer. The appeal body/officer may affirm, modify or reverse the decision of the hearing body/officer. Upon written agreement by the applicant to waive the statutory prohibition against more than one open record and one closed record hearing, and, if needed, to waive the requirement for a decision within the time periods set forth in RCW 36.70B.0980, as allowed by RCW 36.70B.080(3), remand the decision to the hearing body for additional information.

B. F. Open Record Appeal Hearings. An open record appeal hearing shall be conducted in the manner set forth in chapter 19.05 GHMC.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

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

PASSED by the Council and approved by the Mayor of the City of Gig Harbor
this __th day of _____, 2002.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 3/6/02
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

SUMMARY OF ORDINANCE NO. ____

of the City of Gig Harbor, Washington

On _____, 2002, 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 LAND USE AND ZONING, AMENDING THE CITY'S PROCEDURES FOR CLOSED RECORD APPEAL HEARINGS ON PROJECT PERMIT APPLICATIONS, TO PROVIDE FOR A RECONSIDERATION PROCESS FOR HEARING EXAMINER DECISIONS, ELIMINATING ALL ADMINISTRATIVE APPEALS WHICH CURRENTLY ARE HEARD BY THE CITY COUNCIL, WITH THE EXCEPTION OF APPEALS OF SITE SPECIFIC REZONES, CLARIFYING THE BURDEN OF PROOF IN APPEALS AND THE STANDARD FOR REVIEW OF APPEALS, AMENDING GIG HARBOR MUNICIPAL CODE SECTIONS 19.01.003, 19.06.003, 19.06.004, 19.06.005; ADDING A NEW SECTION 19.06.045.

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

APPROVED by the City Council at their meeting of _____, 2002.

MOLLY TOWSLEE, CITY CLERK



City of Gig Harbor Police Dept.
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-2236

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MITCH BARKER *MB*
**SUBJECT: AUTHORIZATION FOR THE USE OF UNIFORMS AND OFF
DUTY EMPLOYMENT AGREEMENT**
DATE: March 20, 2002

INFORMATION/BACKGROUND

On occasion we receive requests to have police officers work in security functions at various events or work sites. These generally are limited to traffic control and sports functions. Since this is a non-duty function, the hours are coordinated by the Police Officers' Guild. While working at these functions, the officers are employed by a third party. All work events must be approved by the Chief and must serve a public safety function. In many cases the off duty officer's presence serves as a deterrent to problems and thereby eliminates the need for an on duty officer to respond or deal with problems related to the special event. In this way, having an off duty officer, compensated by a third party, is a benefit to the city's public safety purpose.

An updated copy of the original agreement was presented to Council in late 2001 in order to add new names to the agreement and delete the names of personnel no longer with the department. Questions arose at that meeting regarding the agreement and Carol Morris was asked to review the agreement.

A new agreement was drafted and approved by Council. The officers signed that agreement but due to the indemnification section, will not continue the agreement past the end of the current school year. The attached agreement eliminates the indemnification language but is otherwise unchanged from the current agreement. The focus of this agreement is to assure that we did not have FLSA claims regarding the off duty officers' working hours.

FISCAL IMPACTS

There are no fiscal impacts related to this agreement.

RECOMMENDATION

I recommend that the Council authorize the Mayor to approve the attached agreement.

AUTHORIZATION FOR THE USE OF UNIFORMS AND OFF DUTY EMPLOYMENT AGREEMENT

WHEREAS, the Police Officers' Guild of Gig Harbor wishes to provide employment opportunities for its members as well as reserve officers with private employers in the community in order to provide, such services as direction of traffic for construction companies; and

WHEREAS, the Guild has requested permission for the City to use regular officers' and reserve officers' uniforms while providing such services; and

WHEREAS, the City finds it to be in the public interest to permit the use of its uniforms in certain limited situation so long as it is clear that the officers are not in the employ of the City and that the reserve officers remain volunteers to the City, and that both are employed solely through the private party under the auspices of the Guild;

NOW, THEREFORE, the Police Officers' Guild of Gig Harbor (hereinafter "Guild"), the City of Gig Harbor (hereinafter "City") and the undersigned regular and reserve officers do enter into this agreement in consideration of the mutual promises contained herein and the mutual benefits to be derived:

1. USE OF UNIFORM

In consideration of the hold harmless agreement provided below; the City of Gig Harbor permits the wearing of police uniforms by officers and reserve officers employed through the Guild for the provision of traffic control for construction sites and other similar services (hereinafter "Guild Assignments"). The use of the City's uniform shall be limited to those generic situations pre-approved by the Chief through the Guild.

2. EMPLOYMENT/VOLUNTEER STATUS

The use of the City's uniform shall not imply any employment status for regular City police officers during Guild assignments or anything other than a volunteer status for the City's reserve officers. The guild shall be solely responsible for the coordination of employment by the third parties and for arranging payment to the officers or reserve officers through the third party. Nothing herein shall be interpreted to imply an employment relationship with the City during the performance of such services.

✓

3. GUILD COORDINATION

The guild shall coordinate all such employment, pre-approving generic employment situations through the Chief. The City shall have no responsibility and bear no costs for any wage, salary or employee benefit, which arises from or out of the provision of services to third parties through the Guild.

4. OFFICER/RESERVE OFFICER ACKNOWLEDGMENT

I, the undersigned reserve officer or officer, understand and agree that services performed for a third party and coordinated by the Guild pursuant to this Agreement are performed for such third parties and the Guild and that no employment status of any kind or nature shall be implied with respect to the City during the performance of Guild assignments.

The officers and reserve officers acknowledge, agree and understand that his/her services are performed for such third parties and that nothing herein nor in the provision of services, shall be interpreted to be a part of their regular employment for police officers or, with respect to reserve officers, impact their volunteer status. In consideration of the City approved uniform use in employment by third parties under the procedures set forth in this Agreement, the officer or reserve officer promises to hold harmless and covenants not to sue the City, and also acknowledges the following:

- 5.1 For officers, pursuant to the Department of Labor regulations and the Fair Labor Standards Act and Union contract, work hours spent in Guild assignments are reasonably believed by the officer, the City and the Guild to be outside of the officer's normal work day and therefore not subject to the Fair Labor Standards Act or Union contract, hours of work and overtime provisions.
- 5.2 With respect to reserve officers, he/she acknowledges and agrees that hours worked through the Guild for third party employers does not impact and is separate and apart from their volunteer status with the City of Gig Harbor and waives and relinquishes any claim of any employment status which he or she could assert based upon Guild assignments.

5. RESERVATION OF RIGHTS

The Chief reserves the right to withdraw the City's approval of the use of a uniform or to withdraw "pre-approval" of any "generic situation" allowing the use of a uniform(s), in the event a member submits a claim for wages or benefits to the City for employment with a third party, or when in the sole discretion of the City or the Chief, such termination or withdrawal is necessary to protect the best interests of the City.

DATED this _____ of April, 200__.

CITY OF GIG HARBOR

GIG HARBOR POLICE
OFFICERS' GUILD

By: _____
Mayor

Guild Representative

ATTEST:

Molly Towslee, City Clerk

_____	_____	_____	Date: _____
Officer Name	(Signature)	(print name)	
_____	_____	_____	Date: _____
Officer Name	(Signature)	(print name)	
_____	_____	_____	Date: _____
Officer Name	(Signature)	(print name)	
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Officer Name	(Signature)	(print name)	
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Officer Name (Signature) (print name)

Date: _____

Officer Name (Signature) (print name)

Date: _____



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ORDINANCE FOR RUST STREET VACATION - BARTA
- FIRST READING
DATE: MARCH 25, 2002

INTRODUCTION/BACKGROUND

On February 25, 2002, Council approved a resolution setting March 25, 2002 as the date to hear public testimony regarding the requested street vacation initiated by Mr. and Mrs. Eric Barta. The city received a letter on February 1, 2002 from the subject applicants, 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 the north property frontage of Parcel No. 2260000240 and the north 30 feet of Rust Street abutting the south property frontage of Parcel No. 2260000140. 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 except to retain an easement in the unimproved right-of-way for the replacement, maintenance, and repair of the existing sewer utilities. A sewer line was constructed as part of ULID No.1 in 1974 in a portion of this right-of-way. Therefore, an approximately 15 foot wide sewer easement in this portion of the Rust Street right-of-way needs to be retained extending 12.5 feet north of centerline and extending 2.5 feet south of centerline, as shown in Exhibit A. 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 ABUTTING
9508 WHEELER AVENUE IN GIG HARBOR, WASHINGTON.**

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 Ardena, 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. 583 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 March 25, 2002, 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 9508 Wheeler Avenue at the north property frontage of Parcel No. 2260000240, and the north 30 feet of Rust Street abutting the south property frontage of Parcel No. 2260000140, 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 Clerk is hereby directed to record a certified copy of this ordinance with the office of the Pierce County Auditor.

Section 3. Reservation of Easement. The City has an easement over, under and through the street as generally depicted Exhibit B. The City shall retain its existing easement in the street for the purpose of maintaining, operating, repairing, and replacing the sewer utilities in place.

Section 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 _____, 2002.

CITY OF GIG HARBOR

By: _____
Gretchen Wilbert, Mayor

ATTEST/AUTHENTICATED:

By: _____
Molly M. Towslee, City Clerk

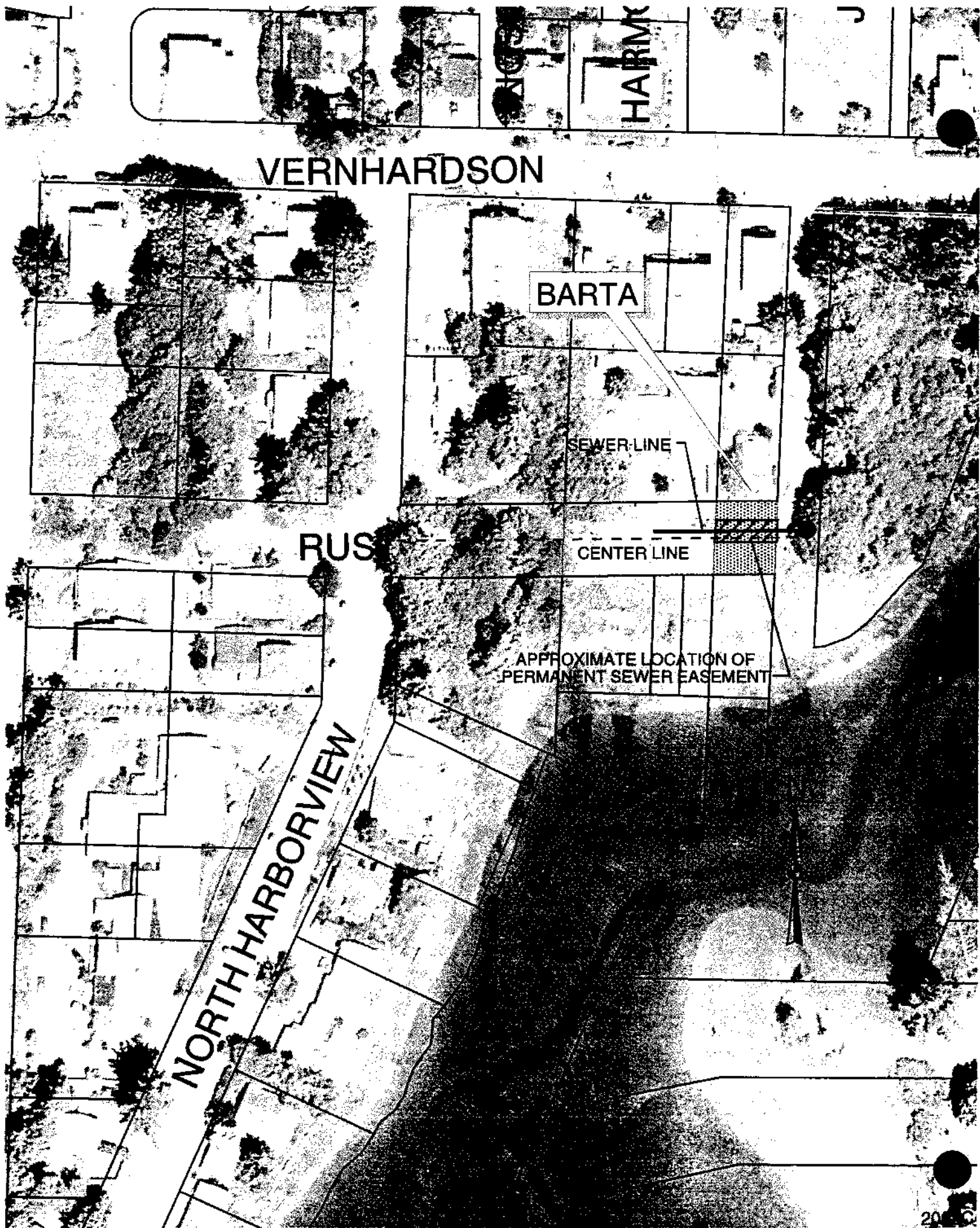
APPROVED AS TO FORM:
Office of the City Attorney:

By: _____
Carol A. Morris

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

EXHIBIT A

Legal Description of Property to be vacated
to be provided by Applicant prior to
Second Reading of Ordinance



BARTA STREET VACATION

EXHIBIT B

MEMORANDUM

To: Gig Harbor Mayor and City Council
From: Carol Morris, City Attorney
Date: March 18, 2002
Subject: A. Request for Street Vacation from Richard D. and Heidi Rohwer of a portion of Rust Street adjacent to their residence at 3516 Rust Street;
B. Request for Street Vacation from Eric and Maureen Barta of a portion of Rust Street adjacent to their residence at 9508 Wheeler Avenue;
C. Request for Street Vacation from Charles S. Bucher of a portion of Sutherland Street and Prentice Avenue adjacent to his residence at 9409 Woodworth Avenue.

I. FACTS.

A. Rust Street -- Rohwer. The portion of Rust Street subject to the Rohwer vacation request abuts 3516 Rust Street in Gig Harbor. This street was created in the Plat of the Town of Artna, recorded in 1891 in Book 5 of Plats at Page 68 in Pierce County, Washington. According to the Public Works Department, the portion of Rust Street abutting the Rohwer property (tax parcel No. 2260000270) has never been opened, improved or used as a street. The property was within Pierce County until the City incorporated in 1946.

B. Rust Street -- Barta. The portion of Rust Street subject to the Barta vacation request abuts 9508 Wheeler Avenue in Gig Harbor. This street was created in the Plat of the Town of Artna, recorded in 1891 in Book 5 of Plats at Page 68 in Pierce County, Washington. According to the Public Works Department, the portion of Rust Street abutting the Barta property (tax parcel 2260000240 and 2260000140) has never been opened, improved or used as a street. The property was within Pierce County until the City incorporated in 1946.

C. Sutherland Street and Prentice Avenue -- Bucher. The portion of Sutherland Street and Prentice Avenue subject to the Bucher request abuts Woodworth Avenue in Gig Harbor. This street was created in the Plat of Woodworth's Addition, recorded in 1890 in Book 5 of Plats at Page 66 in Pierce County, Washington. According to the Public Works Department, the portion of Sutherland Street and Prentice Avenue abutting the Bucher property (tax parcel number 981500-021-0) has never been opened, improved or used as a street. The property was within Pierce County until the City incorporated in 1946.

II. RELEVANT STATUTORY BACKGROUND.

In 1889-90, the Washington State Legislature adopted a statute that automatically vacated unopened roads located in unincorporated areas. This statute provided as follows:

Any county road, or part thereof, which has heretofore been or may be hereafter authorized, which remains unopened for

public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority for building the same is barred by lapse of time.

Laws of 1889-90, chapter 19 (Relating to County Roads), Section 32, p. 603. The use of the word "authorized" in the above statute has been interpreted by the courts to mean "the filing of a proper plat." Murphy v. King County, 45 Wash. 587, 593, 88 P. 115 (1907).

In 1909, the Washington State Legislature re-enacted the same statute, which the following provision:

Provided, however. That the provisions of this section shall not apply to any highway, street, alley or other public place dedicated as such in any plat, whether the land included in said plat be within or without the limits of any incorporated city or town, nor to any land conveyed by deed to the state or to any town, nor to any land conveyed by deed to the state or to any town, city or county for roads, streets, alleys or other public places.

Laws of 1909, chapter 90, Section 1, p. 189, repealed in 1936 by the Washington State Aid Highway Act (Laws of 1936, chapter 187, Section 52, p. 761). Because a statute may not be given retroactive effect if the result would interfere with vested rights, the courts have interpreted the 1909 amendment to integrate with the 1889-90 statute as follows:

. . . where a street lying outside a city or town has been dedicated and unopened for a period of five years prior to the 1909 amendment, the right of abutting property owners to the vacated street, pursuant to the provisions of the 1889-90 statute, has vested and is not affected by the 1909 amendment.

Gillis v. King County, 42 Wn.2d 373, 377, 255 P.2d 546 (1953).

The effect of a vacation of a platted street is to remove the easement for public travel, so that the property in the vacated street "shall belong to the abutting property owners, one half to each." RCW 35.79.020. Therefore, the effect of an automatic vacation of a street subject to the nonuser statute would be to vest ownership of the street area, to the center line, in the abutting owners. (However, the determination of ownership is not made by the City, and this is just a general rule, which may or may not apply, depending on the shape of the parcel.)

A question has arisen as to whether or not the City may still vacate the street, if activities on the street area since the time of the automatic vacation might allow someone (or the public) to claim a right to continued use of the street under prescription or adverse possession. Keep in mind that the nonuser statute was adopted to fix the time limit within which the county could perform (by opening

and improving) under the dedication of the property for street purposes. "If the purpose of the grant was not accomplished within five years, a reversion of the authority to construct a road would result." Wells v. Miller, 42 Wn. App. 94, 97, 708 P.2d 1223 (1985). When the street has not been opened within that five year period, the right of abutting property owners to the vacated street vests by operation of law. Wells, 42 Wn. App. at 97. "Although a street is vacated by operation of law, as long as there is no formal vacation, a dedication of record is merely a 'cloud on the owners title,' which may be removed by a vacation [ordinance]." Id. Therefore, if the Council believes that someone other than the abutting property owner(s) can establish a right to use the street under the doctrines of adverse possession or prescription, this would have no effect on the Council's decision to adopt the vacation ordinance. The vacation ordinance merely removes the cloud on the title, and anyone claiming a right to use or own the street area under adverse possession or prescription would still have to file a quiet title action in Superior Court to adjudicate title or any use rights. The City Council has no authority to adjudicate property rights.

III. APPLICATION OF FACTS TO LAW.

These portions of platted street right-of-way were recorded in Pierce County during the applicable period, were outside of the City and were not opened or improved for a period of five years prior to the 1909 amendment to the nonuser statute, then they automatically vacated by operation of law. The City's ability to open these portions of the streets is barred by lapse of time and the City has no interest in these portions of the street (under these facts). In order to ensure that these portions of the streets are placed on the tax rolls and the ownership is formally recorded, the City may adopt an ordinance vacating the portions of the streets. If the Council finds that any individual or the public has a claim to the street area under the doctrines of prescription or adverse possession, these claims must be pursued in Superior Court in a quiet title action.

IV. RECOMMENDATION.

The City staff recommends that because the portions of these streets have already vacated by operation of law, the Council should adopt a vacation ordinance(s), which would formalize the vacation and remove the cloud on the property owners' titles.



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP *JVP*
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ORDINANCE FOR RUST STREET VACATION - ROHWER
- FIRST READING
DATE: MARCH 25, 2002

INTRODUCTION/BACKGROUND

On February 25, 2002, Council approved a resolution setting March 25, 2002 as the date to hear public testimony regarding the requested street vacation initiated by Mr. and Mrs. Richard D. Rohwer. The city received a letter on December 14, 2001 from Mr. and Mrs. Rohwer, 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 Lot 1, Block 6, Plat of the Town of Ardena, Parcel No. 2260000270, 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 THE PORTION
OF RUST STREET, LYING BETWEEN MILTON AVENUE
AND NORTH HARBORVIEW DRIVE.**

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. 584 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 March 25, 2002, 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 between Milton Avenue and North Harborview Drive, abutting north property frontage of Parcel No. 2260000270, attached hereto as legally described in Exhibit A and incorporated by this reference and as shown on the aerial Ortho photo as depicted in 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 _____, 2002.

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:



EXHIBIT A

LAND CONSULTANTS, INC.

Kenneth P. Giske, President

Land Surveying • Forest & Land Consulting

327 39th Ave. Ct. N.W.
Gig Harbor, WA 98335-7814
Office, Fax 253-851-4554
Home 253-851-5925

December 14, 2001

Mr. Mark Hoppen
City Manager
3105 Judson Street
Gig Harbor, WA 98335

Dear Mr. Hoppen,

Richard D. Rohwer and Heidi Rohwer, husband and wife, petition the City of Gig Harbor to vacate the portion of Rust Street that is adjacent to the Rohwer's residence at 3516 Rust Street. Tax Parcel No. 2260000270.

The legal description for the Rohwer property is as follows:

Lot 1, Block 6, Plat of the town of Artena, Pierce County, Washington, according to plat recorded in Book 5 of plats at Page 68 in Pierce County Auditor's Office. Situate in the City of Gig Harbor, County of Pierce, State of Washington.

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

Beginning at the Northwest Corner of Lot 1, Block 6, Plat of the town of Artena. Situated in the City of Gig Harbor, State of Washington; thence North, 30 feet to the center of Rust Street; (Walnut Street on old plat) thence East along centerline of Rust Street, 120 feet; thence South 30 feet to the Northeast Corner of said Lot 1, Block 6; thence along North line of said Lot 1, West 120 feet to the point of beginning.

All the above is located in the Northwest Quarter of Northwest Quarter in Section 5, Township 21 North, Range 2 East of the Willamette Meridian.

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

The property owners request the earliest action possible on this vacation request. Enclosed is a check for \$150.00 to cover the required fee.

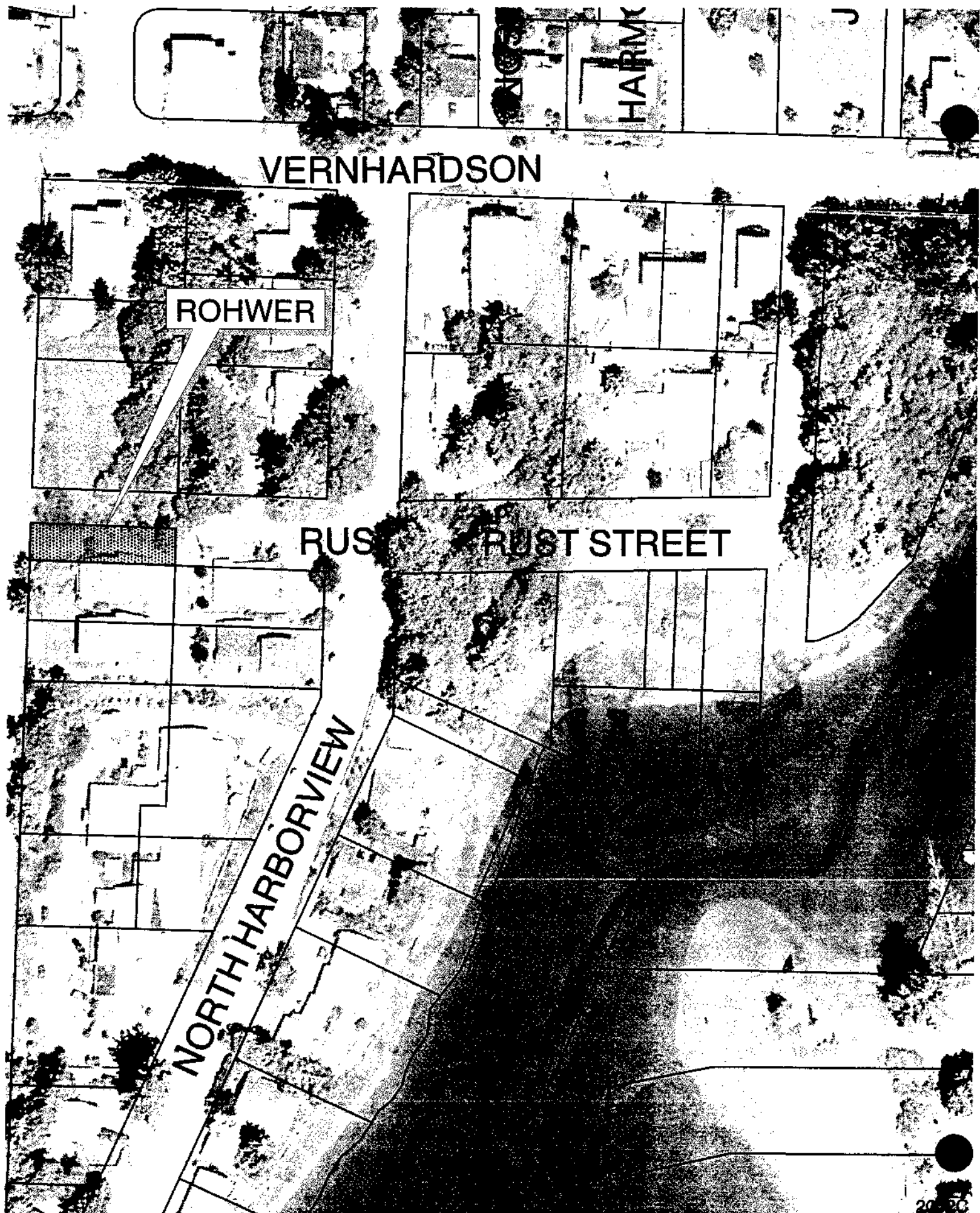
Very truly yours,

Kenneth P. Giske

Kenneth P. Giske, PLS
Land Surveyor No. 10383

Richard D. Rohwer
Richard D. Rohwer

Heidi Rohwer
Heidi Rohwer: Property Owners



ROHWER STREET VACATION

EXHIBIT B

MEMORANDUM

To: Gig Harbor Mayor and City Council
From: Carol Morris, City Attorney
Date: March 18, 2002
Subject: A. Request for Street Vacation from Richard D. and Heidi Rohwer of a portion of Rust Street adjacent to their residence at 3516 Rust Street;
B. Request for Street Vacation from Eric and Maureen Barta of a portion of Rust Street adjacent to their residence at 9508 Wheeler Avenue;
C. Request for Street Vacation from Charles S. Bucher of a portion of Sutherland Street and Prentice Avenue adjacent to his residence at 9409 Woodworth Avenue.

I. FACTS.

A. Rust Street -- Rohwer. The portion of Rust Street subject to the Rohwer vacation request abuts 3516 Rust Street in Gig Harbor. This street was created in the Plat of the Town of Artna, recorded in 1891 in Book 5 of Plats at Page 68 in Pierce County, Washington. According to the Public Works Department, the portion of Rust Street abutting the Rohwer property (tax parcel No. 2260000270) has never been opened, improved or used as a street. The property was within Pierce County until the City incorporated in 1946.

B. Rust Street -- Barta. The portion of Rust Street subject to the Barta vacation request abuts 9508 Wheeler Avenue in Gig Harbor. This street was created in the Plat of the Town of Artna, recorded in 1891 in Book 5 of Plats at Page 68 in Pierce County, Washington. According to the Public Works Department, the portion of Rust Street abutting the Barta property (tax parcel 2260000240 and 2260000140) has never been opened, improved or used as a street. The property was within Pierce County until the City incorporated in 1946.

C. Sutherland Street and Prentice Avenue -- Bucher. The portion of Sutherland Street and Prentice Avenue subject to the Bucher request abuts Woodworth Avenue in Gig Harbor. This street was created in the Plat of Woodworth's Addition, recorded in 1890 in Book 5 of Plats at Page 66 in Pierce County, Washington. According to the Public Works Department, the portion of Sutherland Street and Prentice Avenue abutting the Bucher property (tax parcel number 981500-021-0) has never been opened, improved or used as a street. The property was within Pierce County until the City incorporated in 1946.

II. RELEVANT STATUTORY BACKGROUND.

In 1889-90, the Washington State Legislature adopted a statute that automatically vacated unopened roads located in unincorporated areas. This statute provided as follows:

Any county road, or part thereof, which has heretofore been or may be hereafter authorized, which remains unopened for

public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority for building the same is barred by lapse of time.

Laws of 1889-90, chapter 19 (Relating to County Roads), Section 32, p. 603. The use of the word "authorized" in the above statute has been interpreted by the courts to mean "the filing of a proper plat." Murphy v. King County, 45 Wash. 587, 593, 88 P. 115 (1907).

In 1909, the Washington State Legislature re-enacted the same statute, which the following provision:

Provided, however. That the provisions of this section shall not apply to any highway, street, alley or other public place dedicated as such in any plat, whether the land included in said plat be within or without the limits of any incorporated city or town, nor to any land conveyed by deed to the state or to any town, nor to any land conveyed by deed to the state or to any town, city or county for roads, streets, alleys or other public places.

Laws of 1909, chapter 90, Section 1, p. 189, repealed in 1936 by the Washington State Aid Highway Act (Laws of 1936, chapter 187, Section 52, p. 761). Because a statute may not be given retroactive effect if the result would interfere with vested rights, the courts have interpreted the 1909 amendment to integrate with the 1889-90 statute as follows:

. . . where a street lying outside a city or town has been dedicated and unopened for a period of five years prior to the 1909 amendment, the right of abutting property owners to the vacated street, pursuant to the provisions of the 1889-90 statute, has vested and is not affected by the 1909 amendment.

Gillis v. King County, 42 Wn.2d 373, 377, 255 P.2d 546 (1953).

The effect of a vacation of a platted street is to remove the easement for public travel, so that the property in the vacated street "shall belong to the abutting property owners, one half to each." RCW 35.79.020. Therefore, the effect of an automatic vacation of a street subject to the nonuser statute would be to vest ownership of the street area, to the center line, in the abutting owners. (However, the determination of ownership is not made by the City, and this is just a general rule, which may or may not apply, depending on the shape of the parcel.)

A question has arisen as to whether or not the City may still vacate the street, if activities on the street area since the time of the automatic vacation might allow someone (or the public) to claim a right to continued use of the street under prescription or adverse possession. Keep in mind that the nonuser statute was adopted to fix the time limit within which the county could perform (by opening

and improving) under the dedication of the property for street purposes. "If the purpose of the grant was not accomplished within five years, a reversion of the authority to construct a road would result." Wells v. Miller, 42 Wn. App. 94, 97, 708 P.2d 1223 (1985). When the street has not been opened within that five year period, the right of abutting property owners to the vacated street vests by operation of law. Wells, 42 Wn. App. at 97. "Although a street is vacated by operation of law, as long as there is no formal vacation, a dedication of record is merely a 'cloud on the owners title,' which may be removed by a vacation [ordinance]." Id. Therefore, if the Council believes that someone other than the abutting property owner(s) can establish a right to use the street under the doctrines of adverse possession or prescription, this would have no effect on the Council's decision to adopt the vacation ordinance. The vacation ordinance merely removes the cloud on the title, and anyone claiming a right to use or own the street area under adverse possession or prescription would still have to file a quiet title action in Superior Court to adjudicate title or any use rights. The City Council has no authority to adjudicate property rights.

III. APPLICATION OF FACTS TO LAW.

These portions of platted street right-of-way were recorded in Pierce County during the applicable period, were outside of the City and were not opened or improved for a period of five years prior to the 1909 amendment to the nonuser statute, then they automatically vacated by operation of law. The City's ability to open these portions of the streets is barred by lapse of time and the City has no interest in these portions of the street (under these facts). In order to ensure that these portions of the streets are placed on the tax rolls and the ownership is formally recorded, the City may adopt an ordinance vacating the portions of the streets. If the Council finds that any individual or the public has a claim to the street area under the doctrines of prescription or adverse possession, these claims must be pursued in Superior Court in a quiet title action.

IV. RECOMMENDATION.

The City staff recommends that because the portions of these streets have already vacated by operation of law, the Council should adopt a vacation ordinance(s), which would formalize the vacation and remove the cloud on the property owners' titles.



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ORDINANCE FOR SUTHERLAND STREET AND PRENTICE AVENUE
STREET VACATION - BUCHER
- FIRST READING
DATE: MARCH 25, 2002

INTRODUCTION/BACKGROUND

On February 25, 2002, Council approved a resolution setting March 25, 2002 as the date to hear public testimony regarding the requested street vacation initiated by Mr. Charles S. Bucher. Mr. Bucher is petitioning the city to vacate portions of Sutherland Street and Prentice Avenue abutting his property in accordance with GHMC 12.14.002C.

Specifically, the request is to vacate a 32-foot wide strip on Sutherland Street and a 33-foot wide strip on the Prentice Avenue rights-of-way abutting Mr. Bucher's property at 9409 Woodworth Avenue. The subject rights-of-way were platted in Pierce County in 1890 and were not opened or improved by 1905, therefore automatically vacated by operation of law in 1896. The city's ability to open these portions of rights-of-way is barred by lapse of time and the city has no interest in these rights-of-way. In order to ensure that these portions of Sutherland Street and Prentice Avenue are placed on tax rolls and the ownership is formally recorded, the property owner has requested that the city vacate these streets 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 THE PORTION
OF SUTHERLAND STREET AND PRENTICE AVENUE
LYING BETWEEN PEACOCK HILL AVENUE AND
WOODWORTH AVENUE.**

WHEREAS, the City has the authority to adopt a vacation ordinance to formally remove the cloud on the title of the referenced right-of-way area, but this street vacation ordinance does not affect 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 Sutherland Street and Prentice Avenue are subject to this vacation request was created in the Plat of Woodworth's Addition, recorded in the records of Pierce County in 1890; and

WHEREAS, the referenced portions of street rights-of-way have never been opened or improved as a public street; and

WHEREAS, the referenced portions of street rights-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. 585 initiating the procedure for the vacation of the referenced streets 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 March 25, 2002, and at the conclusion of such hearing determined

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

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

Section 1. The City Council finds that the unopened portions of the platted Sutherland Street and Prentice Avenue rights-of-way have been 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). These portions of Sutherland Street and Prentice Avenue, lying between Peacock Hill Avenue and Woodworth Avenue, abutting property at 9409 Woodworth Avenue, Parcel No. 981500-021-0, attached hereto as legally described and shown 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 _____, 2002.

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:

EXHIBIT A

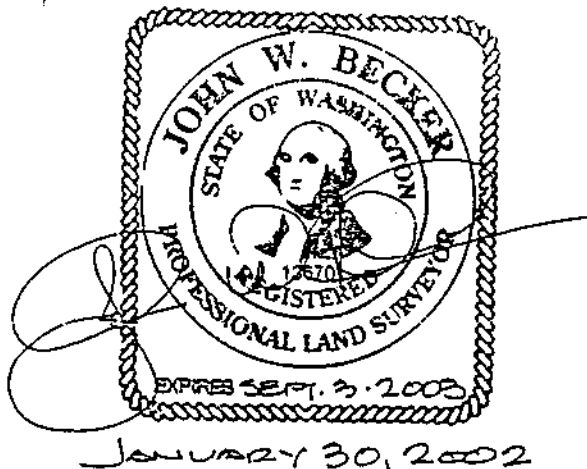
PROPOSED LEGAL DESCRIPTION

RIGHT-OF-WAY THAT WILL ATTACH TO BUCHER ADJOINER FOLLOWING VACATION OF A PORTION OF SUTHERLAND ST. AND PRENTICE AVE., GIG HARBOR, WASHINGTON.

THE SOUTH HALF OF THAT PORTION OF SUTHERLAND STREET (FORMERLY WHITE 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 NORTHERLY PRODUCTION OF THE WEST LINE OF BLOCK 7 OF SAID PLAT, AND THE CENTERLINE OF PRENTICE AVENUE (FORMERLY CHESTER STREET).

TOGETHER WITH THAT PORTION OF THE WEST HALF OF PRENTICE AVENUE (FORMERLY CHESTER STREET) IN SAID PLAT OF WOODWORTH'S ADDITION, LYING BETWEEN THE EASTERLY PRODUCTION OF THE NORTH LINE OF BLOCK 7 IN SAID PLAT, AND THE EASTERLY PRODUCTION OF THE SOUTH LINE OF THE NORTH 40 FEET OF LOT 2, 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 AHBL, INC.
AHBL JOB NO. 201494.50
January 30, 2002

20149450leg.doc

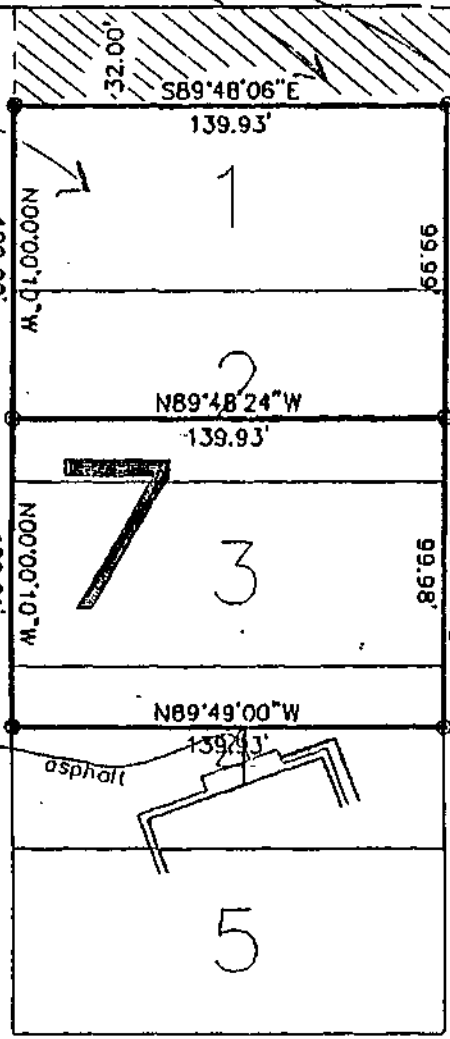
PROPOSED R.O.W.
VACATION AREA(S)

WHITE ST. (SUTHERLAND)

SUBJECT
PROPERTY

FLORENCE ST. (WOODWORTH AVE.)

S89°48'06"E
418.86'



CHESTER ST. (PRENTICE AVE.)

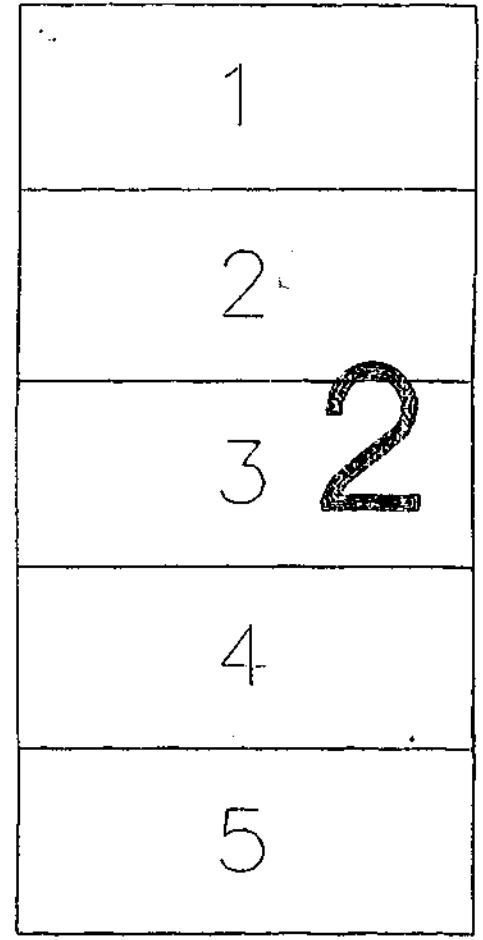


EXHIBIT A

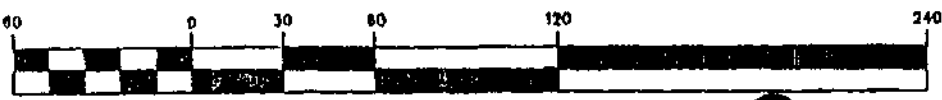
500'00\"/>

NORTH

N89°49'37"W
418.86'

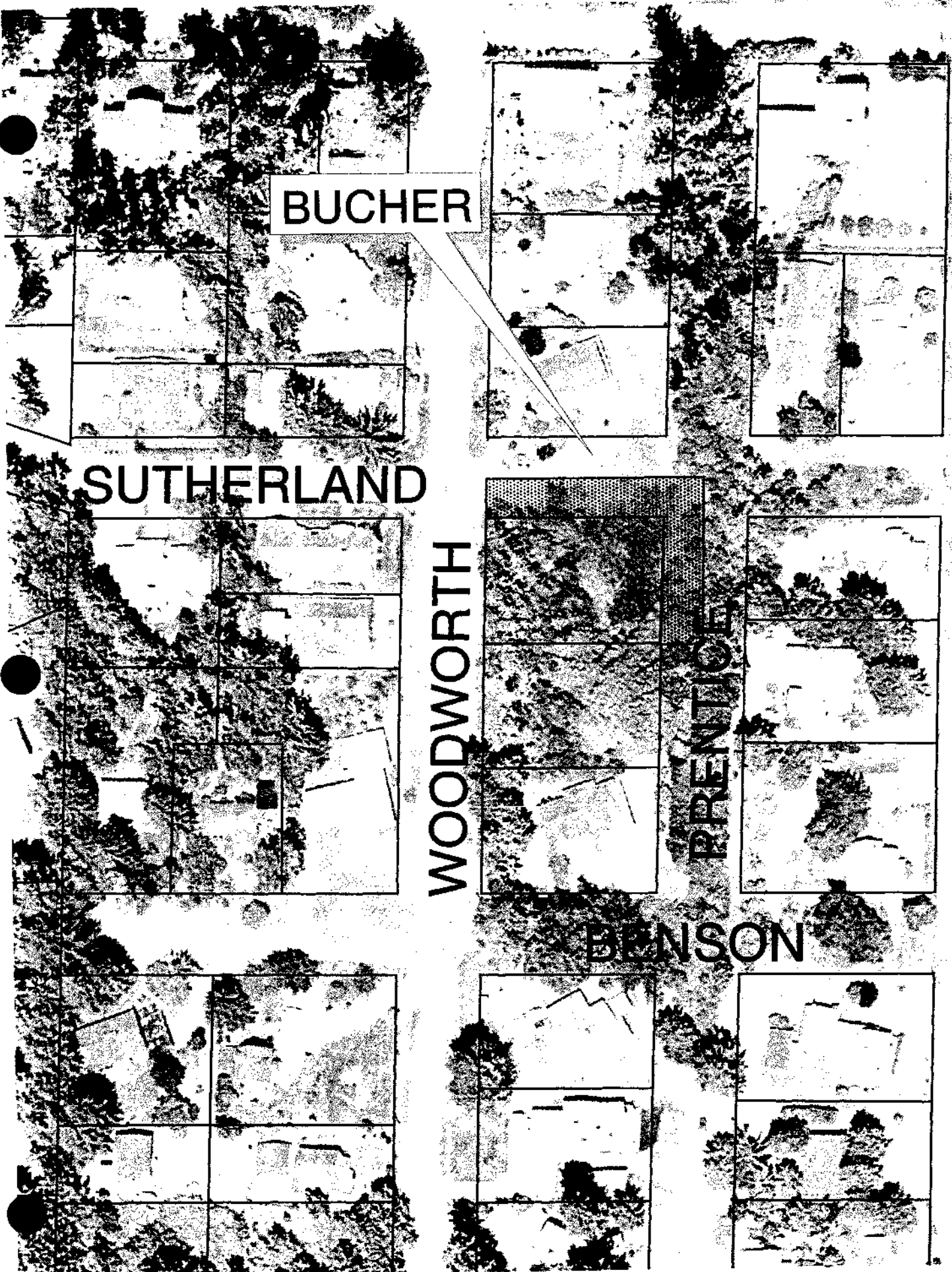
GRAPHIC SCALE

NORTON ST. (BENSON)



(IN FEET)

1 inch = 60 ft



BUCHER

SUTHERLAND

WOODWORTH

PRENTICE

PEACOCK HILL

BENSON

BUCHER STREET VACATION

EXHIBIT B

MEMORANDUM

To: Gig Harbor Mayor and City Council
From: Carol Morris, City Attorney
Date: March 18, 2002
Subject: A. Request for Street Vacation from Richard D. and Heidi Rohwer of a portion of Rust Street adjacent to their residence at 3516 Rust Street;
B. Request for Street Vacation from Eric and Maureen Barta of a portion of Rust Street adjacent to their residence at 9508 Wheeler Avenue;
C. Request for Street Vacation from Charles S. Bucher of a portion of Sutherland Street and Prentice Avenue adjacent to his residence at 9409 Woodworth Avenue.

I. FACTS.

A. Rust Street -- Rohwer. The portion of Rust Street subject to the Rohwer vacation request abuts 3516 Rust Street in Gig Harbor. This street was created in the Plat of the Town of Artena, recorded in 1891 in Book 5 of Plats at Page 68 in Pierce County, Washington. According to the Public Works Department, the portion of Rust Street abutting the Rohwer property (tax parcel No. 2260000270) has never been opened, improved or used as a street. The property was within Pierce County until the City incorporated in 1946.

B. Rust Street -- Barta. The portion of Rust Street subject to the Barta vacation request abuts 9508 Wheeler Avenue in Gig Harbor. This street was created in the Plat of the Town of Artena, recorded in 1891 in Book 5 of Plats at Page 68 in Pierce County, Washington. According to the Public Works Department, the portion of Rust Street abutting the Barta property (tax parcel 2260000240 and 2260000140) has never been opened, improved or used as a street. The property was within Pierce County until the City incorporated in 1946.

C. Sutherland Street and Prentice Avenue -- Bucher. The portion of Sutherland Street and Prentice Avenue subject to the Bucher request abuts Woodworth Avenue in Gig Harbor. This street was created in the Plat of Woodworth's Addition, recorded in 1890 in Book 5 of Plats at Page 66 in Pierce County, Washington. According to the Public Works Department, the portion of Sutherland Street and Prentice Avenue abutting the Bucher property (tax parcel number 981500-021-0) has never been opened, improved or used as a street. The property was within Pierce County until the City incorporated in 1946.

II. RELEVANT STATUTORY BACKGROUND.

In 1889-90, the Washington State Legislature adopted a statute that automatically vacated unopened roads located in unincorporated areas. This statute provided as follows:

Any county road, or part thereof, which has heretofore been or may be hereafter authorized, which remains unopened for

public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority for building the same is barred by lapse of time.

Laws of 1889-90, chapter 19 (Relating to County Roads), Section 32, p. 603. The use of the word "authorized" in the above statute has been interpreted by the courts to mean "the filing of a proper plat." Murphy v. King County, 45 Wash. 587, 593, 88 P. 115 (1907).

In 1909, the Washington State Legislature re-enacted the same statute, which the following provision:

Provided, however. That the provisions of this section shall not apply to any highway, street, alley or other public place dedicated as such in any plat, whether the land included in said plat be within or without the limits of any incorporated city or town, nor to any land conveyed by deed to the state or to any town, nor to any land conveyed by deed to the state or to any town, city or county for roads, streets, alleys or other public places.

Laws of 1909, chapter 90, Section 1, p. 189, repealed in 1936 by the Washington State Aid Highway Act (Laws of 1936, chapter 187, Section 52, p. 761). Because a statute may not be given retroactive effect if the result would interfere with vested rights, the courts have interpreted the 1909 amendment to integrate with the 1889-90 statute as follows:

. . . where a street lying outside a city or town has been dedicated and unopened for a period of five years prior to the 1909 amendment, the right of abutting property owners to the vacated street, pursuant to the provisions of the 1889-90 statute, has vested and is not affected by the 1909 amendment.

Gillis v. King County, 42 Wn.2d 373, 377, 255 P.2d 546 (1953).

The effect of a vacation of a platted street is to remove the easement for public travel, so that the property in the vacated street "shall belong to the abutting property owners, one half to each." RCW 35.79.020. Therefore, the effect of an automatic vacation of a street subject to the nonuser statute would be to vest ownership of the street area, to the center line, in the abutting owners. (However, the determination of ownership is not made by the City, and this is just a general rule, which may or may not apply, depending on the shape of the parcel.)

A question has arisen as to whether or not the City may still vacate the street, if activities on the street area since the time of the automatic vacation might allow someone (or the public) to claim a right to continued use of the street under prescription or adverse possession. Keep in mind that the nonuser statute was adopted to fix the time limit within which the county could perform (by opening

and improving) under the dedication of the property for street purposes. "If the purpose of the grant was not accomplished within five years, a reversion of the authority to construct a road would result." Wells v. Miller, 42 Wn. App. 94, 97, 708 P.2d 1223 (1985). When the street has not been opened within that five year period, the right of abutting property owners to the vacated street vests by operation of law. Wells, 42 Wn. App. at 97. "Although a street is vacated by operation of law, as long as there is no formal vacation, a dedication of record is merely a 'cloud on the owners title,' which may be removed by a vacation [ordinance]." Id. Therefore, if the Council believes that someone other than the abutting property owner(s) can establish a right to use the street under the doctrines of adverse possession or prescription, this would have no effect on the Council's decision to adopt the vacation ordinance. The vacation ordinance merely removes the cloud on the title, and anyone claiming a right to use or own the street area under adverse possession or prescription would still have to file a quiet title action in Superior Court to adjudicate title or any use rights. The City Council has no authority to adjudicate property rights.

III. APPLICATION OF FACTS TO LAW.

These portions of platted street right-of-way were recorded in Pierce County during the applicable period, were outside of the City and were not opened or improved for a period of five years prior to the 1909 amendment to the nonuser statute, then they automatically vacated by operation of law. The City's ability to open these portions of the streets is barred by lapse of time and the City has no interest in these portions of the street (under these facts). In order to ensure that these portions of the streets are placed on the tax rolls and the ownership is formally recorded, the City may adopt an ordinance vacating the portions of the streets. If the Council finds that any individual or the public has a claim to the street area under the doctrines of prescription or adverse possession, these claims must be pursued in Superior Court in a quiet title action.

IV. RECOMMENDATION.

The City staff recommends that because the portions of these streets have already vacated by operation of law, the Council should adopt a vacation ordinance(s), which would formalize the vacation and remove the cloud on the property owners' titles.



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: KRAMERONE, INC. CONSULTANT SERVICES CONTRACT
DATE: MARCH 25, 2002

INFORMATION/BACKGROUND

The Council has indicated a desire to hire a consulting firm to conduct an evaluation of the physical configuration, use and operation of the Gig Harbor Sportsman's Club outdoor shooting range. Two proposals were submitted for the Council's consideration at the March 11, 2002 meeting. The Council moved to select the firm of Kramerone, Inc. and directed staff to prepare a contract in an amount not to exceed \$7,000.00.

The City Attorney notes that Kramerone, Inc. has proposed that the City's standard form consultant contract be amended to limit their obligation to indemnify, defend and hold the City harmless from claims, damages, injuries, losses, suits, attorney's fees or costs to only those covered by their insurance policies, and only if their actions/inactions are determined by a court to be "negligent". As the Council is aware, there are not many choices for a consultant of this type, and at least two other consultants were not acceptable because they either proposed that the City indemnify their actions or refused to contract with the City for an identified scope of services. The Council needs to weigh the advantages of contracting with Kramerone, Inc. for this service together with the possibility that the indemnification provision might not cover all possible situations implicated by the agreement.

The City attorney does agree with the proposed changes to the standard form consultant contract found on page 4.

FISCAL IMPACT

Adequate funds exist in the adopted 2002 budget to cover the costs associated with this contract.

RECOMMENDATION

I recommend that the City Council move to accept the Consultant Services Contract with Kramerone, Inc. in an amount not to exceed \$7,000.00 and further authorize the Mayor's signature on said document.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
KRAMERONE, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Kramerone, Inc., a corporation organized under the laws of the State of Arizona, located and doing business at 6839 East Avalon Drive, Scottsdale, Arizona, 85251 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is desirous of obtaining an evaluation of the physical configuration, use, and operation of the Gig Harbor Sportsman's Club outdoor shooting range and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated February 25, 2002, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A**, 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:

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 seven thousand dollars (\$7,000.00) 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 September 30, 2002; 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 one 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 *to the extent coverage exists under the various liability policies maintained by the Consultant*, 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 *negligent* 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 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.

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. It is the intent of this contract for the Consultant'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 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~~ *reduction in scope of coverage or limits of liability* 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 Director of Planning and Building Services and the City shall determine the term or provision's true intent or meaning. The City Director of Planning and Building Services 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 Director of Planning and Building Services 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:

Lorin D. Kramer, President
Kramerone, Inc.
6839 East Avalon Drive
Scottsdale, Arizona, 85251
(480) 941-9179
(480) 970-3830 Fax
kramer_one@msn.com

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3125 Judson Street
Gig Harbor, Washington 98335
(253) 851-4278
(253) 858-6408 Fax
vodopichj@lesa.net

XVII. Assignment

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

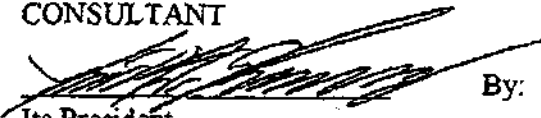
XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2002.

CONSULTANT
By: 
Its President

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
Lorin D. Kramer, President
Kramerone, Inc.
6839 East Avalon Drive
Scottsdale, Arizona, 85251
(480) 941-9179
(480) 970-3830 Fax
kramer_one@msn.com

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3125 Judson Street
Gig Harbor, Washington 98335
(253) 851-4278
(253) 858-6408 Fax
vodopichj@lesa.net

APPROVED AS TO FORM:

ATTEST:

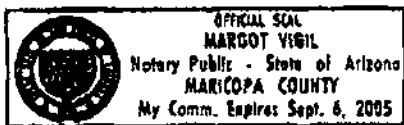
Carol A. Morris
City Attorney

Molly Towslee
City Clerk

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

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

Dated: 3/19/2002



Margot Vigil

MARGOT VIGIL
(print or type name)

NOTARY PUBLIC in and for the
State of Arizona, residing at:
7315 E. OSBORN RD. Scottsdale
AZ 85251
My Commission expires: 9/6/2005

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

Dated: _____

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

My Commission expires: _____

Exhibit 'A'

February 25, 2002

RE: GIG HARBOR SPORTSMAN'S CLUB - GIG HARBOR, WASHINGTON

John P. Vodopich, Community Development Director
Department of Planning & Building Services
City of Gig Harbor
3125 Judson Street
Gig Harbor, Washington 98335

Dear Mr. Vodopich:

We are pleased to provide the shooting range evaluation services you have requested regarding the Gig Harbor Sportsman's Club located in Gig Harbor, Washington.

Kramer One, Inc. is an architecture firm with extensive nationwide experience in shooting range development. We have evaluated the safety of numerous shooting ranges, including several in northwest Washington. Kramer One is licensed to practice architecture in the State of Washington. I have enclosed our professional experience resume for you reference.

Following are the services we will provide for this project.

Assumptions:

- The City of Gig Harbor (GH) will provide Kramer One, Inc. (KO) with pertinent documents, including but not limited to an aerial photograph of the site and surrounding area, the GH draft shooting range ordinance, and any written safety materials provided by Gig Harbor Sportsman's Club (GHSC). The aerial photograph will be current and to a known scale.
- Communications will be directed between KO and GH, unless directed otherwise by GH.
- KO maintains professional liability, general liability and auto liability insurance policies, each with limits of one million Dollars (\$1,000,000.00). The cost for additional insurance or insurance limits requested by GH will be billed as Reimbursable Expenses.

Scope of Work:

1. Kramer One, Inc. will review the City of Gig Harbor's (GH) draft ordinance for outdoor shooting ranges.
2. On one (1) occasion, KO will meet with representatives of the GH and Gig Harbor Sportsman's Club (GHSC). During the site visit, KO will observe the existing shooting range facility.
3. KO will evaluate the safety of GHSC's facility in relationship to the GH draft ordinance; KO's professional experience, and industry standards as published by the National Rifle Association and the National Shooting Sports Foundation. If needed, KO will make recommendations for improvements necessary for GHSC to meet these standards.
4. KO will prepare a report documenting the safety evaluation and any recommendations. KO will provide CH with five (5) copies of the report.

Agreement Rates:

Fixed Fee:

Stipulated sum of six thousand four hundred ninety Dollars (\$6,490.00).

Reimbursable Expenses:

Actual cost incurred by Kramer One, Inc.

Reimbursable Expenses include:

Reproducing and shipping additional copies of the report.

Additional insurance coverage or limits requested by the City of Gig Harbor in excess of that normally carried by Kramer One, Inc.

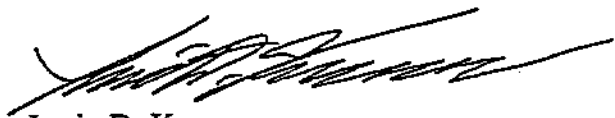
Terms:

Billing will be through the last day of the month. All invoices are due and payable upon receipt of invoice. Invoices sixty days past due accrue interest at the rate of 1.5% per month. Check returned for insufficient funds will be assessed a \$35.00 fee.

Gig Harbor Sportsman's Club
Professional Services Agreement
Page 3

This proposal expires if not signed within ninety days.

Sincerely,



Lorin D. Kramer
President

Accepted for the City of Gig Harbor

Signature

Print Name & Title

Date

PROFESSIONAL EXPERIENCE

Kramer One, Inc. is a respected architecture firm specializing in providing top quality professional services for shooting ranges. These services include full service architecture, land planning, site evaluation, cost estimation, safety evaluation, ventilation design evaluation, range equipment evaluation, and merchandising. Kramer One, Inc. has provided expert testimony regarding shooting range design, safety and operations. The firm has provided professional services for shooting range facilities in twenty-seven states.

Kramer One was formed in 1990 by Lorin D. Kramer. Mr. Kramer has over twenty years of architectural and planning experience. In 1993, Gerald M. Cook joined the firm. Mr. Cook has nearly twenty-five years of architectural, planning, and construction management experience. In 1994, Kramer One, Inc. was incorporated in Arizona. In 2001, Jack J. Giordano joined the firm as a shooting range health and safety specialist. Kramer One, Inc. has numerous other staff members providing drafting and support services.

PROFESSIONAL REGISTRATION

Lorin D. Kramer - Architect: Arizona, Colorado, Delaware, Hawaii, Idaho, Illinois, Maryland, Missouri, Vermont, Virginia, Washington
Gerald M. Cook - Architect: National Council of Architectural Registration Boards (NCARB), Arizona, California, Wisconsin

LORIN D. KRAMER

JOB DESCRIPTION

President, Senior Partner, Principal in Charge of Shooting Range Projects, Architect

PROFESSIONAL REGISTRATION

Architect: Arizona, Colorado, Delaware, Hawaii, Idaho, Illinois, Maryland, Missouri, Vermont, Virginia, Washington

PROFESSIONAL AFFILIATION

National Rifle Association of America (NRA): Member (1975), Life Member (1977), Golden Eagle Charter Member (1992), Benefactor Member (1994), Certified Firearms Education Instructor (1982), Training Counselor (1984), Certified Shooting Coach (1984), Range Technical Team Advisor (1991), Range Technical Team Supervisor (2000)

National Shooting Sports Foundation (NSSF): Corporate Member (2000)

Law Enforcement Alliance of America (LEAA): Life Member (1996)

International Shooting Coaches Association (ISCA): Charter Life Member (1985)

International Association of Law Enforcement Firearms Instructors (IALEFI): Associate Member (1996)

Arizona State Rifle & Pistol Association (ASRPA): Member (1981), Life Member (1983)

New Mexico Shooting Sports Association (NMSSA): Life Member (1988)

Colorado State Shooting Association (CSSA): Life Member (1999)

PROFESSIONAL ACTIVITIES

National Rifle Association of America

2000-Present	Range Technical Team Advisor Supervisor
1993-Present	Range Development Conference staff and speaker
1992	Training Counselor Workshop staff and speaker
1991-2000	Range Technical Team Advisor
1984-1994	Instructor Training Course staff and speaker
1982-1994	Basic Firearms Education Course staff and speaker
1975-Present	Competitor: Smallbore Rifle, High Power Rifle, Rifle Silhouette, Pistol Silhouette, Practical Pistol, Submachinegun

Arizona State Rifle & Pistol Association

1985-1986	Junior Division Executive Officer
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Rio Salado Sportsman's Club, Inc. - Mesa, Arizona (2000 member shooting club)

1989-1990	Secretary
1987-1989	President
1985-1987	Vice President
1983-1985	Chief Instructor

REPRESENTATIVE SHOOTING RANGE PROJECTS

Indoor:

Alaska Department of Fish & Game Hunter Education Building - Fairbanks, Alaska

Design, construction documents, and construction administration for 10,000 s.f. public indoor range, including 10 pistol and rimfire rifle shooting positions and classrooms.

Veterans Administration Security Training Center - North Little Rock, Arkansas

Design, construction documents, and construction administration for 12,800 s.f. security police indoor range, including 15 pistol shooting positions, administrative offices, firearms cleaning and secure storage.

University of Texas Parking Garage and Shooting Range - Austin, Texas

Design documents for 13,000 s.f. ROTC, shooting team and university police indoor range, including 16 pistol, rimfire rifle and airgun shooting positions, classroom, offices, secure storage and shooting team headquarters.

High Noon Indoor Shooting Parlour - Prescott Valley, Arizona

Design and construction documents, and construction administration for 7,000 s.f. commercial indoor range, including 12 pistol shooting positions, retail sales, classroom, and office space.

North Site Intermediate/High School - Bushkill, Pennsylvania

Design, construction documents, and construction administration for public school indoor range, including 5 rimfire rifle shooting positions.

Thunder Mountain Gun - Hereford, Arizona

Design and construction documents for 8,000 s.f. commercial indoor range, including 8 pistol shooting positions, retail sales, classroom, gunsmithing, and office space.

Foothills Shooting Center - Lakewood, Colorado

Environmental analysis for existing commercial indoor range, including lead cleanup, ventilation redesign and OSHA compliance. Design documents for 10,600 sf remodel and addition, including 16 pistol and 6 rifle shooting positions and retail sales.

Action Sports - Slidell, Louisiana

Design documents for 16,700 s.f. commercial indoor range, including 22 pistol and 5 rifle shooting positions, retail sales, classroom, and offices.

Central Jersey Sportsman's Club - Jackson, New Jersey

Design documents for 12,500 s.f. club indoor range including 20 pistol and smallbore rifle positions, and classroom.

Indoor Shooting Range - Mesquite, Texas

Design documents for 40,000 s.f. commercial indoor range in existing department store, including 18 pistol, 6 rifle, 6 airgun, and 4 archery shooting positions, retail sales, classrooms, gunsmithing, and offices.

Indoor Shooting Range - Irvine, California

Design documents for 39,000 s.f. commercial indoor range, including 18 pistol and 5 rifle shooting positions, retail sales, classrooms, gunsmithing, and offices.

Shooter's World - Phoenix, Arizona

Various projects for 65,000 s.f. commercial indoor range.

CLIENT REFERENCES

Dave Willis
Range Services Manager

Range Department
National Rifle Association
11250 Waples Mill Road
Fairfax, Virginia 22030
703-267-1417

James E. Burton
Assistant Director

Arizona Game & Fish Department
2221 West Greenway Road
Phoenix, Arizona 85023
602-789-3440

Donald M. Turner
Project Leader
Statewide Shooting Ranges

Arizona Game & Fish Department
Ben Avery Shooting Facility
4044 West Black Canyon Boulevard
Phoenix, Arizona 85027
623-582-8313

Fred N. Luedtke
Deputy Director
Public Works

City of Escondido
201 North Broadway
Escondido, California 92025
760-839-4573

Schiller Liao
Project Manager

University of Texas System
Office of Facilities Planning & Construction
702 Colorado, Suite 400
Austin, Texas 78701
512-499-4697

Robert W. Allen

High Noon Indoor Shooting Parlour
6969 Highway 69
Prescott Valley, Arizona 86314
520-772-0750

David James

Alaska Department of Fish & Game
1300 College Road
Fairbanks, Alaska 99701
907-457-7222

Deputy Chief Helen L. Perry-Buse

Lansing Police Department
120 West Michigan Avenue
Lansing, Michigan 48933
517-483-6055

Lt. W.R Davis

Indiana Law Enforcement Academy
P.O. Box 313
Plainfield, Indiana 46168
317-839-5191

kramer
ARCHITECTURE
& PLANNING **One** inc.

6839 E. Avalon Dr. • Scottsdale, AZ 85251
phone 480.941.9179 • fax 480.970.3830

JACK J. GIORDANO

JOB DESCRIPTION

Shooting Range Health & Safety Specialist

PREVIOUS OCCUPATION

Police Officer, Port Authority Police of New York and New Jersey (Retired)

EDUCATION

Bachelor of Science Degree, City University of New York, John Jay College of Criminal Justice

PROFESSIONAL CERTIFICATIONS

Investigators Training Course, Department of Investigations, City of New York

Crime Scene Investigations, John Jay College of Criminal Justice

Advanced Explosives and Terrorist Activities, International Association of Bomb Technicians and Investigators

Police Armorer, Smith & Wesson Revolvers

Police Armorer, Smith & Wesson Semi-Automatic Pistols

Police Armorer, Remington Rifles and Shotguns

Principals of Acoustics and Measurement of Sound, Bruel and Kjaer

PROFESSIONAL ACTIVITIES

National Rifle Association of America

2000-Present Range Technical Team Advisor Supervisor

1999-Present Range Development Conference staff and speaker

1999-Present Training Counselor Workshop staff and speaker

1998-Present Chief Range Safety Officer

1991-Present Range Technical Team Advisor

1990-Present Field Support Team

1985-Present Instructor Training Course staff and speaker

1978-Present Basic Firearms Education Course staff and speaker

Port Authority Police of New York and New Jersey

1983-1997 Police Firearms Instructor

Qualified as an expert witness in the field of firearms, firearm safety, and shooting range design, operation, and safety on numerous occasions by numerous jurisdictions.

REPRESENTATIVE SHOOTING RANGE PROJECTS

Outdoor:

Indiana Law Enforcement Academy Range - Plainfield, Indiana

Master plan, design, construction documents, and construction administration for 5 acre law enforcement training facility for Indiana Law Enforcement Academy, including outdoor pistol, rifle and shotgun ranges.

Mac J. Donnelly, Jr. Complex - Lansing, Michigan

Master plan, design, construction documents, and construction administration for 4 acre law enforcement training facility for Lansing Police Department, including outdoor pistol, rifle and shotgun ranges.

Eagle Creek Firearms Training Facility - Indianapolis, Indiana

Master plan, design, construction documents, and construction administration for 50 acre law enforcement training facility for Indianapolis Department of Public Safety, including outdoor pistol, rifle and shotgun ranges.

Kingsbury Fish & Wildlife Range - LaPorte, Indiana

Master plan, design, construction documents, and construction administration for regional public facility for Indiana Department of Natural Resources, including outdoor pistol, rifle and shotgun ranges.

Multipurpose Shooting Range - Bellemont, Arizona

Design, construction documents, and construction administration for 924 acre regional public facility for Arizona Game & Fish Department, including outdoor pistol, rifle, shotgun and archery ranges.

Pima County Southeast Regional Recreational Shooting Facility - Tucson, Arizona

Master plan for 480 acre facility in county park, including public outdoor pistol, rifle, and shotgun ranges. Design, construction documents, and construction administration for rifle and pistol ranges.

Escondido Police Range - Escondido, California

Master plan for 100 acre law enforcement training facility for Escondido Police Department, including outdoor pistol, rifle and shotgun ranges.

Central Park Shooting Range - Huntington Beach, California

Master plan for 7 acre public and law enforcement outdoor pistol and rifle range for City of Huntington Beach.

Ben Avery/Black Canyon Ranges - Phoenix, Arizona

Safety analysis for existing 1400 acre regional public facility for Arizona Game & Fish Department, including outdoor pistol, rifle, shotgun and archery ranges.

King County Ranges - Washington

Safety analysis for eight existing shooting facilities for King County Prosecutor's Office and King County Sheriff's Department, including outdoor pistol, rifle and shotgun ranges.

Sierra Conservation Center Range - Jamestown, California

Safety analysis for state correctional facility outdoor pistol range.

Huntington Beach Police Officer's Association Range - Huntington Beach, California

Safety analysis for city law enforcement outdoor pistol and rifle range.



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ROBERT ROHRBACH - CONSULTANT SERVICES CONTRACT
DATE: MARCH 25, 2002

INFORMATION/BACKGROUND

The Building Department is in need of professional services for the purposes of conducting building and fire code plan review and technical assistance related to building and fire code administration. As building sizes have increased, so too has the complexity of the plans and need for more detailed, technical plan review. Mr. Robert Rohrbach is a qualified individual in this field and has assisted the City in the past in this capacity. Mr. Rohrbach would provide such services to the city on an 'as needed' basis and monthly costs associated with this contract would not exceed \$2,500 per month.

The City Attorney has reviewed and recommended approval of this contract.

FISCAL IMPACT

Adequate funds exist in the adopted 2002 budget to cover the cost of this consultant services contract.

RECOMMENDATION

I recommend that the City Council move to accept the Consultant Services Contract with Mr. Robert Rohrbach for a one-year duration and further authorize the Mayor's signature on said document.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
G. Robert Rohrbach**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and G. Robert Rohrbach, an individual doing business as a codes consultant, located and doing business in 4721 354th Ave S.E. Fall City, Washington, (hereinafter the "Consultant").

RECITALS

WHEREAS, CITY does not have sufficient staff or expertise to provide all aspects of the plan review, inspections, and code enforcement services as contemplated in Chapters 19.27, 19.27A, and 70.92 RCW, which established the Washington State Building Code, along with amendments and local regulations contained in the Gig Harbor Municipal Code in a timely manner, and deems it advisable and desirable to engage the assistance of CONSULTANT to provide the necessary services, as set forth herein, and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, 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:

I. Description of Work

The CONSULTANT shall assist the Community Development Director by providing all requested development review services necessary to faithfully and completely fulfill the intent of the State Building Code Act, as amended by the City, and related provisions found in the Gig Harbor Municipal Code as set forth in Exhibit "A". CONSULTANT shall act at the discretion of the Director to interpret and enforce the Building Code Act and the Gig Harbor Municipal Code to the extent permitted by law and as described in Exhibit "A". The CONSULTANT shall furnish all services and labor as described in Exhibit A.

II. Payment

A. The City shall pay the Consultant, on an hourly basis, as described in Exhibit B, not to exceed Two Thousand Five Hundred Dollars, (\$2,500.00) per month or a total of \$22,500.00 for nine months 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 billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. . The parties agree that the services described in **Exhibit A** shall terminate by December 31, 2002; provided however, that additional time may be negotiated under these same terms, at the sole discretion of the City.

V. Termination

A. Termination of Agreement. The Consultant may terminate this agreement for any reason upon 30 days written notice presented to the person and address stated herein below. If delivered to one 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.

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 any negligent act or willfull misconduct by the Consultant, 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. The City shall defend, indemnify and hold Consultant harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney's fees under the procedures and to the extent provided for in Chapter 2.19 of the Gig Harbor Municipal Code.

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 work as directed by the City, 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 \$500,000 each accident limit, and
2. Commercial General Liability insurance no less than \$500,000 per occurrence with a \$1,000,000 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 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.

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. It is the intent of this contract for the Consultant'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 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, reports, interpretations, and permit approvals 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 services covered by this Agreement or accruing out of the performance of such services.

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. Except to the extent covered by chapter 2.19 of the GHMC, 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 or the Consultant 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 Community Development Director and the City shall determine the term or provision's true intent or meaning. The City Community Development Director 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 Community Development Director 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:

G. Robert Rohrbach, CBO
Codes Consultant
4721 354th Avenue SE
Fall City, WA 980254
Phone: 425-222-5281
Fax: 425-222-9310
rohrbach@snovalley.com

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3125 Judson Street
Gig Harbor, Washington 98335
(253) 851-4278
(253) 858-6408 Fax
vodopichj@lesa.net

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

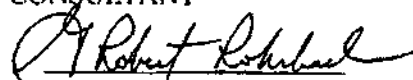
The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering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

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2002.

CONSULTANT

CITY OF GIG HARBOR

By:


Its Principal

By:

Mayor

Notices to be sent to:

CONSULTANT	John P. Vodopich, AICP
Project Manager	Community Development Director
Firm Name	City of Gig Harbor
Address	7125 Judson Street
City, State, Zip	Gig Harbor, Washington 98335
Phone	(253) 851-4278
	(253) 858-6408 Fax
	vodopichj@lesn.net

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

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

My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

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

My Commission expires: _____

Exhibit A
Scope of Code Enforcement Services

1. When directed, CONSULTANT will provide interpretations and propose revisions to the State Building Code, as amended by the City and the Gig Harbor Municipal Code.
2. When directed, Consultant shall provide general and specific information to owners, designers, and builders through code interpretations, pre-application meetings, and other documents or meetings or presentations in support of the duties of the City's Building Official.
3. In supporting the duties of the City's Building Official, the CONSULTANT may recommend that the CITY engage separate professional firms to provide supplemental expertise when required to carry out the functions of the code enforcement agency.
4. When directed, the CONSULTANT will act as the Building Official and provide services for the following activities and whenever the full authority of the office is required:
 - a. Administer and coordinate the function of the code enforcement agency (Building Department) for the City.
 - b. Coordinate the activities of the code enforcement agency with other departments of the City, other Agencies and other jurisdictions.
 - c. Attend, when authorized by the City Administrator, conferences, meetings, seminars, training programs or other activities as may be required to fulfill the functions of the code enforcement agency.
 - d. Make policy and procedure recommendations on building matters and the adoption of new or modified codes.
 - e. Instruct and direct City staff in support of the code enforcement agency.
 - f. Inform the City Administrator, staff and/or other agencies and consultants of irregularities observed in land use approvals, permits and construction.
 - g. Determine when plan review and inspection requirements exceed the normal requirements for like projects and assess additional charges in accordance with the codes and ordinances in force.
5. As directed, CONSULTANT will provide technical services for the following plan review and inspection duties:
 - a. Review building permit applications for compliance with Gig Harbor Municipal Codes and Ordinances, the Uniform Building Code, and related codes adopted as a part of the Washington State Building Codes.
 - b. Require surveys, soils investigations and elevation determinations by professionals licensed in the State of Washington when such determination is required to verify compliance with Gig Harbor Municipal Code and ordinances or to determine proper founding and stability of structures.

- c. Perform site and building observations upon completion of the various phases of the work authorized by building permit to verify compliance of the project with the approved building permit documents, Uniform Building Code, Washington State Building Codes, GHMC, Construction Mitigation Plans and ordinances and/or other conditions that may be a part of the approved building permit.
 - d. Require correction of violations of any code or ordinance observed during plans examination, field observation or site investigation.
6. At the request of the City, the Consultant may provide testimony and/or code interpretation in legal proceedings, including research in response to interrogatories, depositions, and direct testimony as an expert witness.

Exhibit B
Schedule of Code Enforcement Rates

The CITY will compensate CONSULTANT for work performed under this agreement as follows:

1. For work performed in support of the duties of the Building Official, as enumerated in items 1-4 of Schedule A, \$55.00 per hour.
2. For work performed in the technical capacity anticipated by the work elements enumerated in item 5 of Schedule A, \$45.00 per hour.
3. For legal proceedings in fulfillment of the duties as Building Official, or at the request of the City, including depositions, testimony, and research, review and creation of documents for such purposes, \$75.00 per hour.
4. For CONSULTANT'S time spent driving, portal to portal, in support of any services listed above, \$25.00 per hour.
5. All time periods will be calculated in increments of one-quarter (0.25) hour or more.
6. The CITY will compensate the CONSULTANT for vehicle mileage driven in support of any services listed above at the mileage rate currently allowed by City regulations for regular staff.
7. The CITY will reimburse the CONSULTANT for items of direct expense incurred in the performance of the duties listed above at the cost shown on an invoice or receipt and included in the monthly billing.



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: LEBLANC SEWER REQUEST
DATE: MARCH 15, 2002

INFORMATION/BACKGROUND

Ms. LeBlanc is requesting the outside extension of city sewer to her parcel across the street from the Meadow at the crest of Peacock Hill. Four residential sewer connections are requested for a house, a duplex and a cottage. Her property has a failing drainfield.

POLICY CONSIDERATIONS

Although an R-2 use is present on the property (duplex), the city's pre-annexation zoning map prescribes R-1 zoning criteria to the area. Consequently, the proposed contract binds the property to R-1 zoning criteria, making the duplex on the property equivalent by contract to a legal non-conforming use.

FISCAL CONSIDERATIONS

The capacity commitment payment for a three-year commitment is \$1563 (4 [ERUs] x 15% x \$2605). A three-year capacity commitment is the minimum currently allowed for water, and it makes good policy sense maintain the same minimum commitment period for water and for sewer.

RECOMMENDATION

Staff recommends approval of the contract as presented.

March 11, 2002

Mr. Mark Hoppen, Administrator
City of Gig Harbor, Washington

Dear Mr. Hoppen,

I have lived in East Gig Harbor for 26 years, in Shore Acres for 4 years prior to that. Though never a City resident, I also own a rental property at the crest of Peacock Hill that abuts the Gig Harbor city boundary. 9909 Peacock is a home, and the property also includes a duplex 9911A&B and a cottage 9915. This letter is in regard to that property.

In February, the septic drain field failed. The Hemley Company assessed the problem, pumped the tanks, but there is effluent emerging from the hillside which holds the drain field...particularly a problem as the Dave and Janet Robertson home/Gig Harbor Boat Works (Wm. J. Robertson Estate) is directly under that slope.

As there is concern that there is not another drain field site available on the property, Mr. Ray Boland of Hemley's suggested that I explore hooking up to the Gig Harbor City sewer system. Having spoken to Chris Munter and, in his absence, Willy Hendrickson visiting the site with Mr. Boland, they have determined it feasible to have a gravity system that meets a stub-out on Sari Lane or a pumped system up to Peacock.

Therefore, I wish to appeal to the City Council to permit one of these connections as well as a possible annexation of this property, as recommended by Maureen Eisner, as the on-going costs would be mitigated by residency status.

Another possibility, being considered by the neighbors involved and predicated on the Council's decision, is that the two immediately adjacent properties also hook into this new sewer connection, now or in the future, and also consider possible annexation. (Ken Hemley 9921 Peacock and Dave & Janet Robinson 9905 Peacock). All 3 of these properties are in the urban growth area.

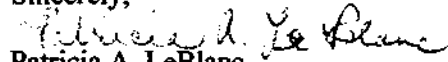
Needless to say, time is of the essence, so I will appreciate knowing of the Council's decision as soon as possible.

I have enclosed a map provided by Mr. Boland. The easement road shown belongs to me...part of the 9909 property.

It may be of interest to know that this property (all 3 mentioned) was originally the Hemley family homestead!

Thank you for your help and consideration of this issue and concern.

Sincerely,


Patricia A. LeBlanc
7903 26th Ave. NW
Gig Harbor, Washington 98332
(253) 858-9792 home
(253) 279-7273

UTILITY EXTENSION, CAPACITY AGREEMENT
AND AGREEMENT WAIVING RIGHT TO PROTEST LID

THIS AGREEMENT is entered into on this ____ day of _____, 2002, between the City of Gig Harbor, Washington, hereinafter referred to as the "City", and Patricia A. LeBlanc, hereinafter referred to as "the Owner".

WHEREAS, the Owner is the owner of certain real property located in Pierce County which is legally described as set forth in Exhibit 'A' attached hereto and incorporated herein by this reference as though set forth in full, and

WHEREAS, the Owner's property is not currently within the City limits of the City, and

WHEREAS, the Owner desires to connect to the City water and sewer utility system, hereinafter referred to as "the utility," and is willing to allow connection only upon certain terms and conditions in accordance with Title 13 of the Gig Harbor Municipal code, as now enacted or hereinafter amended, NOW, THEREFORE,

FOR AND IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties agree as follows:

1. Warranty of Title. The Owner warrants that he/she is the Owner of the property described in Exhibit 'A' and is authorized to enter into this Agreement.

2. Extension Authorized. The City hereby authorizes the Owner to extend service to Owner's property from the existing utility line on Peacock Hill Avenue NW at the following location:

9909 Peacock Hill Ave. NW (house)
9911 Peacock Hill Ave. NW (A&B, duplex)
9915 (cottage)

3. Costs. Owner will pay all costs of designing, engineering and constructing the extension. All construction shall be done to City standards and according to plans approved by the City's Public Works Director. Any and all costs incurred by the City in reviewing plans and in inspecting construction shall be paid for by the Owner.

4. Sewer Capacity Commitment. The City agrees to provide to the Owner sewer utility service and hereby reserves to the Owner the right to discharge to the City's sewerage system 4 ERUs per day average flow; provided however, that the City retains the authority to temporarily suspend such capacity where necessary to protect public health and safety, or where required to comply with the City's NPDES permit, or any other permits required by any agency with jurisdiction. These capacity

rights are allocated only to the Owner's system as herein described. Any addition to this system must first be approved by the City. Capacity rights acquired by the Owner pursuant to this agreement shall not constitute ownership by the Owner of any facilities comprising the City sewerage system. The City agrees to reserve to the Owner this capacity for a period of 12 months ending on March 24, 2003, provided this agreement is signed and payment for sewer capacity is commitment received within 45 days after City Council approval of extending sewer capacity to the Owner's property. Sewer capacity shall not be committed beyond a three-year period.

5. Capacity Commitment Payment. The Owner agrees to pay the City the sum of \$ 1563. to reserve the above specified time in accordance with the schedule set forth below.

Commitment period	Percent (%) of Connection Fee	
Three years	Fifteen percent	(15%)

In no event, however, shall the Owner pay the City less than five hundred dollars (\$500) for commitment for sewer reserve capacity. In the event the Owner has not made connection to the City's utility system by the date set forth above, such capacity commitment shall expire and the Owner shall forfeit one hundred percent (100%) of this capacity commitment payment to cover the City's administrative and related expenses.

In the event the Pierce County Boundary Review Board should not approve extension of the City's sewer system prior to the extension of the commitment period, the Owner shall be entitled to a full refund (without interest) from the City of the capacity agreement.

6. Extension of Commitment Period. In the event the Owner chooses to permanently reserve sewer capacity by paying the entire connection fee for the number of equivalent residential units desired to be reserved before the expiration date set forth above, the Owner shall be responsible for paying each year for the sewer utility system's depreciation based on the following formula: (Owner's reserved capacity divided by the total plant capacity times the annual budgeted depreciation of the sewer facilities.)

7. Permits - Easements. Owner shall secure and obtain, at Owner's sole cost and expense any necessary permits, easements and licenses to construct the extension, including, but not limited to, all necessary easements, excavation permits, street use permits, or other permits required by state, county and city governmental departments including the Pierce County Public Works Department, Pierce County Environmental Health Department, State Department of Ecology, Pierce County Boundary Review Board, and City of Gig Harbor Public Works Department.

8. Turn Over of Capital Facilities. If the extension of utility service to Owner's property involves the construction of water or sewer main lines, pump stations, wells, and/or other city required capital facilities, the Owner agrees if required by the city to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, the Owner will furnish to the City the following:

- A. As built plans or drawings in a form acceptable to the City Public Works Department;
- B. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved by the City Attorney;
- C. A bill of sale in a form approved by the City Attorney; and
- D. A bond or other suitable security in a form approved by the City Attorney and in an amount approved by the City Public Works Director, ensuring that the facilities will remain free from defects in workmanship and materials for a period of 2 year(s).

9. **Connection Charges.** The Owner agrees to pay the connection charges, in addition to any costs of construction as a condition of connecting to the City utility system at the rate schedules applicable at the time the Owner requests to actually connect his property to the system. Any commitment payment that has not been forfeited shall be applied to the City's connection charges. Should the Owner not initially connect 100% of the Sewer Capacity Commitment, the Capacity Commitment payment shall be credited on a pro-rated percentage basis to the connection charges as they are levied.

10. **Service Charges.** In addition to the charges for connection, the Owner agrees to pay for utility service rendered according to the rates for services applicable to properties outside the city limits as such rates exist, which is presently at 150% the rate charged to customers inside city limits, or as they may be hereafter amended or modified.

11. **Annexation.** Owner understands that annexation of the property described on Exhibit 'A' to the City will result in the following consequences:

- A. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- B. City of Gig Harbor ordinances, resolutions, rules and regulations will begin to apply to the property upon the effective date of annexation;
- C. Governmental services, such as police, fire and utility service, will be provided to the property by the City of Gig Harbor upon the effective date of annexation;
- D. The property may be required to assume all or any portion of the existing City of Gig Harbor indebtedness, and property tax rates and assessments applicable to the property may be different from those applicable prior to the effective date of annexation;
- E. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and

- F. All or any portion of the property may be annexed and the property may be annexed in conjunction with, or at the same time as, other property in the vicinity.

With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owner's decision to forego opposition to annexation of the property to the City of Gig Harbor, Owner agrees to sign a petition for annexation to the City of the property described on Exhibit A as provided in RCW 35.14.120, as it now exists or as it may hereafter be amended, at such time as the Owner is requested by the City to do so. The Owner also agrees and appoints the Mayor of the City as Owner's attorney-in-fact to execute an annexation petition on Owner's behalf in the event that Owner shall fail or refuse to do so and agrees that such signature shall constitute full authority from the Owner for annexation as if Owner had signed the petition himself. Owner further agrees not to litigate, challenge or in any manner contest, annexation to the City. This Agreement shall be deemed to be continuing, and if Owner's property is not annexed for whatever reason, including a decision by the City not to annex, Owner agrees to sign any and all subsequent petitions for annexations. In the event that any property described on Exhibit 'A' is subdivided into smaller lots, the purchasers of each subdivided lot shall be bound by the provisions of this paragraph.

12. Land Use. The Owner agrees that any development or redevelopment of the property described on Exhibit 'A' shall meet the following conditions after execution of Agreement:

- A. The use of the property will be restricted to uses allowed in the following City zoning district at the time of development or redevelopment: R-1
- B. The development or redevelopment of the property shall comply with all requirements of the City Comprehensive Land Use Plan, Zoning Code, Design Review Guidelines, Building Regulations, and City Public Works Standards for similar zoned development or redevelopment in effect in the City at the time of such development or redevelopment. The intent of this section is that future annexation of the property to the City of Gig Harbor shall result in a development which does conform to City standards.

13. Liens. The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above-described property. If the extension is for sewer service, the lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.220 through RCW 35.67.280, all as now enacted or hereafter amended. If the extension is for water service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended.

14. Termination for Non-Compliance. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right to terminate utility service to the Owner's property in addition to any other remedies available to it.

15. Waiver of Right to Protest LID. Owner acknowledges that the entire property legally

described in Exhibit 'A' would be specially benefited by the following improvements (specify):

Sidewalks

Owner agrees to sign a petition for the formation of an LID or ULID for the specified improvements at such time as one is circulated and Owner hereby appoints the Mayor of the City as his attorney-in-fact to sign such a petition in the event Owner fails or refuses to do so.

With full understanding of Owner's right to protest formation of an LID or ULID to construct such improvements pursuant to RCW 35.43.180, Owner agrees to participate in any such LID or ULID and to waive his right to protest formation of the same. Owner shall retain the right to contest the method of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provisions of this Agreement, this waiver of the right to protest shall only be valid for a period of ten (10) years from the date this Agreement is signed by the Owner.

16. **Specific Enforcement.** In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

17. **Covenant.** This agreement shall be recorded with the Pierce County Auditor and shall constitute a covenant running with the land described on Exhibit 'A', and shall be binding on the Owner, his/her heirs, successors and assigns. All costs of recording this Agreement with the Pierce County Auditor shall be borne by the Owner.

18. **Attorney's Fees.** In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other remedy provided by law or this agreement.

19. **Severability.** If any provision of this Agreement or its application to any circumstance is held invalid, the remainder of the Agreement or the application to other circumstances shall not be affected.

DATED this _____ day of _____, 2002.

CITY OF GIG HARBOR

Mayor Gretchen Wilbert

OWNER

Name:

Title:

ATTEST/AUTHENTICATED:

City Clerk, Molly Towslee

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument 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: _____

Signature

NOTARY PUBLIC for the State
of Washington, residing at

My commission expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen A. Wilbert, is the person who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they are 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: _____

Signature

NOTARY PUBLIC for the State
of Washington, residing at

My commission expires: _____

Exhibit 'A'

02-22-32-3-3

**W 200 FT OF N ½ OF NW OF SW OF SW EXC N 85 FT THEREOF ALSO EXC
W 30 FT FOR COUNTY ROAD EASE OF RECORD
OUT OF 3-007 SEG N-1008 SG EMS**

TAX AREA CODE: 480.0

Re:

**9909 Peacock Hill Ave. NW
Gig Harbor, WA 98332**

Note: parcel includes

9909 (house)

9911A&B (duplex)

9915 (cottage)

**(Location of property is just at the crest of Peacock Hill across the
road from the restaurant/play meadow.)**

Owner:

Patricia A. LeBlanc

7903 26th Ave. NW

Gig Harbor, WA 98332

253-858-9797

253-279-7273



9909

house



9911

duplex



9915
cottage

Map Themes

Step 1: Check boxes:

Step 2: Click

- Neighborhood
- Points of Interest
- County Facilities
- Polling Precincts
- Recycling Centers
- Schools
- Colleges
- Hospitals
- Fire Station HQ
- Businesses
- Bike Routes
- Streets
- Sewer Lines
- Major Highways
- Major Rivers
- Ruston Asarco Remediation Zones
- Parks
- Property
- Subdivisions
- Water Purveyors
- Firearms Restricted Areas
- District Courts
- Patrol Reporting Blocks
- Fire Districts
- School Districts
- Zoning Labels
- Zoning
- Cities
 - Cities
 - Pierce County

City

0222318056

PEACOCK HILL

0222323037

0222323123

0222323048 0222323050 0222323121



Map

Step 1: Sel

Tax Parcel:

Step 2: Clic below or clic

- What is
- Closest
- Vicinity
-
- Map-My-

Current

Pierce Count

+ You

1 Inch Scale

Start!

Pierce Co Home!



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

CITY OF GIG HARBOR - UTILITIES SERVICE APPLICATION

Application No. _____, Parcel No. 0222323/23, Date 3/20/02

Applicant Patricia A. LeBlanc, Phone # 253-858-9792

Mailing Address 7903 26th Avenue NW, Gig Harbor, WA 98332

STORM WATER CALCULATION:

Impervious Area (Sq.Ft.)	Calculation	Units

Connection/Service ADDRESS OR LOCATION: _____
 Subdivision _____, Lot No. _____
 Date of Hook-Up _____, Meter No. _____, Size _____, Rate _____
 Account No. _____, Meter Location _____

WATER SYSTEM HOOK-UP & METER INSTALLATION CHARGES:

Meter Size	Capacity Factor(s)	Hook-Up Fee (Inside City Limits)	Hook-Up Fee (Outside City) (1)	Meter Charge	Total Fees
3/4"	1	\$1,305.00	\$1,960.00	\$450.00	\$
1"	1.67	\$2,175.00	\$3,260.00	\$555.00	\$
1-1/2"	3.33	\$4,350.00	\$6,525.00	(2) \$1,130.00	\$
2"	5.33	\$6,960.00	\$10,440.00	(2) \$1,260.00	\$
Over 2"	(3)	(3)\$	(3)\$	(3) \$	\$

IMPACT FEES & OTHER CHARGES:

Street Boring (2)	\$ 10.00 / Foot		\$
Open Street Cut (2)	\$ 20.00 / Foot		\$
Park Impact Fees	Residential @	\$1,500.00	\$
Transportation Impact Fees	Residential @	\$ 517.30	\$
	Commercial/Multi - @	\$	\$
Water Latecomer Fees	Latecomer Fee Calculation	\$ _____	\$
	Administration Fee	\$ _____	\$

Notes: (1) If project is outside the city limits, the hook-up fee is (1.5) times inside city rate.
 (2) Time & Material Plus 10% (3) Negotiable

TOTAL WATER, IMPACT AND OTHER CHARGES: \$ _____

BASIC SEWER SYSTEM CONNECTION FEE:

Zone A	Zone B, C, D	Other	# Of ERU'S *	Total Fee
\$ 755.00	\$ 1,855.00	\$ 2,605.00	4	\$ 10,420.00

- Equivalent Residential Unit Calculation for non-residential service:

Residential (1 ERU's per residence) X (4) = 4
 Class of Service Conversion rate for appropriate unit (sq. ft., seats, students, etc.) Number of units Equivalent ERU's

SPECIAL CHARGES:

Check (X)	Type of Fee (1)	FEE
<input checked="" type="checkbox"/>	Encroachment Permit Application & Fee	\$ 50.00
<input checked="" type="checkbox"/>	Sewer Stub Inspection Fee	\$ 125.00
<input checked="" type="checkbox"/>	House Stub Inspection Fee (\$25 in city / \$37.50 out)	\$
<input checked="" type="checkbox"/>	As-Built Plans Fee (Refundable)	\$ 150.00
<input checked="" type="checkbox"/>	Sewer Latecomers Fee/Administration Fee	\$

Note: (1) Single Family Residence only (See Public Works Department for Multi-Family and Commercial) \$10,420.00

TOTAL WATER, IMPACT & OTHER FEES PAID: \$ _____

TOTAL SEWER SYSTEM FEES PAID: \$ _____

GRAND TOTAL FEES PAID WITH THIS APPLICATION: \$ _____

Application is hereby made by the undersigned property owner or his/her agent for water and/or sewer service for which I agree to pay in advance. For the following estimated charges, the exact charges shall be paid as established by City Resolution, and will be determined at the time a water availability certificate is issued and be payable immediately upon completion of the installation.

I further agree that all rates and charges for water, sewer and/or storm service to the above property shall be paid in accordance with the now-existing ordinances and regulations of the City or any ordinances or regulations adopted hereafter. I agree to comply with the water, sewer and storm drainage service existing ordinances/regulations of the City or any such ordinances/regulations adopted hereafter.

I understand that the City will use all reasonable effort to maintain uninterrupted service, but reserves the right to terminate the water and/or sewer service at any time without notice for repairs, expansions, non payment of rates or any other appropriate reason and assumes no liability for any damage as a result of interruption of service from any cause whatsoever.

I understand that if the City issues a water availability certificate to me, such certificate shall be subject to all ordinances and regulations of the City, as they now exist or may hereafter be amended, and that such certificate expires within one year from the date of issuance, if I do not pay the required fees and request an actual hook-up or connection to the above-identified individual parcel of property within that time period.

I understand that the City shall maintain ownership in such water meters installed by the City and the City shall be responsible for providing reasonable and normal maintenance to such meters.

Patricia A. LeBlanc 3-20-02
 Applicant's Signature Date

TO BE COMPLETED BY STAFF ONLY:

Receipt No.	Fees Paid	Date	Received By
Building Official	P.W. Inspector	P.W. Supervisor	Finance Technician

City of Gig Harbor

Thursday March 21, 2002
Receipt No.0006570

9:39 AM

ADMFSW
Admin fees - 402 Sewer/Pat
ricia A LeBlanc-Sewer Appl
Request 9909 PeacockHill 150.00

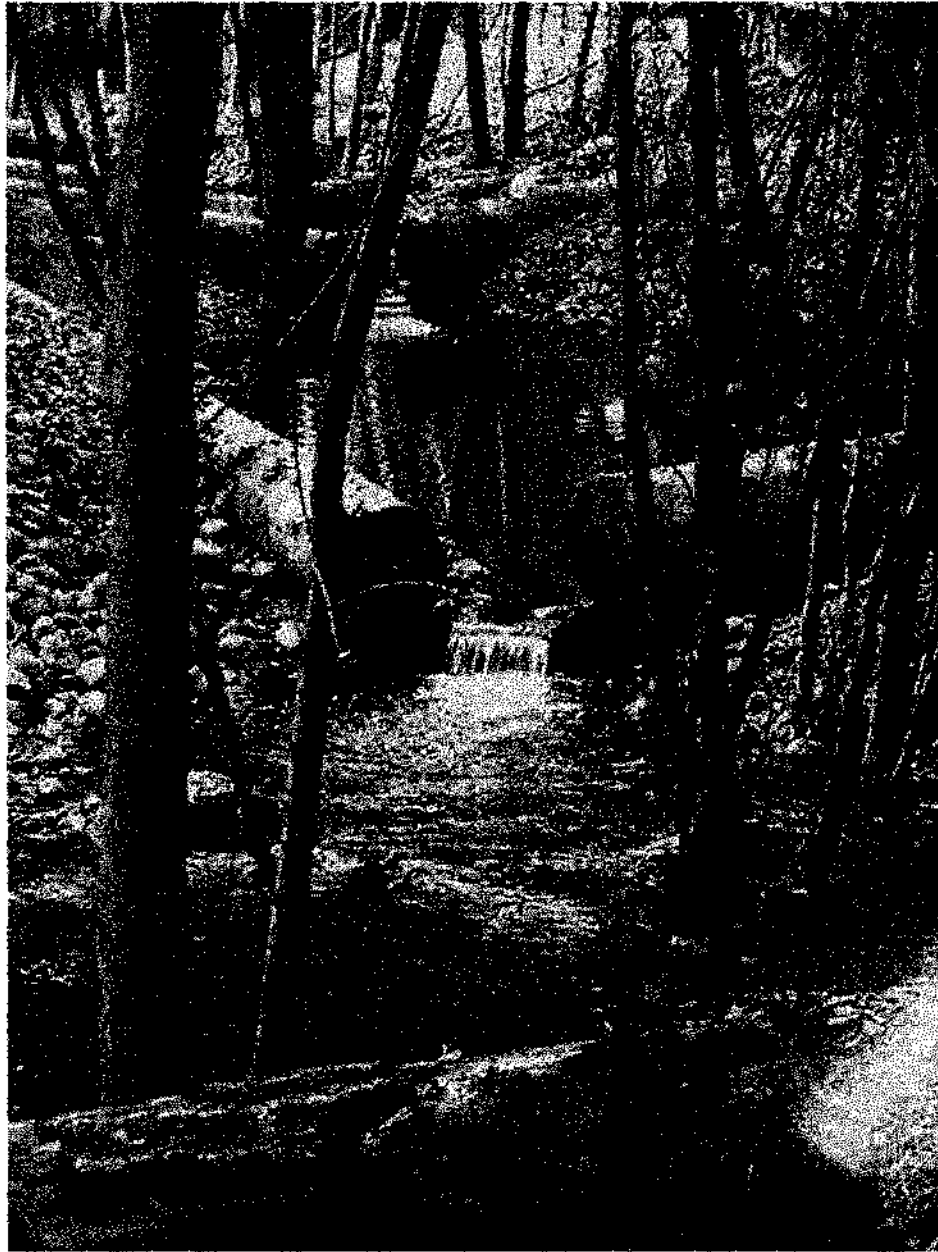
Total 150.00

Payment: Check 150.00
6393
Cash: 0.00
Change: 0.00

Customer: Patricia A LeBlanc
Cashier: MM
Station: CR1

Timber Stepdown

- Deep Pools
- Feeding/Resting
- Storm/Predator Refuge



Spawning and Incubation Habitat

- Stable Gravel Beds
- Clean Gravels
- Cool & Well Oxygenated Water



Forced Riffle-Pool Habitat

