

Gig Harbor City Council Meeting



**July 9, 2001
7:00 p.m.**

**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
July 9, 2001 - 7:00 p.m.**

CALL TO ORDER:

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 June 25, 2001.
2. Correspondence/Proclamations:
 - a) Letter from Walt Smith regarding FISH.
3. Judson Street/Stanich Avenue Storm Sewer Design Consultant Services Contract.
4. Approval of Payment of Bills for July 9, 2001.
Checks #33259 through #33388 in the amount of \$273,171.99
5. Approval of Payroll for the month of June:
Checks #808 through #874 in the amount of \$191,387.69.

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. Appeal of Hearing Examiner's Decision - Henderson Bay Alternative School.
2. First Reading of Ordinance - Issuance and Sale of Water/Sewer Revenue Bond Anticipation Note.

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:

DRAFT

GIG HARBOR CITY COUNCIL MEETING OF JUNE 25, 2001

PRESENT: Councilmembers Ekberg, Young, Pasin, Owel, Dick, Picinich and Ruffo and Mayor Wilbert.

CALL TO ORDER: 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 June 11, 2001.
2. Gig Harbor Civic Center - Materials Testing Consultant Services Contract.
3. Gig Harbor Civic Center - Owner Contractor Agreement.
4. Harborview Drive Improvements Contract Award.
5. Approval of Payment of Bills for June 25, 2001.
Checks #33142 through #33258 in the amount of \$307,821.37.

Councilmember Dick requested that item number three, Gig Harbor Civic Center Owner Contract Agreement, be moved to Old Business as he had a question on the contract.

MOTION: Move to approve the Consent Agenda with item number three moved to Old Business.
Picinich/Ruffo - unanimously approved.

OLD BUSINESS:

1. Second Reading of Ordinance - Amendments to Chapter 18.04 - SEPA. John Vodopich, Planning Director, explained that this was the second reading of the proposed amendments dealing with State Environmental Policy Act regulations. He said that a public hearing and first reading had been held at the last Council meeting, and recommended approval.

MOTION: Move to adopt Ordinance No. 886 adopting amendments to Chapter 18.04 - SEPA.
Picinich/Owel - unanimously approved.

2. Hearing Examiner Services. John Vodopich explained that this had been tabled from the last meeting. He said that members of the Land-use Sub-committee participated in a conference call with the City Attorney, discussed the matter, and is recommending that the Council approve a Temporary Hearing Examiner Contract with Mr. Mike Kenyon for three months. During that time, staff will re-issue a Request for Proposals for Hearing Examiner Services.

MOTION: Move to table this matter until Executive Session to review the proposals submitted to the city pursuant to the Request for Proposals.

Dick/Owel - Councilmembers Ekberg, Young, Pasin, Owel and Dick voted in favor of the motion. Councilmembers Picinich and Ruffo voted against. The motion carried five to two.

3. Gig Harbor Civic Center - Owner Contractor Agreement. Councilmember Dick asked for clarification on whether this was the contract form that had been previously amended by Legal Counsel. David Skinner and Carol Morris explained that the amended contract had been between the city and the Architect, and had been approved at a previous Council Meeting. They added that the Owner/Contractor Agreement on the agenda this evening was a standard form.

MOTION: Move to approve execution of the Owner/Contractor Agreement with Porter Brothers Construction, Inc. for construction of the Gig Harbor Civic Center for their bid proposal amount of six million two hundred seven thousand dollars and no cents (\$6,207,000.00).
Ruffo/Picinich - unanimously approved.

NEW BUSINESS:

1. Sewer Extension Request - Purdy Shopping Center. Mark Hoppen, City Administrator, explained that the management at the Purdy Shopping Center had recently purchased the old Knapp Realty Building, currently housing Towne Cleaners, and is requesting one ERU of sewer for the building. He added that the all the other Purdy Shopping Buildings were currently on city sewer.

MOTION: Move to approve the extension of one ERU of city sewer to the Towne Cleaners Building.
Picinich/Owel - unanimously approved.

2. Right of Way Dedication Agreement - Northwest Investment Office Building. David Skinner presented this request for a right-of-way dedication from a developer that owns property on Olympic Drive. He said that as a condition of the Hearing Examiner's conditions for approval, the property owner is required to participate in frontage improvements, and the dedication of the right-of-way is required to accommodate these improvements.

MOTION: Move to accept the attached easement agreement.
Dick/Ruffo - unanimously approved.

STAFF REPORTS:

GHPD - May Statistics. No verbal report given.

PUBLIC COMMENTS:

Len McAdams - 4310 Foxglove Dr. NW. Mr. McAdams, representing the Gig Harbor Lions Club, gave a brief history of how the Bogue Building became the property of the city. He furnished a letter outlining this history to Councilmembers. He stressed that because the city did not buy the property or pay for the building, that it should not be sold, but used for community

service. He continued to explain that he had contacted Ruth Bogue, who supports the use of the property for the benefit of the community. He said that various civic organizations and churches could put together a program to make the building available for service to the community. He asked Council for consideration in this matter.

Ron Coen - 14724 118th Ave NW. Mr. Coen explained that he is a Board Member for Peninsula FISH and was present to request reconsideration of the decision at the last Council meeting to sell the City Hall and Planning Department properties. He said that there are more appropriate ways to use these buildings that are more far-sighted and that serve the community better. He asked for the opportunity to meet with a task force made up of Councilmembers to discuss these options. He requested that FISH be allowed to use the City Hall building in the same manner that the Historical Society utilizes another city building, which is leased for a nominal fee. He discussed the inadequate facilities that FISH currently occupies, and gave an overview of the services that they provide to the community.

Carl Retting - 3410 61st Ave NW. Mr. Retting said that he could not add anything to what was just said, but wanted to emphasize that the volunteers all support this position.

Margaret Leroy - 5119 Pt. Fosdick. Ms. Leroy said she agreed with this. She said that she had been a volunteer with FISH for the past two years, and that it had been the most rewarding experience she ever had. She added that the volunteers need a place to perform their services.

Shirley Tomasi - 11107 Hallstrom Dr. NW. Ms. Tomasi gave a history on the formation of the Cultural Arts Commission. She spoke of volunteerism and community partnerships, how the CAC has grown, and the desperate need for facilities. She said she would appreciate the opportunity to discuss this option further.

Milt Boyd (no address given.) Mr. Boyd equated retirement of the buildings to his own retirement. He talked about his service to the community through the Lions Club and Peninsula FISH. He said that the buildings should be used in a productive, non-commercial manner to continue to serve the community.

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor Wilbert talked about her recent attendance at the AWC Conference and the focus on the theme: Conversation, Cooperation, and Creativity. She said that this theme is what she had observed this evening with the suggestions on how to utilize all the blessings in our community. She asked that a task force be formed with Councilmembers, community members from FISH, CAC and the Lions Club to explore options for use of the buildings, and how funds might be raised to help the city to build the Civic Center. She thanked everyone for coming and participating.

Councilmember Owel said that she did not want to lose sight, as a public official, that public buildings are public assets. She added that she thought was responsible for those present to come and speak to that issue and to weigh in. She used the WIC program and the Historical Society to

illustrate the city's history of working with community programs, adding that some times a little help goes a long way. She said that the types of organizations that the city is trying to attract to enhance economic development that are attracted to cities that have vision, creativity and compassion. She said that reputable foundations are going to look at how well a city takes care of its own, adding that the rule of civilization is how well you care for those who have the least, the standard of civility in a compassionate community. She talked about the economic benefits to this perspective, and said that Mr. Coen presented many valid points that volunteer organizations add great value to the community.

Councilmember Picinich added that he had worked with Shirley Tomasi for many years and would be ready to work together for options. Councilmember Ruffo said that he was impressed with the turnout and added that he would like to respond in as positive manner as possible, taking into consideration what is in the overall best interest of the city. Councilmembers Picinich, Owel and Ruffo offered to serve on a task force.

Mayor Wilbert introduced the new publisher of the Peninsula Gateway, George LeMasurier.

ANNOUNCEMENT OF OTHER MEETINGS:

Groundbreaking Ceremony for the Gig Harbor Civic Center - 9:00 a.m. at the Grandview site.

EXECUTIVE SESSION:

MOTION: Move to adjourn to Executive Session at 7:52 p.m. for the purpose of discussing pending litigation per RCW 42.30.110(i), and personnel matters per RCW 42.30.110(g) for approximately 30 minutes.
Picinich/Ruffo - unanimously approved.

MOTION: Move to return to regular session at 8:23 p.m.
Picinich/Young - unanimously approved.

MOTION: Move to return to Executive Session for an additional ten minutes at 8:23 p.m.
Picinich/Ruffo - unanimously approved.

MOTION: Move to return to regular session at 8:33 p.m.
Picinich/Ruffo - unanimously approved.

MOTION: Move that Council approve the three-month agreement with Mike Kenyon to act as Temporary Hearing Examiner, and that staff re-open the Request for Proposals for permanent Hearing Examiner services for two weeks.
Picinich/Ruffo - Six Councilmembers voted in favor. Councilmember Dick voted against the motion. The motion carried six to one.

ADJOURN:

MOTION: Move to adjourn at 8:35 p.m.
Ekberg/Young - unanimously approved.

Cassette recorder utilized.
Tape 618 - Side B 076 - end.
Tape 619 - Side A 000 - 341.

Gretchen A. Wilbert, Mayor

City Clerk

**active
construction
inc.**

RECEIVED

JUN 28 2001

CITY OF GIG HARBOR

June 25, 2001

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

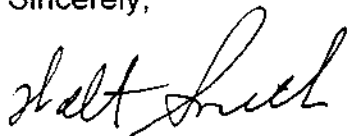
Dear Gretchen:

I am writing on behalf of FISH Organization to occupy the current City Hall. I know that you are more than familiar with the great work that FISH has done for our community throughout the years.

I am writing to encourage the City to do whatever they can to help this worthy organization to move forward and support our community.

Thank you for consideration in this matter.

Sincerely,



Walt Smith,
Active Construction Inc.

WS/cb

pc: Mark Hoppen
Joan, Fish





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: DAVID R. SKINNER, P.E., PUBLIC WORKS DIRECTOR *DES*
SUBJECT: CONSULTANT SERVICES CONTRACT –
- JUDSON STREET/STANICH AVENUE STORM SEWER DESIGN
DATE: JULY 5, 2001

INTRODUCTION/BACKGROUND

A budgeted objective for 2001 includes the engineering and design of the Judson Street/Stanich Avenue storm sewer improvements from Stanich Avenue through Judson Street to Soundview Drive. This improvement project will correct the overflow conditions that exist during heavy rainfall. Design work is needed to model the existing drainage system, design the new facilities to convey the anticipated runoff, and prepare the plans and specifications for advertisement of the construction project.

After reviewing the Consultant Services Roster and based on the interviews and evaluation of materials submitted for review, the engineering firm of Berryman & Henigar, Inc. was selected as the most qualified to perform the work. Their selection was based on their understanding of the project, storm sewer design experience and extensive municipal experience.

POLICY CONSIDERATIONS

Berryman & Henigar, Inc. is able to meet all of the City's standard insurance provisions for professional services contracts.

FISCAL CONSIDERATIONS

This is a budgeted item in the 2001 Storm Sewer Fund.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Berryman & Henigar, Inc. for engineering design work in the amount not to exceed twenty-eight thousand one hundred six dollars and no cents (\$28,106.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
BERRYMAN & HENIGAR, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Berryman & Henigar, Inc., a corporation organized under the laws of the State of California, located and doing business 720 Third Avenue, Suite 1200, Seattle, Washington 98104-1820 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the design of the Judson Street and Stanich Avenue Stormwater Improvements, 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 June 27, 2001, 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 Twenty-eight thousand one hundred six dollars and no cents (\$28,106.00) 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 December 31, 2001; 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 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 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
Jeffery A. Sharp, P.E., Project Manager
Berryman & Henigar, Inc.
720 Third Avenue, Suite 1200
Seattle, Washington 98104-1820
(206) 505-3400

David R. Skinner, P.E.
Director of Public Works
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 _____, 2001.

CONSULTANT
By: *David R. Skinner*
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
CONSULTANT
Jeffery a. Sharp, P.E., Project Manager
Berryman & Henigar, Inc.
720 Third Avenue, Suite 1200
Seattle, Washington 98104-1820
(206) 505-3400

David R. Skinner, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335
(253) 851-8145



APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
)
COUNTY OF King) ss.

I certify that I know or have satisfactory evidence that Donald Graf 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: 7/3/01

Tempe P. Patterson

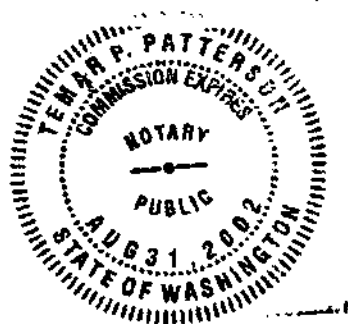
Tempe P. Patterson

(print or type name)

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

King County

My Commission expires: 8/31/02



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 SERVICES

The Power to Change
The Power to Build



June 27, 2001

David Skinner, P.E.
Public Works Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

RECEIVED

JUN 28 2001

CITY OF GIG HARBOR
PUBLIC WORKS DEPT.

RE: **Final Engineering Proposal**
Judson Street Stormwater Improvements (CIP Project #1)

Dear Dave:

Here is our final engineering proposal for the above project based on your review comments received 6/5/01 and 6/13/01, and our meeting with you on 6/26/01.

Project Description

The existing piped storm system along Stanich Lane and Judson Street is undersized (typically 12" diameter), resulting in flooding of downstream properties located between Judson Street and Pioneer Way. The replacement/upgrade of this storm system has been identified as CIP Project #1 by the City of Gig Harbor Storm Water Comprehensive Plan (SWCP), prepared by Gray & Osborne, draft dated March 2001. This CIP Project will eliminate the connection between Judson Street and Pioneer Way (across private property) and construct a new piped system along Judson Street between Stanich Lane and Soundview Drive.

At this time, the City would like to limit the extent of improvements as shown in Figure 5-3 of the SWCP by beginning the project at the fourth catch basin from the upstream or south end of the identified CIP Project #1 boundary. Consequently, the upstream end of the project will be at the south terminus of Stanich Lane at the existing catch basin located in the lawyer's office parking lot. The remaining upstream portion of the storm system identified by CIP Project #1 (three catch basins and connecting pipe located within Stanich Avenue and lawyer's office side yard) will be monitored by the City to determine whether future improvements (such as inlet modifications or pipe replacement) are warranted.

Capacity analysis for the proposed piped storm system will be based on 25-year peak flow (future conditions) values obtained from the model developed by Gray & Osborne for the SWCP. Two flow values are required from this model, one at the upstream end of the project (southern terminus of Stanich Lane) and one at the downstream end (intersection of Judson Street and Soundview Drive). Based on these two flow values obtained from the G&O model, the new pipe system can be adequately sized to overcome backwater conditions at the downstream junction.

The length of proposed improvements is estimated at 360 linear feet +/- along Stanich Lane and 660 linear feet +/- along Judson Street, based on scaling Figure 5-3 of the SWCP. The preferred alignment follows the existing piped conveyance system along Stanich Lane to Judson Street, and along the north edge of Judson Street to intercept the existing 18" piped system located along

the west side of Soundview Drive. It will likely be necessary to upsize 100 feet +/- of the existing storm system on Soundview downstream of Judson in order to provide positive gradient from the existing sag point in Judson Street. It is assumed that all existing pipe and most existing catch basins will be removed and replaced. One or two existing catch basins may be reused depending on hydraulic grade line requirements.

It appears that the entire project can/will be located within City right of way, with the exception of the upstream 20 to 30 feet located within the lawyer's office driveway. The City may need to procure an easement for construction of the upstream end.

Design Standards and Assumptions

1. Stormwater improvements will be designed in accordance with the Gig Harbor Stormwater Design Manual and WSDOT Standard Plans and Specifications.
2. Street restoration design will be in accordance with Gig Harbor Public Works Standards and WSDOT Standard Plans and Specifications. Street restoration will generally conform to existing finish grades, with the assumption that existing surface water drainage conditions are adequate as is. The final design will accommodate one or two minor grading modifications to enhance surface drainage conditions, as directed by the City.
3. Pipe conveyance analysis will utilize 25-year future condition flow values from the Gray and Osborne model developed for the Storm Water Comprehensive Plan. Catch basins will be designed to surcharge, taking into account backwater conditions of the existing downstream drainage system.
4. Topographical survey will utilize random horizontal control, tied to City monumentation if available. Vertical control will be based on City monumentation and datum if available, otherwise assumed.
5. Design documents will be suitable for competitive bid in the marketplace.
6. All permitting will be done by the City.

Proposed Design Services

1. Field locate existing utilities along proposed pipe alignment. This work will be performed by a private utility locate contractor (most likely Bill Phillips of Applied Professional Services) who will research all existing utilities and paint the street with color coded markings to be picked up by the topographic survey.
2. Perform topographic survey (20-foot wide strip) along proposed pipe alignment to map existing surface features, utility paint marks, storm catch basin and sanitary sewer rims and invert elevations. Topographical mapping will extend along the west side of Soundview Drive at least 100 feet downstream of the intersection with Judson Street. This survey will be utilized for design purposes only, will not be a recorded survey, and will not identify existing property lines or right of way limits. This work will be

performed by either N.L. Olson and Associates (out of Port Orchard) or Hatton Godat Pantier (out of Tumwater) depending on their workload at the time the project is authorized. The City may desire an additional boundary survey prior to construction in order to prepare easement documents if necessary. This work, if necessary, can be performed by either surveyor for an additional fee.

3. Perform hydraulic analysis to determine appropriate pipe sizing and depth. This task will utilize existing flow data from the Gray & Osborne model. This work will be an iterative process likely involving upsizing of a portion of the existing Soundview Drive pipe system in order to reduce backwater effects, allowing positive gradient from the sag point in Judson Street. The analysis results will be summarized in a technical memo format with preliminary sketches of the system profile, to be submitted to the City for review.
4. Prepare 50% design drawings to be submitted to the City for review and comment. This preliminary design set will be limited to plan and profile of proposed pipe alignment. We will meet with the City to discuss the 50% design progress.
5. Prepare 90% design drawings, special provisions and engineer's estimate of probable construction cost to be submitted to the City for review and comment. We will meet with the City to receive final comments for preparation of bid documents. The anticipated drawing list is as follows:

- Sheet 1 – Cover Sheet/Legend/Vicinity Map/General Notes
- Sheet 2 – Split Plan/Profile Sheet, Upstream Half of Project
- Sheet 3 – Split Plan/Profile Sheet, Downstream Half of Project
- Sheet 4 – Sections, Enlargements and Details

Special provisions to the WSDOT Standard Specifications will be prepared as necessary for Divisions 2 through 9. Since this is a storm and street restoration project, we do not anticipate many special provisions. It is assumed that the City has a preferred set of Division 1 specifications and bid documents, and that the City will administer the bid process. As an option, we will administer the bid process on behalf of the City for an additional fee.

6. Finalize design drawings, special provisions and engineer's estimate for use by the City as bid documents. It is assumed that one original set of documents will be submitted to the City, and that the City will collate the documents and prepare bid sets as necessary. As an option, we will arrange for production and distribution of bid sets to those who request them, for an additional fee.

Milestones

1. Field utility locate services will be performed within 3 weeks of Berryman and Henigar receiving notice to proceed from City of Gig Harbor.
2. Topographical survey will be completed within 2 weeks of utility locates.

3. Hydraulic analysis technical memo will be submitted for City review and comment within 2 weeks of completed topographical survey.
4. 50% design documents will be submitted for City review and comment within 2 weeks of completed hydraulic analysis.
5. 90% design documents will be submitted for City review and comment within 2 weeks of meeting with the City to discuss 50% design.
6. Final design documents will be submitted to the City within 2 weeks of meeting with the City to discuss 90% design.

Proposed Services During Bidding and Construction

1. Respond to questions from the City during the bid period. It is assumed that the City will administer the bid process and will screen contractor questions such that consultant involvement will be minimal.


Budget Estimate

[See attached spreadsheet]

Services During Design	\$27,261
Services During Bidding and Construction	\$ 845
Total Budget Estimate:	\$28,106

We look forward to working with you on this project.

Sincerely,
Berryman & Henigar, Inc.


Jeffery A. Sharp, P.E.
Project Manager

cc: Don Graf – B&H

Exhibit B

Estimated Hours GIG HARBOR - JUDSON STORMWATER PROJECT

TASK DESCRIPTION	Sr. Engr.		PM		Eng. III		CADD		Admin.		TOTAL LABOR COST	3% Comp. Fee	Reimb. Exp.	Total Subs + 10% Fee	TOTAL AMOUNT
	Hours	Amount	Hours	Amount	Hours	Amount	Hours	Amount	Hours	Amount					
Services During Design															
D1.1 Existing Utility Locate	0	\$0	4	\$360	0	\$0	0	\$0	0	\$0	\$360	\$11	\$0	\$1,870	\$2,291
D2.1 Topographic Survey	0	\$0	4	\$360	0	\$0	4	\$360	0	\$0	\$720	\$22	\$0	\$4,400	\$5,192
D3.1 Hydraulic Analysis	1	\$125	8	\$720	16	\$1,200	0	\$0	0	\$0	\$2,045	\$61	\$0	\$0	\$2,106
D3.2 Prepare Tech Memo of Hydraulic Analysis Results	1	\$125	4	\$360	6	\$600	6	\$0	2	\$120	\$1,205	\$36	\$25	\$0	\$1,286
D4.1 Prepare 50% Plan/Profile Drawings	1	\$125	12	\$1,080	28	\$2,100	16	\$1,440	0	\$0	\$4,745	\$142	\$25	\$0	\$4,912
D4.2 Meet w/City to Discuss 50% Plan/Profile Drawings	0	\$0	4	\$360	0	\$0	0	\$0	0	\$0	\$360	\$11	\$50	\$0	\$421
D5.1 Prepare 90% Plan/Profile Drawings	1	\$125	4	\$360	12	\$900	10	\$900	0	\$0	\$2,285	\$69	\$25	\$0	\$2,379
D5.2 Prepare 90% Station/Details/Notes	0	\$0	8	\$720	16	\$1,200	12	\$1,080	0	\$0	\$3,000	\$90	\$0	\$0	\$3,090
D5.3 Prepare 90% Special Provisions	0	\$0	2	\$180	6	\$450	0	\$0	2	\$120	\$750	\$23	\$25	\$0	\$798
D5.4 Prepare 90% Engineer's Cost Estimate	1	\$125	2	\$180	6	\$450	0	\$0	1	\$60	\$815	\$24	\$0	\$0	\$839
D5.5 Meet w/City to Discuss 90% Documents	0	\$0	4	\$360	0	\$0	0	\$0	0	\$0	\$360	\$11	\$50	\$0	\$421
D6.1 Prepare 100% Plan Set for Bid	1	\$125	6	\$540	12	\$900	12	\$1,080	0	\$0	\$2,645	\$79	\$25	\$0	\$2,749
D6.2 Prepare 100% Special Provisions for Bid	0	\$0	1	\$90	4	\$300	0	\$0	2	\$120	\$510	\$15	\$25	\$0	\$550
D6.3 Prepare 100% Engineer's Cost Estimate	0	\$0	1	\$90	2	\$150	0	\$0	0	\$0	\$240	\$7	\$0	\$0	\$247
SUBTOTAL DESIGN	8	\$1,150	64	\$5,180	110	\$8,250	64	\$5,860	7	\$420	\$20,045	\$601	\$350	\$4,370	\$27,287
Services During Construction															
C1.1 Respond to Questions during Bid	2	\$250	4	\$360	2	\$150	0	\$0	1	\$60	\$820	\$25	\$0	\$0	\$845
SUBTOTAL CONSTRUCTION	2	\$250	4	\$360	2	\$150	0	\$0	1	\$60	\$820	\$25	\$0	\$0	\$845
TOTAL HOURS	8		68		112		64		8						
TOTAL COST		\$1,000		\$6,120		\$8,400		\$4,860		\$480	\$20,860	\$626	\$350	\$6,270	\$28,186

SCHEDULE OF RATES

Hourly

Sr. Engineer	\$125
Project Engineer	\$90
Engineer III	\$75
AutoCADD Designer	\$90
Administrative Staff	\$60

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City of Gig Harbor. The "Maritime City"

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

MEMORANDUM

TO: GIG HARBOR CITY COUNCIL
FROM: CAROL MORRIS, CITY ATTORNEY
DATE: JULY 3, 2001
**RE: APPEAL OF THE HEARING EXAMINER'S DECISION ON THE
CONDITIONAL USE PERMIT AND SITE PLAN FOR THE
HENDERSON BAY ALTERNATIVE HIGH SCHOOL**

BACKGROUND/INTRODUCTION

This memo will briefly address the legal issues raised by the appellant in the Appeal filed on June 20, 2001 by the Coalition to Save the Field.

LEGAL ISSUES

Comprehensive Plan

The appellant argues that "the proposal is contrary to the Comprehensive Plan of the City of Gig Harbor." Apparently, the appellant has erroneously assumed that even if the criteria in the City's code are satisfied by a proposal, the City may deny based on a perception that the proposal is "contrary to the Comprehensive Plan."

Under state law, the City is required to determine a project's consistency with development regulations adopted under the Growth Management Act. RCW 36.70B.040(1). In the absence of applicable regulations, the City uses the appropriate elements of a comprehensive plan adopted under the Growth Management Act. RCW 36.70B.040(1).

The Hearing Examiner correctly determined that the applications submitted were to be reviewed under the criteria in the City's code for approval. None of the excerpts from the City's Comprehensive Plan in the appeal statement by the appellant are applicable.

For example, the appellant recites the "objective" of the Parks, Recreation and Open Space Plan, which was merely to identify existing public and private parks in the City. (Appeal Statement, p. 7.) A statement is made about the ratio of parks that will be provided in the future, and why this ratio will decline. (Id.) The "goals and objectives" are highlighted, but the appellant fails to understand that these are the goals and objectives of the City, not the School District. (Id., p. 8.) There is a reference to "other agencies," which states the City's "goal and objective" to "cooperate with other public and private agencies . . . to set aside land and resources necessary to provide . . . park and recreational facilities." (Id., p. 8.) Strategies are listed for the City to follow on how the City may satisfy the City's park and recreational needs. (Id.) The City "should help,

coordinate and assist other public and private agencies, such as the Peninsula School District, to develop park and recreational facilities. (Id., p. 9.) Finally, there is an inventory of the park and recreational facilities at Discovery Elementary. (Id.)

Nothing in the above provides any authority for the City to impose conditions on a conditional use permit or site plan relating to the size of play fields. No authority is cited by the appellant for its request that the City impose such a condition, other than appellant's belief that the imposition of such a condition would be consistent with the City's Comprehensive Plan.

Conditional Use Criteria

The appellant argues that the overall site is inadequate for the proposed development because the overall area is too small for three schools. However, the City does not have any development regulations addressing the minimum area for a school. If the City has no development regulations addressing this issue, there is no authority for the City to deny or condition the application.

While there may be state regulations addressing the minimum acreage of a site, these are not regulations enforced by the City. Furthermore, these regulations are based on enrollment, which the District, not the City, controls.

The appellant contends that the site is too small to provide adequate space for parking. This issue has been addressed by the Planning Staff.

Standard of Review

The appellant is required to demonstrate that the Hearing Examiner's decision was not supported by substantial evidence. However, this appeal involves the dissatisfaction a number of people have with the decisions made by the School District, not any error made by the Hearing Examiner. No authority is presented by the appellant to support its contention that the City may deny or impose the appellant's suggested conditions on this proposal.

RECOMMENDATION

The City Attorney recommends that the City Council affirm the decision of the Hearing Examiner.

*Paid \$120.00
receipt # 42112*

CITY OF GIG HARBOR
JUN 20 2001
CITY CLERK

CITY OF GIG HARBOR

**IN RE HENDERSON BAY ALTERNATIVE HIGH SCHOOL
CUP 01-02/SPR 01-01/DRB 01-02**

**APPEAL OF THE FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER APPROVING THE CONDITIONAL
USE PERMIT AND SITE PLAN WITH CONDITIONS AND
APPEAL OF APPROVAL OF THE ADMINISTRATIVE VARIANCE
FOR HENDERSON BAY ALTERNATIVE HIGH SCHOOL**

APPELLANT: COALITION TO SAVE THE FIELD

**c/o Douglas V. Alling
Smith Alling Lane, P.S.
1102 Broadway Plaza, #403
Tacoma, WA 98402**

APPELLANT is a non-profit organization, organized by residents of the City of Gig Harbor and parents of children who attend Discovery Elementary School.

Appellant has standing as an Appellant and participant in the Hearing Examiner decision and was the Appellant in the granting of the variance for Henderson Bay Alternative High School.

APPELLANT'S STATEMENT OF GROUNDS FOR APPEAL

As set forth herein the grounds for appeal include:

1. The conditional use permit is inconsistent with the Comprehensive Plan and the City of Gig Harbor Parks, Recreation and Open Space Plan.
2. The conditional use permit is inconsistent with the criteria for a conditional use permit as set forth in GHMC 17.64.040.

3. The conditions required for mitigation do not meet the requirements of the Comprehensive Plan or GHMC 17.64.040.

RELIEF SOUGHT

Appellant requests the following relief:

1. That the conditional use permit for the construction Henderson Bay Alternative High School be denied.
2. In the alternative, the following conditions should be imposed.
 - a. The site should be developed to provide Discovery Elementary with a playfield not smaller than 170' x 300', excluding landscaped areas.
 - b. The parking lot for Henderson Bay alternative High School should be located north of the building on existing impervious surfaces which are currently used for parking for temporary parking.
 - c. There should be dedicated to Discovery Elementary a playfield 170' x 300' on the existing Gig Harbor High School soccer field. This facility should include (1) handicapped access and sidewalks; (2) bathroom and water facilities; and (3) a fenced area.
 - d. Prior to an occupancy permit being issued for Henderson Bay Alternative High School, Discovery Elementary playfield should be leveled, graded and planted for playfield use.

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- f. Vegetative barriers should be planted around the "Fort Discovery" area between it and Henderson Bay Alternative High School and Gig Harbor High School.

INTRODUCTION

The Coalition to Save the Field is a non-profit parent/community organization, whose goal is to protect the existing Discovery Elementary School playfield and to preserve it for the benefit of the health and education of current and future Discovery Elementary students, as well as for the community as a whole.

The Gig Harbor City Council should not base its decision on the current crisis created by the Peninsula School District, but upon appropriate land use considerations. This proposal will impact the site for decades to come. In this regard, GHMC 17.64.040 should be applied to the overall site, including the elementary school playfield. Appellant asserts that the proposal at issue is violative of GHMC 17.64.040(A) through (D).

FACTS

In 1980, the Peninsula School District (hereinafter "District") built Gig Harbor High School on the 44.47 acre site at issue. It was built for 800 students with adequate parking and adequate fields for its size.

In 1981, Discovery Elementary School was built on the 44.47 acre site. It had adequate parking and an irregular shaped field 197' x 325'. The rectangular portion is of sufficient size to play baseball and soccer.

In 1991, Gig Harbor High School was expanded to increase its capacity to 1,300 students, 100 staff members and 470 cars. In 1991, there were 450 students attending Discovery with 50 staff members and 30 cars.

In 1997, the District sold the Harbor Heights property and building occupied by the Henderson Bay Alternative High School to the City of Gig Harbor, with the understanding that it would be vacated in the year 2000. The high school was located on Grandview (former site of Harbor Ridge). It had a playfield adequate for two (2) baseball diamonds or two (2) soccer fields. (Ex. 8, Attach 11.)

In 2001, the District proposed building Henderson Bay High School on two-thirds (2/3) of the Discovery Elementary playfield. It will house 150 students with a staff of 23 to 50, and 24 children in a daycare center. At the present time, there are 1,778 students at Gig Harbor High School, with a staff of 115, and 805 cars parking in the original parking lots provided for the original 800 students. (Ex. 8, Attach. 3.)

Two-thirds (2/3) of the Discovery Elementary playfield will be developed for a parking lot and the building for Henderson Bay Alternative High School. (Ex. 8, Attach. 2.)

The remaining playfield will result in a restricted and reduced physical education curriculum at Discovery Elementary School. (Testimony of Waage, Ex. 8, Attach. 20.) The playfield will be the smallest playfield of any elementary school in the District and will be the only elementary school playfield not large enough for baseball and soccer. (Ex. 8, Attach. 6 and Site Plan Overlay, Ex. 25.) The size of the playfield will be well below the standards recommended by national experts and experts at the University of

Puget Sound for elementary school playfields. (Ex. 8, Attach. 12, 13, 14, and 15.) It is nationally recognized that elementary school children need physical education and exercise. (Ex. 10, Attach. 13.) The size of the field will be inadequate for this recognized need.

The additional play area between Gig Harbor High School and the Discovery Elementary School, which is to be designated as "Fort Discovery" is at a different elevation above Discovery Elementary and is difficult to supervise and will cause safety problems. There are 250 students in grades 4 and 5, who use the field, which results in less than 160 square feet per student during the two recess periods.

The community organization, such as PAA will be adversely impacted by the reduced playfield and will be unable to play baseball or soccer on it. (Ex. 8, Attach 8.) (Testimony of Jeff Smyth, Ex. 8, Attach 18.)

The Gig Harbor High School athletic fields are currently completely occupied by physical education instruction during good weather. If they are used for Discovery Elementary School students, the Gig Harbor High School physical education curriculum will be reduced and restricted. (Testimony of Sandy Pringle.)

The existing playfields for Gig Harbor High School owned by the District are inadequate for its school population. (Ex. 8, Attach. 14 and Testimony of Sandy Pringle.) No additional playfields will be added to service the students at Henderson Bay Alternative High School. Gig Harbor High School is currently using property that is not owned by the school district as a supplemental track and field area. (Testimony of Sandy Pringle.)

The school district owns other vacant land which is more viable for an alternative high school site, including three (3) large vacant parcels and one of two (2) playfields at Purdy Elementary School, which are significantly larger than the Discovery Elementary playfield. (Ex. 8, Attach. 16 and 22.)

The number of parking stalls for Henderson Bay Alternative High School is not realistic when compared to the overflow of cars in the Gig Harbor High School parking lot. (Testimony of Shira Stark Ex. 8, Attach. 13.) Pierce County owns property which is directly adjacent to the Gig Harbor High School site, a portion of which is used for track and field and which could be acquired from Pierce County for use as the alternative high school site or for parking.

Gig Harbor High and Discovery Elementary were developed with state funds. The Washington Administrative Code required that Gig Harbor High School have 26 acres and Discovery Elementary have eleven (11) acres and Henderson Bay Alternative High School have thirteen (13) acres. The overall site is less than 45 acres. The site for Henderson Bay Alternative High School is 1.69 acres and has an impervious surface of over 70%. (Staff Report.)

ARGUMENT

The proposal is contrary to the Comprehensive Plan of the City of Gig Harbor. The city emphasizes in its comprehensive plan, the need for additional parks and fields for recreation. The Comprehensive Plan recognizes that the playfields now provided are inadequate for its population. When the district sold the former Henderson Bay Alternative High School site (Harbor Ridge) to the City of Gig Harbor, the city has lost

two (2) baseball or soccer fields. Granting this conditional use permit will result in the loss of an additional baseball/soccer field.

**The Reduction in Size of the Discovery
Elementary School Playfield Violates Both the
Spirit and Intent of the Gig Harbor Comprehensive Plan**

A portion of the Gig Harbor Comprehensive Plan is entitled "City of Gig Harbor Parks, Recreation and Open Space Plan." This element of the plan was adopted on December 23, 1996, and remains in effect. According to the plan itself, it had the following objective:

- The specific objectives of this planning effort were to (1) identify and evaluate the existing public and private park and recreation facility inventory which has been developed to date within the Gig Harbor urban growth area by the city, county and school district.

Page 1, City of Gig Harbor Parks, Recreation and Open Space Plan.

The inventory by facility states as follows:

The Peninsula School District has developed an extensive amount and significant percentage of the inventory of park and recreation related facilities, including outdoor playgrounds and athletic fields, indoor arts and crafts, meeting rooms, and gymnasiums, school facilities represent a significant portion of the more competitive and higher quality, capacity sites – and much of the smaller, more flexible facilities that are used on a local basis by neighborhood residents.

Page 79.

Under the heading "land and facility demand" the following entry is made regarding soccer fields.

Soccer Fields. The participation model projections indicate public agencies should be providing a ratio of 0.32 soccer fields of all type (regulations and practice or junior size) per 1,000 residents, or a requirement of 1.2 fields within the city limits and 3.0 fields within the urban growth area at the present time. The projections for Pierce County indicate this ratio will likely decline in the future as the ratio of soccer play and use decline as a percentage of the total resident population.

By comparison, Gig Harbor facilities do not presently provide regulation or practice fields or a ratio of .00 fields per 1,000 city residents.

Page 109.

The "goals and objectives" section, states the following:

The following goals and objectives are based on an analysis of existing parks and recreation conditions and the results of a workshop planning session. . . .

Open Spaces and Preserves. Develop a high quality, diversified park system that preserves and enhances significant environmental resources and features.

At 153.

Urban Growth Preserve and Set-Asides.

A. Cooperate with other public and private agencies and with private landowners to set aside land and resources necessary to provide high quality, convenient park and recreation facilities before the most suitable sites are lost to development —such as the wooded undeveloped and sensitive lands adjacent to the Bonneville Power (BPA) power line right-of-way adjacent to SR 16.

Athletic Facilities. Develop athletic facilities that meet the highest quality competitive playing standards and requirements for all age groups, skill levels and recreational interests.

B. Concentrate on fields and court activities like soccer, football, baseball, basketball, tennis and volleyball that provide for the largest number of participants.

At page 155.

Recreational Facilities.

B. Support soccer, baseball, softball, basketball, volleyball, tennis and other instruction and participatory programs for all age, skill levels and income groups of the community.

Under "Strategies" it states as follows:

The following is a brief accounting of strategies that can satisfy the Gig Harbor park and recreational needs along with a discussion of the philosophical issues involved. . . .

Outdoor Facilities. Gig Harbor should assume major responsibility for the planning, developing and operation of a variety of outdoor facilities, including playgrounds, tennis courts, picnicking areas, swimming and fishing beaches, parks and bicycle trails that are directly related to the site and opportunities within the urban growth area and are of most interest to local residents.

Gig Harbor should help, coordinate and assist other public and private agencies, such as Peninsula School District, to develop major competitive outdoor athletic facilities, including football, soccer, baseball, and softball, as well as pickup play facilities for outdoor basketball and volleyball courts since these facilities are and will be provided by this agency.

Recreational Programs. Gig Harbor should assist with and possibly coordinate with Pierce County for the operation of programs for athletic leagues and sport, teen and senior age groups and special populations since these facilities directly serve the local area and are of a major interest to city residents of all ages.

Pages 161-163.

Under existing athletic parks, the following statement is made:

The following parks are athletic parks eligible for area-wide financial assistance.

4) Discovery Elementary – this 40.0 acre elementary school property is located on Rosedale Street NW adjoining Gig Harbor High School and Pierce County's Peninsula Recreation Center. About 8.0 acres of the site have been improved to provide a small gymnasium, 2 playgrounds, 2 youth ball fields, a soccer field, and 4 half basketball courts.

One grass playground and picnic facility are located in front of the school on Rosedale Street NW. The 4 half basketball courts are located on asphalt that surrounds the main classroom facility.

The grass soccer field and 2 youth ball fields are located alongside the other sand surfaced playground in the back of the site adjoining Pierce County's Peninsula Recreation Center. The back lot fields are located below the grade of the county's fields, and are separated by wooded buffers. Portions of the buffer area have been improved with an 8 station parcource facility, picnic tables, and benches that overlook the fields.

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Significantly, the plan inventory then contained the recreational facilities that were once available at the former site of the Henderson Bay Alternative High School. These consisted of two (2) softball fields and two (2) soccer fields. Of the two (2) soccer fields, one was regulation size and the other was a smaller field suitable for use by younger children.

Approval of the Henderson Bay Alternative High School project will result in the net loss of one softball field and one soccer field. The remaining field at Discovery Elementary will be inadequate for use by community groups because it will not meet minimum architectural standards for playfields.

The Coalition presented evidence regarding field sizes at all other District elementary schools, as well as schools in the Tacoma School District. (Ex. 8, Attach. 6 and 8.) Based upon the size of all its existing fields, the school district has recognized that the minimum size playfield for any elementary school is not less than 262' x 335', or approximately 87,770 square feet. This is based on the size of the playfields at Voyager Elementary School, which currently has the smallest play area of any elementary school in the district. (Ex. 8, Attach. 6 and 8.) The proposed reduction in the Discovery playfield will reduce it to 130' x 300' (approximately 39,000 square feet), less than half the size of the next smallest playfield at any other elementary school in the district. There are only two schools in the Tacoma School District that have less play area than will be available to Discovery students if this conditional use permit is issued. Those schools are Lowell and Washington Elementary Schools. Washington Elementary School was built in 1924. Robert Dahl, the principal of Lowell Elementary School. (Ex. 8, Attach 31.)

**The Applicant's Proposal Does Not Meet
the Review Criteria of GHMC § 17.64.040(A) through (D)**

GHMC 17.64.040 states as follows:

Each determination granting or denying a conditional use permit shall be supported by written findings of fact showing specifically wherein all of the following conditions are met:

- A. That the use which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;
- B. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;
- C. That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets.
- D. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, loading, landscaping and other such features as are required by this title or as needed in the opinion of the examiner.

The Conditional Use Will Replace a Permitted Use.

The use for which the conditional use permit is applied for must be specified as being conditionally permitted within, and consistent with the description and purpose of the R-1 district in which the property is located. GHMC 17.64.040A. An outright permitted use includes publicly owned and operated parks and playgrounds. The Applicant proposes to replace an existing use which is outright permitted with a conditional use.

The Site Is of Insufficient Size to Accommodate the Proposed Use.

The Applicant must show that the site is of sufficient size to accommodate the proposed use. GHMC 17.64.040D. The District proposes to have up to 2,428 students occupy the original 44.47 acre site, together with 24 children in daycare. (Ex. 8, Attach 3.) They propose to reduce the number of playing fields from three (3) to two (2) (the football and track fields are on property now owned by Pierce County, and the track was closed for 2000-2001 season.

The overall site is inadequate for the proposed development in four (4) respects:

1. The overall area is too small for three (3) schools;
2. The site for Henderson Bay High School is too small;
3. There are too few athletic fields; and
4. The parking area is too small.

The Overall Area is too Small for Three (3) Schools.

Under Washington law, for schools to receive assistance from the state, they must be of sufficient size to meet the needs of the facilities. The regulations state that the minimum acreage of the site should be five (5) usable acres and one additional usable acre for each 100 students or portion thereof based upon the projected maximum enrollment, plus an additional five (5) usable acres if the school contains any grade above grade six. WAC 180-26-020. (Ex. 8, Attach. 4 and 5.) The District uses, but does not own or lease, Pierce County property for a track and field located north of the site. The Hearing Examiner and Applicant improperly considered this area as part of the decision.

At the present time, the overall site is significantly deficient. The requirements under the regulation require a site of at least 51 acres. (Ex. 8, Attach. 5.)

The Henderson Bay Site is too Small for the High School.

The Henderson Bay Alternative High School site is 1.69 acres. Under the administrative code the site should be thirteen (13) acres in size and is, therefore, deficient by over eleven (11) acres. (Ex. 8, Attach 4.)

The Athletic Fields for Three (3) School Are too Few and Too Small.

Currently, the fields provided for Gig Harbor High School are inadequate for its population. (Testimony of Sandy Pringle.) The proposal will exacerbate this problem.

It is well-recognized that schools need physical education for the health and safety of their students. (Ex. 8, Attach. 10, 12-15.) A population of 1,778 students would require more fields than are projected. A minimum standard for a 1,400 pupil school is four (4) field spaces. Two (2) field spaces for each class using the fields during any period should be provided for activities such as softball, hockey, speedball, soccer and touch football. The area of each field should be 190' x 420', or 7.3 acres (Physical Education Programs Organization and Administration, Daughtrey, M.A. and Woods, Ph.D.). (Ex. 8, Attach. 14.) Without the proposed reduction, the fields provided for Discovery are minimally adequate. No fields will be provided for Henderson Bay Alternative High School. Thus, the school district is ignoring the physical education needs of its students (high school and elementary) in siting the Henderson Bay Alternative High School. Rather than reducing existing fields, new fields should be added.

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The Parking Area Is too Small.

GHMC § 17.64.040D requires the Applicant to demonstrate the sufficiency of the size of the site to accommodate the proposed uses. It is not only too small to accommodate adequate fields, but is also too small to provide adequate space for parking.

A survey of Gig Harbor High School indicated that for the 1,778 student population, there are approximately 805 cars parking on site. (Testimony of Shira Stark, Ex. 8, Attach. 3.) There are many difficulties with parking offsite, including parking on private property, Covenant Church, CenturyTel parking lots, and parking in the Discovery parking lots. Rather than address the parking issues in the 44.47 acre site, the District has ignored this issue and overburdened the site with buildings and student population.

Excluding faculty and staff, the ratio of students to parking spaces is 3.07 to 1. Henderson Bay Alternative High School is the only alternative high school in the District. Thus, its students are drawn from within the entire district boundaries, from Gig Harbor to Longbranch. These students are more likely to drive to school than students who attend a school because they reside within geographical boundaries based upon proximity to the school. Providing room for only one (1) in three (3) to park is inadequate.

On March 30, 2001, city staff took measurements to determine the amount of impervious surfaces on the site. They "found approximately 81,900 square feet of additional impervious area consisting mostly of service roads, and highly compacted informal parking areas, and a relatively smaller number of heavily traveled play areas." (Staff Report and Recommendation to the City of Gig Harbor Hearing Examiner at page

7.) The experience at Gig Harbor High School must be considered when determining whether the site is of adequate size for the proposed alternative high school.

Nor is the site of sufficient size to accommodate the landscaping and other features necessary. As for landscaping, the mitigation offered by the district includes creating a new play area for Discovery students known as "Fort Discovery." Although the District has never submitted any detailed plans for "Fort Discovery" it is undisputed that Discovery will have the smallest amount of open space and the smallest field of any other school in the district. As proposed, the existing buildings are in such close proximity to one another that the demands on the site would be more consistent with a dense, urban setting rather the R-1 residential zone in which it is proposed.

The Proposed Use Will Be Detrimental to the Public Health, Safety, Comfort, Convenience and General Welfare, and Will Be Injurious to the Property and Improvements in the Vicinity in Which the Property Is Located. (GHMC 17.16.040(D).)

GHMC § 17.64.040B requires that the granting of a conditional use permit must not be detrimental to the public safety, health, comfort, convenience and general welfare, nor may it be injurious to the neighboring property or improvements. Using an existing playfield for a parking lot for the Henderson Bay Alternative High School is detrimental to the public health and safety needs of the 450 students who attend Discovery.

Elementary school students need outdoor physical activity, including organized and team activities requiring sufficient space. (Ex. 8, Attach. 14.) (Report of Heidi Orloff, Ex. 15.) The proposed reduction in size of the Discovery playfield is contrary to the established land use policy of the District itself. Reducing or eliminating the playfield for team sports not only negatively impacts Discovery (the immediately

adjacent use), but also the community at large. It is inconsistent with the goals of the City of Gig Harbor Parks, Recreation and Open Space plan, which plan was devised to foster the comfort, convenience and general welfare of the public.

A national expert on physical education for elementary schools has opined that the proposal is not in compliance with basic standards for playfields (Pangrazi, May 13, 2001). (Ex. 8, attach. 12.) Mr. Pangrazi states:

Standards for outdoor play areas call for a minimum of ten acres for the school, with an additional acre for each 100 pupils and the maximum projected enrollment. Parking areas, cycle racks, and entry roads are in addition to these standards. The outdoor area should include field space for games, a track, hard surfaced areas, apparatus areas, play courts, age group specific play areas, covered areas.

(Ex. 8, Attach. 14, page 184; Ex. 8, Attach. 12.)

The District, as a practice, has recognized these minimum standards. All other elementary schools in the District have larger playfields than are proposed. Currently, the minimum square foot per child for elementary school children in the District is 148 square feet. The school district now proposes that for Discovery Elementary it should be 87 square feet. (Ex. 8, Attach. 6 and 7.)

The original Discovery playfield is an irregular shape, but has a rectangular soccer play area of 197' x 325'. It is now proposed that the play area be reduced to 130' x 288'. This is not adequate for either baseball or soccer. (Ex. 8, Attach. 2; Recreational Standards Ex. 8, Attach. 17; Report of Ortgiesen, Ex. 8, Attach. 18; Architectural Standards Ex. 8, 18-19).

The areas necessary for playing baseball and soccer are documented by the National Recreation and Parks Association. The minimum area for little league baseball is 200' x 200'. The minimum area for soccer is 195'-225' x 330'. (Ex. 8, Attach. 17.)

Pierce County Park Planners believe the proper size for a little league softball field for boys and girls is 240' x 240'. The proper size for mini soccer is 235' x 370'. (Ex. 8, Attach. 18.) Graphic standards for architects require a soccer field of 360' x 195-225'. (Ex. 19.) The architectural standard for a baseball diamond is 200' x 250'. (Ex. 8, Attach. 19.)

The District and the Hearing Examiner propose that while playfields are provided at other elementary schools of sufficient size for team sports, the Discovery Elementary students should be limited to an irregular shaped area of insufficient size for any recognized team sports.

At the present time, Discovery has a curriculum for physical education which requires the full use of the existing field. (Ex. 8, Attach. 20; Testimony of Christina Waage.) The testimony from Christina Waage, the physical education teacher at Discovery Elementary, established that the proposed field is inadequate for the current curriculum. Ms. Waage testified that she uses the entire Discovery playfield for team sports and games as well as for teaching basic skills, such as throwing and catching. It is particularly important for the safety of the children to have enough room so they do not get hit with balls while they are learning basic skills. (Testimony of Waage and Orloff.)

The mitigation proposed by the school district is inadequate. Discovery's physical education classes often use the playfield to engage in organized team sports,

such as softball and soccer games. They are also used for organized game activities and drills. The school district has offered in mitigation to make the Gig Harbor High School softball field available for Discovery to use during its physical education baseball units. That field would have to be shared with seven (7) other Gig Harbor High School physical education classes, and perhaps with other additional uses by new Henderson Bay High School students. (Testimony of Sandy Pringle.)

Sandy Pringle, one of the physical education teachers for Gig Harbor High School testified that the Gig Harbor fields are fully utilized for physical education instruction during good weather and that using the field by elementary school children with high school students on the same field would not be safe. Ms. Pringle further testified that the curriculum for Gig Harbor High School would need to be changed and she could not have the same activities she presently has if the field were shared with elementary school children. She also testified that the field on the Pierce County Parks property was also fully utilized by the Gig Harbor High School students.

Currently, Gig Harbor High School athletic fields are fully utilized after 2:30 p.m. for its sports programs. Discovery is in session until 3:30 p.m. and could use the Gig Harbor High School fields at the end of the instructional day. (Testimony of Sandy Pringle and Christina Waage.)

The School District Has other Sites Available that Are More Appropriate for the Proposed Project.

The District owns 13 other parcels of real property, including several that are more appropriate for the use that they now seek to impose on a site that is already at or near capacity. Those include 7.3 acres north of Harbor Heights; 94 acres on Bujacich; 10

acres on Fox Island and 40 acres in Crescent Valley. In addition to that, there were proposals from Talmo, Wade Perrow, and Pierce County to provide sites for Henderson Bay Alternative High School.

Instead, the Applicant proposes to develop the site to urban type density. This is inconsistent with both the letter and the spirit of the GHMC.

The Hearing Examiner Misapplied the Facts

In the Hearing Examiner's response to the demonstrated impact on the Discovery Elementary School students, he stated that there would be 1,200 square feet of play space per student in the typical physical education class. However, this ignores the use of the playfield by 250 elementary school students during recess and the testimony of Christina Waage, physical education specialist at Discovery Elementary School, that the entire playfield is utilized for her instruction for safety reasons.

Further, the Hearing Examiner in determining that the site was of sufficient size included adjacent property owned by Pierce County that is not owned by the District. If, in fact, this area can be used by the District, then it should be utilized for the alternative high school or as a parking lot for the alternative high school.

CONCLUSION

The Hearing Examiner's decision results in the following adverse consequences:


1. Two-thirds (2/3) of an existing playfield will be replaced by a parking lot.
2. The school district will not replace the playfields previously lost when the Henderson Bay High School site was sold to the City of Gig Harbor.
3. The Henderson Bay Alternative High School students will have no athletic facilities for their use.

4. Henderson Bay Alternative High School will have no area for expansion.
5. The Gig Harbor High School will be required to institute a plan allowing Discovery Elementary to share their playfield.
6. Discovery Elementary School students will be required to walk from their school to the high school fields for athletic use.
7. The reduction of the Discovery Elementary playfield will adversely affect the students.
8. The sharing of the athletic fields at Gig Harbor High School will adversely affect the physical education instruction at Peninsula High School.
9. The reduction in playfields will adversely affect the community use of the use of Discovery playfield for baseball, soccer and other community athletic organizations. The site will have urban density without adequate open space for all the students' use of the facilities.
10. The already overburdened Gig Harbor High School site will be burdened by additional alternative high school students and Discovery Elementary students' use of the playfield.

The decision is an unnecessary compromise resulting from a crisis created by poor planning on the part of the Peninsula School District.

For the foregoing reasons, the Coalition to Save the Field requests the following: that the City of Gig Harbor deny the conditional use permit sought by the District for construction of Henderson Bay High School, or in the alternative, that the mitigations set forth on page 2 hereof be granted.


Respectfully submitted this 20th day of June, 2001.



DOUGLAS V. ALLING, Attorney for
Coalition to Save the Field

The Appellant has read the Appeal and believes the content to be true.

COALITION TO SAVE THE FIELD

By 

SHIRA STARK



CITY OF GIG HARBOR
PLANNING AND BUILDING SERVICES
3125 Judson Gig Harbor Washington - (253) 851-4278

FACSIMILE TRANSMITTAL SHEET

TO:	Ms. Jill Guernsey	FROM:	Patricia Iolavera
COMPANY:		DATE:	6/20/01
FAX NUMBER:	253-858-1742	TOTAL NO. OF PAGES INCLUDING COVER:	
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	
RE:	Henderson Bay Appeal	YOUR REFERENCE NUMBER:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Jill,

I'm sending a copy of the most recent appeal on Henderson Bay. I think you can expect a SEPA appeal to council on the mitigation.

The appellants want to go on the 23rd of July. Doug Alling has a hearing in Seattle that goes to 5:00 on July 9th and he is concerned that he will not be able to get here in time. Let me know if you are agreeable to that.

Pat

Jun-20-01 03:15 PM

<u>Identification</u>	<u>Result</u>	<u>Pages</u>	<u>Type</u>	<u>Date</u>	<u>Time</u>	<u>Duration</u>	<u>Diagnostic</u>
98581742	OK	22	Sent	Jun-20	02:57P	00:18:02	002184230020



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR DR
DATE: JULY 2, 2001
SUBJECT: FIRST READING - ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF WATER/SEWER REVENUE BOND ANTICIPATION NOTE (BAN).

BACKGROUND

The BAN will provide funds for construction of Pump Station 3A. We are planning to refinance the BAN in 3 years with a revenue bond that will also provide financing for the sewer outfall extension.

FISCAL CONSIDERATIONS

This is a \$1.5 million, 36-month note with a fixed interest rate of approximately 4.30%. The actual interest rate will be set July 19, 2001 and closing will be August 1, 2001. Banc of America will purchase the note and the proceeds will be receipted into the Sewer Capital Construction Fund.

The City is pledging the net revenue of the Water/Sewer system to provide debt service for the BAN, in addition to the currently outstanding 1994 Water/Sewer Revenue and Refunding Bonds (\$1,370,000 principal balance) and Public Works Trust Fund Loan (\$662,000 principal balance). The City is also pledging to refinance the BAN within 3 years.

RECOMMENDATION

Staff recommends adoption of the ordinance after a second reading.

CITY OF GIG HARBOR, WASHINGTON

WATER AND SEWER REVENUE BOND ANTICIPATION NOTE, 2001

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR CERTAIN IMPROVEMENTS TO THE CITY'S WATER AND SEWERAGE SYSTEM DECLARING THE ESTIMATED COST THEREOF; AUTHORIZING THE ISSUANCE OF A SUBORDINATE LIEN REVENUE BOND TO PAY THE COSTS THEREOF; PROVIDING FOR THE ISSUANCE AND SALE OF A WATER AND SEWER REVENUE BOND ANTICIPATION NOTE OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1,500,000, FOR THE PURPOSE OF PROVIDING INTERIM FINANCING PENDING THE ISSUANCE OF SAID BOND; PROVIDING THE DATE, FORM, TERMS AND MATURITY OF SAID NOTE AND FOR REPAYMENT OF SUCH NOTE; AND APPROVING THE SALE OF SUCH NOTE.

APPROVED ON JULY __, 2001

PREPARED BY:

PRESTON GATES & ELLIS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR CERTAIN IMPROVEMENTS TO THE CITY'S WATER AND SEWERAGE SYSTEM DECLARING THE ESTIMATED COST THEREOF; AUTHORIZING THE ISSUANCE OF A SUBORDINATE LIEN REVENUE BOND TO PAY THE COSTS THEREOF; PROVIDING FOR THE ISSUANCE AND SALE OF A WATER AND SEWER REVENUE BOND ANTICIPATION NOTE OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1,500,000, FOR THE PURPOSE OF PROVIDING INTERIM FINANCING PENDING THE ISSUANCE OF SAID BOND; PROVIDING THE DATE, FORM, TERMS AND MATURITY OF SAID NOTE AND FOR REPAYMENT OF SUCH NOTE; AND APPROVING THE SALE OF SUCH NOTE.

WHEREAS, the City of Gig Harbor needs to make certain improvements to its combined water and sewerage system (the "System"); and

WHEREAS, the City is authorized by RCW ch. 39.50 to issue revenue bond anticipation Note in anticipation of the issuance of revenue bonds; and

WHEREAS, the City has received an offer from Bank of America, N.A. to purchase said Note on terms and conditions that are acceptable to this Council; and

WHEREAS, the City has issued its Water and Sewer Revenue and Refunding Bonds, 1994 dated July 1, 1994 issued pursuant to Ordinance No. 677 in the original principal amount of \$2,995,000 and currently outstanding in the principal amount of \$1,370,000, secured by a parity lien on the revenues of the System.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON DOES ORDAIN, as follows:

Section 1. Definitions. As used in this ordinance, unless a different meaning clearly appears from the context:

Assessments means any assessments levied in any utility local improvement district of the City created for the acquisition or construction of additions and improvements to and extensions of the System, if such assessments are pledged to be paid into the Bond Fund. The word "Assessments" shall also include any installments of assessments and any interest or penalties which may be due thereon.

Assessment Income means the principal of and interest on assessments levied in any utility local improvement district and pledged to be paid into the Bond Fund. In the case of assessments payable in installments, Assessment Income shall be allocated to the years in which it would be received if the unpaid principal balance of each assessment roll were paid in equal principal amounts over the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance confirming the assessment roll.

Bond Fund means the City of Gig Harbor Utility Bond Redemption Fund created in the office of the Treasurer of the City pursuant to Section 13 of Ordinance No. 468.

Bond Register means the books or records maintained by the Bond Registrar containing the name and mailing address of the owner of the Bond or nominee of the owner and the remaining principal amount of the Bond held by the owner or nominee.

Bond Registrar means the Clerk-Treasurer of the City as registrar and paying agent for the Note.

Bonds means the water and sewer parity revenue bonds of the City authorized to be issued in Section 3 of this ordinance for the purpose of providing permanent financing for the Improvements.

City means the City of Gig Harbor, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Washington.

Code means the federal Internal Revenue Code of 1986, as the same shall be amended from time to time, and all regulations promulgated or applicable thereunder.

Completion Date means the date on which the City accepts the completed Improvements from the contractor. Punch list items may remain to be completed after this date.

Costs of Maintenance and Operation mean all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expenses with respect to the System, but excludes depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the System, municipal taxes or payments to the City in lieu of taxes.

Council means the City Council as the general legislative authority of the City as the same shall be duly and regularly constituted from time to time.

Debt Service Account means the account of that name created in the Bond Fund by Ordinance No. 468.

Future Parity Bonds means any water and sewer revenue bonds which the City may hereafter issue having a lien upon the Revenue of the System for the payment of the principal thereof and interest thereon equal to the lien upon the Revenue of the System of the Bond.

Improvements means those additions, betterments and improvements authorized in Section 2 hereof.

Maturity Date means August 1, 2004.

Net Revenue means the Revenue of the System less the Costs of Maintenance and Operation.

Note Fund means the 2001 Note Redemption Fund created in Section 7 hereof

Outstanding Parity Bonds means the City's Water and Sewer Revenue and Refunding Bonds, 1994 dated July 1, 1994 issued pursuant to Ordinance No. 677 in the original principal amount of \$2,995,000 and currently outstanding in the principal amount of \$1,370,000.

Outstanding Parity Bond Ordinance means Ordinance No. 677, passed by the Council on July 11, 1994.

Parity Bonds means the Outstanding Parity Bonds and any Future Parity Bonds.

Project Fund means the Sewer Capital Construction Fund maintained by the Treasurer.

Registered Owner means the person in whose name the Bond is registered on the Bond Register.

Reserve Account means the account created in the Bond Fund by Section 15 of Ordinance No. 468 and shall include any subaccount created therein.

Revenue Fund means the "City of Gig Harbor Utility Revenue Fund" created by Section 12 of Ordinance No. 468, into which fund all of the Revenue of the System is to be deposited, as collected.

Revenue of the System means all earnings, revenue and moneys received by the City from or on account of the operation of the System, including the income from investments of money in the Revenue Fund and the Bond Fund or from any other investment thereof. "Revenue of the System" shall also include any federal or state reimbursements of operating expenses to the extent such expenses are included as "Costs of Maintenance and Operation."

System means the existing sanitary sewerage collection and treatment system of the City, as it now exists and as it may later be added to, extended and improved, and the existing water supply and distribution system of the City, as it now exists and as it may later be added to, extended and improved for as long as any Parity Bonds remain outstanding.

Term Bonds means any Parity Bonds identified as such in the ordinance authorizing the issuance thereof, the payment of which is provided for by a requirement for mandatory deposits of money into a "sinking fund account" in the Bond Fund.

Treasurer means the Finance Director of the City.

Words importing the singular number include the plural number and vice versa.

Section 2. The Improvements. The Council of the City hereby specifies and adopts a plan for making the following improvements to the System (the "Improvements"): construction of a new wastewater pump station and associated piping, and modifications to the wastewater treatment plant and the electrical and control systems.

In carrying out the Improvements, the City shall acquire and install all equipment and appurtenances necessary for its proper operation, and shall acquire by purchase, lease or condemnation all property, both real and personal, or any interest therein, and all rights-of-way,

franchises, and easements necessary to carry out the Improvements, which is all as more particularly set forth in maps and plans prepared by Earth Tech Inc.

It is hereby provided that said Improvements shall be subject to such changes as to details of size or location or any other details of said Improvements as may be authorized by the Council either prior to or during the actual course of construction.

Section 3. Authorization of Bonds. The estimated cost of the acquisition, construction and installation of the Improvements is hereby declared to be, as near as may be, the sum of \$1,500,000 which shall be provided by the issuance and sale of water and sewer revenue parity bonds of the City (the "Bonds").

Said Bonds shall bear interest a interest rates of not to exceed the maximum rate permitted at the time said Bonds are sold, shall be issued at such time as may be found necessary, and shall mature in various amounts and at such times up to a maximum period of not to exceed forty years from date of issue as may be fixed by the Council at the time of issuance. Both principal and interest on said Bonds shall be paid from the Revenue of the System. The exact date, form, terms and maturities of said Bonds shall be as hereafter fixed by ordinance of the City Council.

Section 4. Authorization of the Note. For the purpose of providing interim financing for the Improvements pending the completion of the Improvements and the issuance and delivery of the Bonds, the City Council hereby authorizes the issuance and sale of its water and sewer revenue bond anticipation note (the "Note"). The Note shall be designated as the "City of Gig Harbor, Washington, Junior Lien Water and Sewer Revenue Bond Anticipation Note, 2001," shall be dated as of its date of delivery, shall be issued in fully registered form in the denomination of \$1,500,000, shall bear interest on unpaid principal from its date at a per annum rate of 4.30%, payable [at maturity][semiannually on each _____ 1 and _____ 1, commencing on _____ 1, 2001, and shall mature on August 1, 2004. Interest on the Note shall be payable in U.S. currency and shall be calculated on the basis of a 360-day year with 30-day months.

The Note is not a general obligation of the City. The Note shall be an obligation only of the Note Fund created hereunder and shall be payable and secured as provided herein. The Note does not constitute an indebtedness of the City within the meaning of the constitutional provisions and limitations of the State of Washington.

Section 5. Optional Redemption. The County has reserved the right to prepay the Note prior to its maturity in whole or in part at any time, upon at least 5 days' written notice to the Bank subject only to prepayment fees as stated in Exhibit A attached hereto.

Section 6. Priority of Payments from Revenue Fund There has heretofore been established in the office of the Treasurer a special fund of the City known as the "City of Gig Harbor Utility Revenue Fund" (the "Revenue Fund"), into which the Revenue of the System is deposited as collected. The Revenue Fund shall be held separate and apart from all other funds and accounts of the City, the Revenue of the System shall be used only for the following purposes and in the following order of priority:

First, to pay the Costs of Maintenance and Operation of the System;

Second, to make all payments required to be made into the Bond Fund to pay the interest on any Parity Bonds;

Third, to make all payments required to be made into the Bond Fund to pay the maturing principal of any Parity Bonds;

Fourth, to make all payments required to be made into the Reserve Account created to secure the payment of the Parity Bonds;

Fifth, to make all payments required to be made into the Note Fund with respect to the Note;

Sixth, to make all payments required to be made into any other revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the City having a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

Seventh, to retire by redemption or purchase in the open market any outstanding revenue bonds or revenue warrants of the City, to make necessary additions, betterments and improvements and repairs to or extensions and replacements of the System, or for any other lawful City purposes.

Section 7. Note Fund--Security and Sources of Payment of Note. There is hereby authorized to be established and the Treasurer of the City is authorized and requested to establish a special fund of the City to be known as the "2001 Note Redemption Fund" (the "Note Fund"), which fund shall be a trust fund and shall be drawn upon only for the payment of the principal of and interest on the Note. The City hereby covenants and agrees that on or before the Maturity Date, it will deposit in the Note Fund proceeds of a refunding note and/or the proceeds of sale of the Bonds in an amount sufficient to pay the principal of and interest on the Note as the same become due.

The City hereby irrevocably obligates and binds itself for as long as the Note remain outstanding to set aside and pay into the Note Fund out of the proceeds of sale of the Bond, or from Revenue of the System or moneys in the Revenue Fund available therefor after payment of the amounts identified in paragraphs First through Fourth of Section 6 of this ordinance, prior to the date the same becomes due such amounts as are required to pay the interest on and principal of the Note as the same shall become due.

The City hereby covenants that it will issue the Bonds in an amount sufficient, with other moneys of the City, legally available and specifically set aside for such purpose, to pay the interest on the Note as it comes due and the principal of the Note on or prior to its scheduled maturity.

Said amounts so pledged to be paid into the Note Fund, are hereby declared to be a prior lien and charge upon the Revenue of the System superior to all other charges of any kind or nature whatsoever, subject only to the payments provided in paragraphs First through Fourth of Section 6 of this ordinance.

Section 8. Sufficiency of Revenue of the System. The corporate authorities of the City hereby declare that in fixing the amounts to be paid into the Note Fund as aforesaid they have exercised due regard to the Costs of Maintenance and Operation of System and the charges necessary to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds and any Future Parity Bonds and have not obligated the City to set aside and pay into said Note Fund a greater amount of the Revenue of the System than in their judgment will be available over and above such Costs of Maintenance and Operation and the amounts necessary to pay the principal of and interest on the Outstanding Parity Debt, any Future Parity Bonds and the Note.

Section 9. Specific Covenants.

(a) *Maintenance of System.* The City shall at all time maintain, preserve and keep the properties of the System in good repair, working order and condition and will from time to time make all necessary and proper repairs, renewals, replacements, extensions and betterments thereto, so that at all times the business carried on in connection therewith will be properly and advantageously conducted and said properties of the System and the business in connection therewith administered in an efficient manner and at a reasonable cost.

(b) *Collection and Application of Assessments.* The City will promptly collect all Assessments levied in utility local improvement districts that have been heretofore created by the City and all Assessments levied in utility local improvement districts heretofore created and all utility local improvement districts that are hereafter created to secure the payment of the principal of and interest on Parity Bonds and will pay the same into the Bond Fund. The same may be used to meet required payments into any Account of the Bond Fund and may be used to pay the principal of and interest on any Parity Bonds without said Assessments being particularly allocated to the payment of any particular series of bonds payable out of such Fund. It is hereby further provided, however, that nothing in this ordinance or in this subsection shall be construed to prohibit the City from issuing revenue bonds having a lien on the Revenue of the System and the money in the Revenue Fund junior to the lien on such revenue and money for the payment of

the principal of and interest on the Bonds and pledging as security for the payment of such junior lien bonds assessments levied in any utility local improvement district that may have been created to pay part or all of the cost of improvements to the System for which such junior revenue bonds were specifically issued.

(c) *Rates and Charges.* The City shall fix, maintain and collect rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the System, which shall be fair and nondiscriminatory and shall adjust such rates and charges from time to time so that the Revenue of the System derived therefrom, together with Assessments collected, will at all times be sufficient (A) to pay the Costs of Maintenance and Operation, (B) to pay the principal of and interest on all Parity Bonds, as and when the same shall become due and payable, (C) to make adequate provision for the payment of the any Term Bonds, (D) to make when due all payments which the City is obligated to make into the Reserve Account and all other payments which the City is obligated to make pursuant to this ordinance, and (F) to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the revenue therefrom or payments in lieu thereof and any and all other amounts which the City may now or hereafter become obligated to pay from the Revenue of the System by law or contract

(d) *No Encumbrances.* The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the System or the Revenue of the System, or any part thereof, prior or superior to the lien thereon for the payment of Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, or upon any funds in the hands of the City, prior to or superior to the lien of Parity Bonds, or which might impair the security of Parity Bonds.

(e) *Insurance.* The City will keep the works, plants and facilities comprising the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents or casualties, at least to the extent that insurance is

usually carried by private corporations operating like properties, or will implement a self-insurance program with reserves adequate, in the judgment of the Council, to protect City and the owners of the Note against loss. In the event of any loss or damage, the City will promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the System, the proceeds of such insurance shall be paid into the Reserve Account to the extent that such transfer shall be necessary to make up any deficiency in said Reserve Account and the balance, if any, shall at the option of the City, be used either for repairs, renewals, replacements, or capital additions to the System, for the redemption of Parity Bonds and the Note, or for deposit into the Reserve Account.

(f) *Books and Accounts.* The City shall keep proper books of account which shall be kept in accordance with any applicable rules and regulations prescribed by the State of Washington. The City shall prepare, and any owner of Parity Bonds may obtain copies of, balance sheets and profit and loss statements showing in reasonable detail the financial condition of the System as of the close of each year, and the income and expenses of such year, including the amounts paid into the Revenue Fund, the Bond Fund, and into any and all special funds or accounts created pursuant to the provisions of this ordinance, and the amounts expended for maintenance, renewals, replacements, and capital additions to the System.

Section 10. Tax Covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exemption from federal income taxation of the interest on the Note and will take or require to be taken such acts as may reasonably be within its ability and as may from time to time be required under applicable law to continue the exemption from federal income taxation of the interest on the Note. Without limiting the generality of the foregoing, the City covenants that it will not take any action or fail to take any action with respect to the investment of the proceeds of any Note or other funds that would result in constituting the Note "arbitrage bonds" within the meaning of such term as used in Section 148 of the Code.

The City hereby covenants that it will not make any use of the proceeds from the sale of the Note or any other moneys or obligation of the City which may be deemed to be proceeds of such Note pursuant to Section 148(a) of the Code which, if such use has been reasonably expected on the date of delivery of the Note to the initial purchasers thereof, would have caused the Note to be "arbitrage bonds" within the meaning of said Section. The City will comply with the applicable requirements of Section 148(a) of the Code. The City covenants that it will not act or fail to act in a manner which will cause the Note to be considered obligations not described in Section 103(a) of the Code.

The City will take no action and will make no use of the proceeds of the Note, or any other funds held under this ordinance which would cause any Bond to be treated as a "private activity bond" (as defined in Section 141(b) of the Code, as then in effect) subject to treatment under said Section 141(b) as an obligation not described in subsection (a) of said Section 141, unless the tax exemption thereof is not affected.

The City hereby designates the Note as "qualified tax exempt obligations" for purchase by financial institutions pursuant to Section 265 of the Code. The City does not anticipate that it will issue more than \$10,000,000 in "qualified tax-exempt obligations" during the year 2001.

The City covenants that none of the proceeds of the Note will be used for any purpose other than as provided in this ordinance and that the City shall not suffer any amendment or supplement to this ordinance, or any departure from the due performance of the obligations of the City hereunder, that might materially and adversely affect the rights of the owners from time to time of the Note.

Section 11. Representations and Warranties. The City hereby makes the following representations, warranties and agreements.

(a) *Authority.* The City has full legal right, power and authority (i) to adopt this ordinance, (ii) to sell, issue and deliver the Note as provided herein and (iii) to carry out and consummate all other transactions contemplated by this ordinance.

(b) *Official Action.* By all necessary official action prior to or concurrently herewith, the City has duly authorized and approved the execution and delivery of, and the performance by the City of its obligations contained in the Note and this ordinance and the consummation by it of all other transactions contemplated by this ordinance in connection with the issuance of the Note, and such authorizations and approvals are in full force and effect and have not been amended, modified or supplemented in any material respect.

(c) *Ordinance a Valid Obligation.* This ordinance constitutes the legal, valid and binding obligation of the City.

(d) *Notification.* The City represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is an issuer whose arbitrage certifications may not be relied upon.

Section 12. Form of Note and Certificate of Authentication. The Note shall be in substantially the following form:

UNITED STATES OF AMERICA

\$1,500,000

No. 1

STATE OF WASHINGTON

CITY OF GIG HARBOR

JUNIOR LIEN WATER AND SEWER REVENUE BOND ANTICIPATION NOTE, 2001

INTEREST RATE: 4.30% MATURITY DATE: _____

REGISTERED OWNER:

PRINCIPAL AMOUNT: ONE MILLION FIVE HUNDRED THOUSAND DOLLARS

The City of Gig Harbor, Washington, a municipal corporation of the State of Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns, but solely from the Note Fund (hereinafter defined) on the Maturity Date the Principal Amount specified above and to pay interest thereon from the date hereof at the rate per annum of 4.30% computed on a 360-day year and the actual number of days elapsed, upon presentation and surrender of this note at the office

of the Finance Director of the City. Interest on this note shall be payable [at maturity][on each ____1 and ____1, commencing on ____1, 2001.

This note is issued pursuant to an ordinance of the City, adopted on July __, 2001 (the "Note Ordinance"), for the purpose of financing various capital improvements to the City's combined system of water and sewerage in anticipation of the issuance of water and sewer revenue bonds, all in conformity with the Constitution and laws of the State of Washington.

The County has reserved the right to repay the principal amount of this note in whole or in part prior to its maturity on five days' written notice subject to prepayment fees as provided in the Note Ordinance.

The note is payable solely out of the Revenue of the System (as such term is defined in the Note Ordinance), and does not constitute a general obligation of the City. Both principal and interest on this note are payable solely out of the special fund of the City known as the "2001 Note Redemption Fund" created by the Note Ordinance (the "Note Fund"). The City does hereby pledge and bind itself to set aside and pay into the Note Fund the amounts required by the Note Ordinance to be paid therein on and prior to the maturity of the Note of this issue as the same shall become due from the proceeds of the Bond (as authorized in the Note Ordinance) or from the sources and in the priority specified in the Note Ordinance.

This note is not a "private activity bond." The City has designated the Note of this issue as qualified tax exempt obligations for investment by financial institutions pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended.

The City hereby irrevocably covenants and agrees with the Registered Owner of this note that it will keep and perform all the covenants of this note and of the Note Ordinance (hereinafter defined) to be by it kept and performed. Reference is hereby made to the Note Ordinance for a complete statement of such covenants and for the definition of capitalized terms used herein.

This note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Note Ordinance until the Certificate of Authentication hereon shall have been manually signed by or on behalf of the Note Registrar.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done and performed precedent to and in the issuance of this note have happened, been done and performed and that the issuance of this note and the Note of this issue does not violate any constitutional, statutory or other limitation upon the amount of indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of Gig Harbor, Washington, has caused this note to be signed with the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk of the City, and the seal of the City to be impressed or a facsimile thereof to be imprinted or otherwise reproduced hereon, as of this ____ day of____, 2001.

CITY OF GIG HARBOR, WASHINGTON

By /s/ manual or facsimile
Mayor

ATTEST:

 /s/ manual or facsimile
City Clerk

REGISTRATION CERTIFICATE

This note is registered in the name of the Registered Owner on the books of the City, in the office of the Treasurer (the "Note Registrar"), as to both principal and interest, as noted in the registration blank below. All payments of principal of and interest on this note shall be made by the County with full acquittance by the Note Registrar's wire transfer, made payable to the last Registered Owner as shown hereon and on the registration books of the Note Registrar at his/her address noted hereon and on the registration books of the Note Registrar.

<u>Date of Registration</u>	<u>Name and Address of Registered Owner</u>	<u>Signature of Registrar</u>
_____	<u>Bank of America, N.A.</u>	_____
_____	<u>800 Fifth Avenue, Floor 34</u>	_____
_____	<u>Seattle, WA 98124-1662</u>	_____

Section 13. Execution and Delivery of Note. The Note shall be executed on behalf of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk of the City. The official seal of the City shall be impressed or a facsimile thereof imprinted or otherwise reproduced on each Note. In case any officer whose signature shall appear on any Note shall cease to be an officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, and the Note may be authenticated and delivered the same as if such officer had remained in office until such delivery.

Section 14. Sale of the Note. The City hereby accepts the offer of Bank of America, N.A., Seattle, Washington, delivered to the City Council on this date to purchase the Note in

accordance with the terms contained in this ordinance and said offer. The City officials are hereby authorized and directed to do everything necessary to complete such sale and delivery of the Note to the purchaser thereof upon the payment of the purchase price thereof, all in accordance with this ordinance and the offer of Bank of America, N.A..

Section 15. Application of Note Proceeds. The net proceeds of the Note received by the City will be deposited in the Project Fund and used to pay the costs of constructing, acquiring and installing the Improvements, including the costs of issuance of the Note.

All money held in the Project Fund may be invested in any legal investment for City funds and all investments shall be scheduled to mature as costs of the Improvements are reasonably anticipated to be incurred. Upon the completion of the Improvements and the payment of all costs thereof, including the payment of all retainages for construction, the Project Fund may be closed, and the remaining Note proceeds and interest earnings thereon shall be transferred to the Note Fund to be used to pay the principal of and interest on the Note or, if the Note have been redeemed, may be transferred to the Bond Fund to pay debt service on the Bond.

Section 16. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Note.

Section 17. Effect of Covenants, Etc. All covenants, obligations and agreements of the City contained in this ordinance shall be deemed to be covenants, obligations and agreements of the City to the full extent authorized by the Act and permitted by the Constitution of the State of Washington. No covenant, obligation or agreement contained herein shall be deemed to be a covenant, obligation or agreement of any present or future official, member, agent or employee of the City in his or her individual capacity, and neither the members of the Council nor any officer thereof executing the Note shall be liable personally on the Note or be subject to any

personal liability or accountability by reason of the issuance thereof. No member, officer, agent or employee of the City shall incur any liability in acting or proceeding or in not acting or proceeding, in good faith in accordance with the terms of this ordinance.

Section 18 Ongoing Disclosure. The City is exempt from the ongoing disclosure requirements of Securities and Exchange Commission Rule 15c2-12 by reason of the exemption set forth in subsection (d)(i) of that rule with respect to the issuance of securities in authorized denominations of \$100,000 or more.

Section 19 Effective Date. This ordinance shall be effective five days after its passage and publication in the manner required by law.

PASSED by the Council of the City of Gig Harbor, Washington at a regular meeting held on the _____ day of July, 2001.

CITY OF GIG HARBOR, WASHINGTON

Mayor

ATTEST:

City Clerk

First Reading: _____, 2001

Date Adopted: _____, 2001

Date of Publication: _____, 2001

Effective Date: _____, 2001

CERTIFICATE

I, the undersigned, City Clerk of the City of Gig Harbor, Washington (the "City") and keeper of the records of the City Council (the "Council"), DO HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. _____ of the Council (the "Ordinance"), duly passed at a regular meeting thereof held on the ____ day of July, 2001.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of July, 2001.

_____, City Clerk

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