

Gig Harbor City Council Meeting



**October 8, 2001
7:00 p.m.**

**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
October 8, 2001 - 7:00 p.m.**

CALL TO ORDER:

LIFESAVING AWARD: Lt. William Colberg.

PUBLIC HEARINGS:

1. Erickson Street.

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 September 24, 2001.
2. Correspondence/Proclamations:
3. Assigned Counsel Agreement.
4. Liquor License Renewals:
Central 76; Fred Meyer Marketplace; Harvester Restaurant; Uddenberg's Thriftway;
Water to Wine.
5. Approval of Payment of Bills for October 8, 2001.
Checks #34053 through #34193 in the amount of \$376,632.77.
6. Approval of Payroll for the month of September:
Checks #1011 through #1070 in the amount of \$196,461.96. Check #979 in the
amount of \$740.05 from the August payroll was omitted in error and is in listed in
addition to the September payroll figure.

OLD BUSINESS:

1. Erickson Street.

NEW BUSINESS:

1. Agreement for Use and Maintenance - Sunshine.
2. Subgrantee Agreement for Earthquake Mitigation - Pierce County Dept. of Community Service.
3. Consultant Services Contract Amendment - John Tevis.

STAFF REPORTS:

Pat Iolavera, Senior Planner - Update on Donkey Creek Project.

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 SEPTEMBER 24, 2001

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

CALL TO ORDER: 7:03 p.m.

PLEDGE OF ALLEGIANCE: Mayor Wilbert introduced members of Scout Troop #212 who presented the colors and led the audience in the Pledge of Allegiance. Members included Jason Cox, Jason McKinney, Tim Reich, and Jonathan Scholendraw, along with Scout Leader, Spruce Cox. Mayor Wilbert presented a copy of the Proclamation for Constitution Week passed at the last meeting to the scouts.

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 September 10, 2001.
2. Correspondence/Proclamations: none.
3. Liquor License Renewals: Hy-Iu-Hee-Hee Olympic Village 76
4. Approval of Payment of Bills for September 27, 2001.
Checks #33916 through #34052 in the amount of \$411,304.96.

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

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. **Resolution - National Unity.** Mayor Wilbert read this resolution expressing the need for local unity and support of the national effort to eradicate terrorism in light of the events of September 11, 2001.

MOTION: Move to adopt Resolution No. 573 as presented.
Picinich/Ruffo - unanimously approved.

STAFF REPORTS:

GHPD - August Statistics. No verbal report given.

PUBLIC COMMENTS:

Mayor Wilbert invited Colonel Caniano, the city's liaison with Ft. Lewis, to give a brief update on the local military efforts. Colonel Caniano thanked Council for showing support of the armed forces by passing the resolution. He said he was honored to follow the boy scouts and their

symbolic support. He added that the military stands ready and prepared for any mission that may be given. He said that the important thing to remember is that this will be a long-term, structured campaign, and gave an overview of local efforts.

COUNCIL COMMENTS / MAYOR'S REPORT:

Councilmember Pasin asked for an update on the opening of the East-West Roadway. Mayor Wilbert announced that the ceremony to open Borgen Boulevard was scheduled for Monday, 9:00 a.m., October 1st. Mark Hoppen described the program, adding that an invitation was forthcoming.

Spruce Cox - Scout Troop 212. Mr. Cox said that his troop had been invited to perform the opening ceremony presentation of the colors for the Borgen Boulevard ribbon cutting. He said that the troop were privileged to be invited and asked for assistance in obtaining permission for the students to be absent from school. Mark Hoppen asked for a list of the students' names and their school and assured him that arrangements would be made.

Mayor Wilbert called attention to a tapestry donated to the City of Gig Harbor many years ago. She asked the City Clerk to read the descriptive message attached to the tapestry by the artists, Floyd and Margreth Brewer, calling for peace among all people. Mayor Wilbert expressed that this is an appropriate time for the message depicted in the tapestry.

Councilmember Pasin addressed the scouts and the leader of Troop 212, describing his memories of serving in the scouts in his youth. He congratulated Mr. Cox for his dedication as a leader, adding that the scouting program gives youth the knowledge, skills and friendships that would help to prepare them for the future.

ANNOUNCEMENT OF OTHER MEETINGS:

Opening Ceremony for Borgen Boulevard - Monday, October 1st - 9:00 a.m.

ADJOURN:

MOTION: Move to adjourn at 7:24 p.m.
Ruffo/Picinich - unanimously approved.

Cassette recorder utilized.
Tape 626 - Side B 263 - end.
Tape 627 - Side A 000 - 145.

Gretchen A. Wilbert, Mayor

City Clerk



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: ASSIGNED COUNSEL AGREEMENT
DATE: OCTOBER 3, 2001

INFORMATION/BACKGROUND

Pierce County provides indigent defense services for the Gig Harbor Municipal Court through Pierce County's Department of Assigned Counsel. The attached contract authorizes the continuation of this relationship, prior to the first billing period for the year 2002.

POLICY CONSIDERATIONS

Except for the change of dates and payment amounts, the contract provisions are identical to Assigned Counsel contract provisions approved by the City Council for the year 2001.

FISCAL CONSIDERATIONS

The new contract provides for a 3.9% increase in cost for services for 2002 (COLA related to CPI-W). The contract can be evaluated quarterly to determine whether payments should be revised to accurately reflect costs. In previous years, such revision has not been necessary.

RECOMMENDATION

Administration and Judge Dunn recommend approval of the agreement.

ASSIGNED COUNSEL AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of January, 2002, by and between the City of Gig Harbor, (hereinafter called the "City"), and Pierce County, (hereinafter called the "County").

WITNESSETH:

WHEREAS, the Revised Code of Washington, Rules for Courts of Limited Jurisdiction JCR 2.11 requires legal counsel to be furnished every indigent defendant charged in the Gig Harbor Municipal Court with an offense whereby upon conviction may be punished by imprisonment; and

WHEREAS, the Gig Harbor Municipal Court Judge and City Administrator determined that the Pierce County Department of Assigned Counsel (hereinafter "the Department") is capable and qualified to provide the necessary and required legal services; and

WHEREAS, said Judge and City Administrator have evaluated the performance of the above-named Department and found the requirements of the Rules for Court of Limited Jurisdiction met by providing the necessary and qualified legal services to indigent defendants, thereby satisfying the requirements of the Judge of the Municipal Court; and

WHEREAS, the Pierce County Department of Assigned Counsel indicated their willingness to enter into a contractual agreement to furnish such services to the City for the period beginning January 1, 2002 and ending December 31, 2002.

NOW THEREFORE,

1. The Department will provide legal counsel services to indigent defendants in the Gig Harbor Municipal Court for the 2002 calendar year. Such services will include, but are not limited, to, legal services to all indigent defendants charged with misdemeanor crimes, including, where appropriate, interviewing defendants held in custody, representation at arraignments as requested by the Court, and at all subsequent proceedings in the Municipal Court. Indigency status will be determined by the City in coordination with the Court.
2. In return for the services rendered to the city and to those indigent defendants represented by the Department, the City agrees to pay the County a sum not to exceed \$30,754.90 annually, commencing January 1, 2002, and ending December 31, 2003. Payments shall be due and payable in the amount of \$7688.73 the end of each quarter for those services rendered.

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3. The parties to this agreement may review the agreement quarterly to determine whether the costs contemplated by the Department of Assigned Counsel have been materially altered such that the payments made by the City are not proportionate to the actual cost of the services provided. Every quarter, the Department shall provide the City with the appropriate records to facilitate such review. If at any such review by the Department or by the City it is determined that the actual expenses of the Department have been materially increased or decreased, then the payment provisions of this Agreement may be amended upon written agreement by the parties, or upon the option of either party, canceled with 90 days written notice.
 4. The Department will comply with such reporting and project evaluation requirements as may be established by the City to enable it to appraise the effectiveness of the Department's services. Upon request by the City, the Department shall allow the City reasonable access to its records for the purpose of evaluating the Department's performance under this paragraph.
 5. The Department will not subcontract any of its responsibilities or activities required hereunder without the prior written approval of the Judge(s) of the Municipal Court of Gig Harbor and the City.
 6. The Department shall carry on its activities pursuant to this agreement at all times in full compliance with all applicable laws, rules and regulations of the United States Government, the State of Washington, the County of Pierce, and the City of Gig Harbor.
 7. In all hiring or employment made possible by or resulting from this Agreement, (1) there will not be any discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin, (2) affirmative action will be taken to assure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or marital status, and (3) the Department agrees to comply with Section 504 of the Rehabilitation Act of 1973, thereby assuring that no person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or other be subjected to discrimination under any program, service, or activity provided by the Department as part of this Agreement.
 8. None of the funds, materials, property, or services provided directly or indirectly in this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to defeat or support legislation pending before any legislative body.

9. The County shall provide all the Department's malpractice coverage either through malpractice insurance or through self-insurance.
10. The Department agrees to indemnify, defend and hold the City harmless for any and all claims or liabilities of any nature for any negligent or intentional acts performed by the Department, its agents or employees pursuant to this Agreement.
11. Either party may terminate this Agreement by providing the other with written notice 30 days prior to the termination date.
12. The written provisions of this Agreement shall supersede all prior verbal statements of any officer or representative of the City, or any prior agreements between the parties and such statement or prior agreements shall not be effective or be construed as entering into, forming a part of, or altering this Agreement in any way. The entire agreement between the parties is contained in this Agreement document.
13. In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect.
14. Notice given pursuant to the Agreement shall be given in writing to the parties as follows:

Department: Department of Assigned Counsel
949 Market Street, Suite 334
Tacoma, WA 98402

City: City Administrator
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

This Agreement shall be in effect until the 31st day of December, 2002, provided that it be renewable or renegotiable on or before such termination date.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year above written.

CITY OF GIG HARBOR

PIERCE COUNTY

MAYOR GRETCHEN A. WILBERT

JOHN H. HILL, DIRECTOR, DAC

CITY ADMINISTRATOR

PIERCE COUNTY EXECUTIVE DIRECTOR

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20011231

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 GIG HARBOR GASOLINE LLC	CENTRAL 76 3718 56TH ST GIG HARBOR WA 98335 0000	081604	GROCERY STORE - BEER/WINE
2 KU ACQUISITION CORPORATION	FRED MEYER MARKET PLACE 5500 OLYMPIC DR BLDG B GIG HARBOR WA 98335 0000	076448	GROCERY STORE - BEER/WINE
3 HARVESTER GIG HARBOR, INC.	HARVESTER RESTAURANT 5601 SOUNDVIEW DR GIG HARBOR WA 98335 0000	366707	SPIRITS/BR/WM REST LOUNGE +
4 KKLD, INC.	UDDENBERG'S THRIFTWAY #277 3110 JUDSON AVE GIG HARBOR WA 98335 0000	362719	GROCERY STORE - BEER/WINE
5 CRAIG C. NELSEN ENTERPRISES, L	WATER TO WINE 3028 HARBORVIEW DR GIG HARBOR WA 98335 1962	082542	BEER/WINE SPECIALTY SHOP

RECEIVED
CITY OF GIG HARBOR



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: MARK HOPPEN, CITY ADMINISTRATOR *MHS*
SUBJECT: ERICKSON STREET
DATE: SEPTEMBER 3, 2001

INTRODUCTION/BACKGROUND

Erickson Street is currently an irregularly gated public street. In March, 1985, a previous City Council authorized the placement of this gate at the time of plat approval with the provision "that at some future date should the City require that the street be extended, that it be done." In his August 22, 2001, memorandum to the City Council, former Public Works Director David Skinner reported that as a result of public comment during the August 13, 2001, City Council Meeting, the Council directed the Public Works Director and the City Attorney to prepare a recommendation for either the removal of the gate or the continued closure of Erickson Street.

POLICY CONSIDERATIONS

Erickson Street was designed as part of the Spinnaker Ridge PUD in September of 1985. As indicated on the approved plat, the street was designed to meet public works standards including a 60-foot wide right-of-way that was dedicated to the City of Gig Harbor upon completion of the plat. The plat provided no evidence that Erickson Street was intended to be a dead-end street by providing any widening that would be required for a turnaround facility. The roadway was designed to be consistent with transportation planning methodology that encourages through-access as warranted. The design and construction of Erickson Street is equivalent to the city's Public Works Standards for collector arterials.

Erickson Street meets the City of Gig Harbor's adopted Transportation Comprehensive Plan definition of a collector arterial as a street that connects residential neighborhoods with smaller community centers and facilities, as well as provides access to the minor and principal arterial system, such as the two minor arterials to Erickson Street, Kimball Drive and Soundview Drive.

To date, the City of Gig Harbor Police Department does not identify enforcement issues associated with the gate located on Erickson Street. As a public safety policy, however, the police department does not support closures of through public streets that serve areas that require routine patrol and emergency response. Fire District #5, similarly, indicates no significant safety concerns with the existing situation, but indicates that service would be improved either with the removal of gate or with a radio-actuated gate device.

RECOMMENDATION

Based on the current situation with a gate on a public roadway, two courses of action are recommended:

1. Following approval and construction of a traffic circle and associated pedestrian amenities at the intersection of McDonald and Erickson, Erickson Street shall be open to public travel from Soundview Drive to Kimball Drive.
2. Following Council resolution to vacate the Erickson Street right-of-way pursuant to GHMC 12.14.018 D.*, changing the name of the street within Spinnaker Ridge, and installing a radio-actuated gate in place of the current gate, the through-access from Soundview Drive to Kimball Drive shall remain closed.

***GHMC 12.14.018 Compensation for vacation.**

D. Vacations Initiated by Council Resolution.

The council may pass a vacation ordinance to vacate a street, alley or public place without requiring that the abutting property owners make payment to the city for such vacation where:

1. The street, alley or public place was not acquired at city expense;
2. The city determines that the street, alley or public place is not needed for public travel either now or in the foreseeable future;
3. The city's maintenance or upkeep of the street, alley or public place is unrelated to any use of the street, alley or public place for public travel. (Ord. 723, 1996)



City of Gig Harbor. The "Maritime City"

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GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: AGREEMENT FOR USE AND MAINTENANCE - SUNSHINE
DATE: OCTOBER 4, 2001

INFORMATION/BACKGROUND

The Russell Foundation facility, approved as a planned unit development, included the requirement that the City of Gig Harbor and the developer enter into an agreement for the utilization of the Scenic View Overlook. The Hearing Examiner's decision also found that the Garden Area would be an asset to Gig Harbor. The attached agreement seeks to temporarily address the Hearing Examiner's decision until the Hearing Examiner can further interpret issues of significance with respect to a long-term agreement. Approval of the attached agreement by the City of Gig Harbor and Sunshine Property Management will enable public use of the public areas of the building and will enable private occupancy of the building.

POLICY/FISCAL CONSIDERATIONS

This agreement requires the owner to pay basic maintenance on the building as described in Exhibit 'C'. For exceptional maintenance, the city will pay up to \$15,000 during the contract period for costs substantiated by invoice. \$15,000 is equivalent to costs associated with other similar park facilities in the city based on a square foot analysis.

RECOMMENDATION

Staff recommends approval of the agreement, which has been reviewed by the City Attorney.

**AGREEMENT FOR USE AND MAINTENANCE
FOR SUNSHINE SCENIC VIEWING OVERLOOK
AND GARDEN AREA**

(3025 Harborview Drive, Gig Harbor)

THIS AGREEMENT FOR USE AND MAINTENANCE FOR SUNSHINE SCENIC VIEWING OVERLOOK AND GARDEN AREA is made and entered this ____ day of October, 2001 by and between **Sunshine Property Management, LLC, a Washington Limited Liability Company**, hereinafter referred to as "Owner", and **City of Gig Harbor, a Washington municipal Corporation**, hereinafter referred to as "Gig Harbor". Owner is the owner of the real property commonly referred to as 3025 Harborview Drive, Gig Harbor, and legally described on Exhibit A attached hereto (the "Property").

RECITALS

WHEREAS, the Owner filed development applications with Gig Harbor for a planned unit development (PUD 00-02) and a shoreline substantial development permit (SSDP 00-04) for the development of the Property; and

WHEREAS, the Gig Harbor Hearing Examiner approved the planned unit development and the shoreline substantial development permit with a number of conditions, including the requirement that the parties enter into an agreement to: (1) confirm that Sunshine will provide basic maintenance for the Scenic Viewing Overlook; (2) to address hours of access and any special terms in the event the Scenic Viewing Overlook becomes a high intensity public use; and (3) that the agreement outline Sunshine's right to request assistance from the City if the Scenic Viewing Overlook becomes a high intensity use; and

WHEREAS, the Hearing Examiner's decision found that the Garden Area would be an asset to Gig Harbor, but did not specifically require the parties to enter into an agreement addressing maintenance of the Garden Area; and

WHEREAS, the Hearing Examiner's decision requires that the Agreement between the parties be negotiated prior to occupancy of the Project; and

WHEREAS, the Hearing Examiner's decision also allows the parties to return to the Hearing Examiner to resolve issues relating to the proposed agreement, if the parties are not able to agree on the terms prior to occupancy; and

WHEREAS, the parties have attempted to negotiate an agreement to satisfy the conditions in the Hearing Examiner's decision, but interpret differently the scope of the

Hearing Examiner's decision regarding the Garden Area (as set forth in Section 1 below); and

WHEREAS, the parties have agreed to schedule a hearing before the Hearing Examiner to resolve their dispute; and

WHEREAS, the Owner would like to occupy the Project prior to the time that the parties resolve the issues with the Hearing Examiner; and

WHEREAS, the parties have agreed to enter into this Agreement for a limited period of time to satisfy the Hearing Examiner's decision as it exists, and to either amend this Agreement or enter into another Agreement after resolution of the dispute with the Hearing Examiner;

NOW, THEREFORE, in consideration of the mutual covenants and benefits and other good and valuable consideration, the parties agree as follows:

1. PREMISES.

A. The parties interpret differently the scope of the Hearing Examiner's decision relating to the Garden Area and the Scenic Viewing Area, and whether the Owner is required to keep the Garden Area open to the public, as a condition of the permits/approvals granted by the City. In addition, the Hearing Examiner's decision is unclear as to whether the Garden Area should be included in the Agreement mentioned in the Hearing Examiner's decision, and what if any, terms of that Agreement should be applicable to the Garden Area. The parties agree to resolve their differences as provided in the Hearing Examiner's decision, by returning to the Hearing Examiner for a determination.

B. Owner shall make the Garden Area and the Scenic Viewing Overlook Area, as the same are depicted in Exhibit B, attached hereto, open to the public pursuant to the terms of this Agreement. Except for the Premises described herein, no other portion of the Property shall be open or available to the Public without Owner's prior written consent, which may be withheld at Owner's sole discretion. No public parking, public restrooms or utilities are available on the Property.

2. TERM.

A. The term of this Agreement shall commence upon Owner's receipt of its occupancy permit for the building and Premises, or otherwise agreed by the parties in writing.

B. The parties contemplate that after the Hearing Examiner has

issued a new decision resolving the ambiguities, they will either: (1) amend this Agreement; or (2) terminate this Agreement and enter into a new Agreement. This Agreement shall remain in place until either amended or terminated by the duly authorized representatives of the parties.

3. USE

3.1 Nature of Use. Subject to the conditions of this Agreement and the underlying PUD approvals, the Premises shall be used only for the purpose of a Scenic Viewing Overlook and garden viewing area. The Public's use is non-exclusive and permissive in nature. No other public activities or uses shall be allowed, including public demonstrations or political rallies, without Owner's prior written consent. The Public shall also have no right to make any alterations, additions or improvements to the Premises, or store or install fixtures or equipment of any type on the Premises without the prior written consent of Owner.

3.2 Hours of Use. During the term of this Agreement, the Premises shall be open to the public for pedestrian viewing purposes from 9:00 a.m. to dusk (except as provided below), or for reduced hours as approved by Gig Harbor in the event of repeated vandalism or other abuses to the Premises. The City of Gig Harbor may provide assistance with closing the main gate at dusk. In the event Gig Harbor is unwilling or unable to provide assistance with closing the main gate, the Owner shall be responsible for closing the gates at the end of normal business hours.

3.3 Load Limit. Owner reserves the right to limit the number of people on the Premises as recommended by Owner's architect or City Fire Marshall to avoid issues relating to structural integrity or fire code restrictions. If limitations are imposed, the Owner shall provide appropriate signs to identify the number of individuals allowed on the Premises.

3.4 Immunity from Liability. The public's use of the Scenic Viewing Overlook and Garden Areas is subject to chapter 4.24 RCW.

4. OWNER CONTROL. The Premises and underlying Property shall remain at all times private property. The rights provided to the Public hereunder are non-exclusive. Owner also retains the right to close any portion of the Premises during maintenance, cleaning or repair, and shall have the right to install gates or other security devices to restrict access to the Premises after dusk and before 9:00 a.m. In addition, the Public's use of the Premises shall be subject to reasonable rules and regulations adopted by Owner and approved by Gig Harbor planning director which rules and regulations may be amended from time to time. All amendments to the rules and regulations shall also be approved by the Gig Harbor planning director.

5. MAINTENANCE OBLIGATIONS.

5.1 Scope of Obligations.

5.1.1. Owner. Owner will be responsible for the costs of initial installation of the landscaping and related improvements, and continuing basic maintenance for the Premises. For purposes of this Agreement, basic maintenance for landscaping shall be consistent with the Landscape Maintenance Guidelines dated September _____, 2001 prepared by The Berger Partnership attached hereto as Exhibit C. ("Landscape Maintenance Guidelines"). The Owner agrees to keep invoices for all costs associated with the repair, maintenance and upkeep of the Scenic Viewing Overlook and Garden Areas, and to provide copies of such invoices to Gig Harbor prior to the termination of this Agreement, so that the parties may reasonably develop a budget for Gig Harbor's payment of costs for the upcoming year(s). The Owner agrees to ensure that such invoices clearly state whether they relate to the Scenic Viewing Area or the Garden Area, in the event that the Hearing Examiner's new decision differentiates responsibility for these two areas.

5.1.2. Gig Harbor. Gig Harbor agrees, for the term of this Agreement, to participate in costs associated with the high intensity public use ("Gig Harbor's Costs") for the Scenic View Overlook Area and Garden Area only to the dollar amounts and extent described in this Agreement. During the term of this Agreement, Gig Harbor's Maintenance Cost shall be the equivalent of \$15,000 per year, non-refundable, and payable to Sunshine Property Management, LLC in quarterly installments, or at times otherwise agreed by the parties. In the event the Scenic Viewing Overlook and/or Garden Areas are damaged or destroyed by any casualty as to render them uninhabitable or unusable for a period exceeding ninety (90) days, Gig Harbor's Cost shall be abated on a pro rata basis until the Premises are reopened to the Public. In the event a portion of the Scenic Viewing Overlook and/or Garden Area are damaged or destroyed by any casualty, the abatement shall be based on a square footage basis in proportion of the uninhabitable or unusable area to the overall area of the Scenic Viewing Overlook and/or Garden Area.

6. TAXES AND OTHER CHARGES. It is the intention of Owner that this Agreement and the rights of the parties hereunder shall qualify the Premises for a property tax exemption under Chapter 84.36, RCW. Gig Harbor agrees to cooperate and execute the necessary documents to obtain the necessary approvals for the Premises to be exempt from property taxes pursuant to this Code section and RCW 82.29A.020. Gig Harbor makes no guarantee that the Premises qualify for any tax exemption.

7. NOTICES. Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to

the sending, mailing or delivery of any notice or the making of any payment by Owner to Gig Harbor or with reference to the sending, mailing or delivery of any notice or the making of any payment by Gig Harbor to Owner shall be deemed to be complied with when and if the following steps are taken:

All fees and other payments required to be made by Gig Harbor to Owner hereunder shall be payable to Owner at the address hereinbelow set forth or at such other address as Owner may specify from time to time by written notice delivered in accordance herewith. Gig Harbor's obligation to pay such fee and any other amounts to Owner under the terms of this Agreement shall not be deemed satisfied until such fee and other amounts have been actually received by Owner.

OWNER:

Sunshine Property Management, LLC
Post Office Box 1715
Tacoma, WA 98401

With a copy to:

Mark E. Holcomb

Bonneville, Viert, Morton
& McGoldrick, P.S.
P.O. Box 1533
Tacoma, WA 98401

GIG HARBOR:

Attn: Gig Harbor City Administrator

With a Copy to:

Carol Morris
Law office of Carol A. Morris, P.C.
321 Bromley Place NW
Bainbridge Island, WA. 98110

8. Amendment. This Agreement may not be altered, changed or amended except by an instrument in writing signed by both parties hereto

9. Miscellaneous. If any clause or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby. In the event either party fails to comply with the terms of this Agreement, the nondefaulting party shall be entitled to court cost and reasonable attorney fees for the enforcement of obligations. Neither party waives any rights regarding the decision of the Hearing Examiner by entering into this Agreement.

OWNER:

Sunshine Property Management, LLC.

GIG HARBOR:

On this _____ day of _____, 2001, before me, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, to me known to be the person who signed as _____, respectively, of City of Gig Harbor, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were duly elected, qualified and acting as said officers of the corporation, that they were authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC for the State of _____
Residing at _____
My Commission Expires _____

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel A: (Tax Parcel #0221082025)

Beginning at the meander corner to Section 8, Township 21 North, Range 2 East of the Willamette Meridian on the West side of Gig Harbor, Pierce County, Washington;

Thence running South 71° East 149.27 feet;

Thence South 58° East 300 feet for point of beginning;

Thence running South 32° West 322.12 feet to the west line of the Burnham-Hunt County Road; Thence South 76° 10' East 107 feet;

Thence South 89° 25' East 19.7 feet;

Thence North 32° East 280.28 feet to the line of Puget Sound;

Thence North 58° West 120 feet to the point of beginning, in Gig Harbor, Pierce County, Washington. Together with all tide and shore lands abutting thereon.

Parcel B: (Tax Parcel #0221082113)

Beginning on meander corner common to Section 5 and 8, Township 21 North, Range 2 East of W.M., on West side of Gig Harbor; thence on the Government Meander line in front of said Section 8 to 71° East 149.27 feet; South 58° East 420 feet to point of beginning; thence South 58° East 120 feet; thence South 32° West 207.04 feet to North line of County Road; thence North 89° 25' West 140.62 feet; thence North 32° East 286.28 feet to beginning. TOGETHER WITH second class tidelands adjoining.

TOGETHER with a perpetual easement for pedestrian and vehicular use in favor of the above described real property over and on an existing road on the following described real property situate in the County of Pierce, State of Washington, to-wit:

Beginning at the meander corner between Sections 5 and 8, Township 21 North, Range 2 East of the W.M., on the West side of Gig Harbor, thence South 71° East 149.27 feet; thence South 58° East 540 feet to the point of beginning; thence South 58° East 60 feet; thence South 32° West 172.42 feet; thence North 89° 25' West 70.31 feet; thence North 32° East 207.04 feet to the point of beginning. TOGETHER WITH tidelands of the second class abutting thereon.

Exhibit 'B'
PREMISES

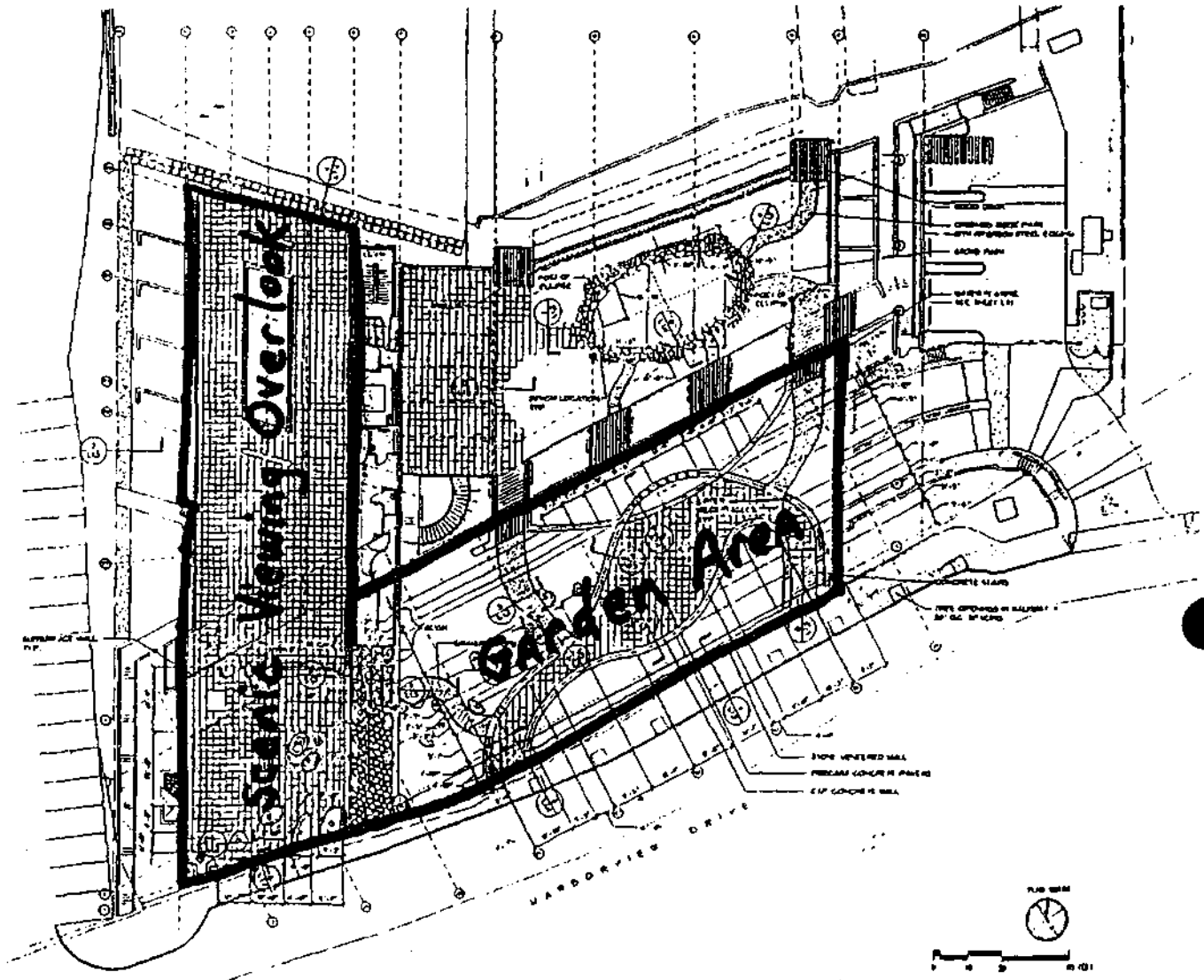


Exhibit 'C'
SUNSHINE PROJECT
LANDSCAPE MAINTENANCE GUIDELINES
AUGUST 2001

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1. SCOPE OF WORK

The work under this contract includes but is not limited to the following items: Tree, shrub, and groundcover basic maintenance; irrigation basic maintenance; waterfall and pond basic maintenance; and hardscape basic maintenance. Work under this contract shall adhere to the philosophy of the design as implemented. The maintenance contractor shall study and understand the design and unique qualities of the project before proceeding.

2. SITE

Sunshine Project -- Russell Family Foundation.
3025 Harborview Drive
Gig Harbor, WA 98335

3. EXECUTION OF WORK

The work shall be performed on a schedule mutually agreed to by the owner.

4. TREES, SHRUBS, GROUNDCOVERS AND PLANTING BEDS

A. WEED CONTROL

1. Weed control shall occur in all planting areas.
2. Weeding shall be performed on an orderly schedule of not less than monthly in the active growing season. Chemicals that prevent weed growth and that do not create an attraction for animals or children may be used where appropriate and proper with standard horticultural practices. Contractor shall notify Owner of intent to use chemical control and explain all cautions.
3. Weed crops should not be allowed to get sufficient size requiring spraying or other drastic measures. No weeds shall be allowed to reach seed maturation.
4. Weeding shall be accomplished such that the complete bed or planting area is rid of all noxious weeds and roots, and is left in a clean orderly fashion with mulch smoothed, crowns void of soil or mulch, and no sign of footprints, etc., in those areas.

B. FERTILIZATION

1. All planting shall receive fertilization in the first 3 years after planting. Beyond 3 years fertilizer shall be applied according to individual plant requirements. However, enough fertilizer shall be applied annually to sustain good color, healthy but not rampant growth, and good display of flowers as appropriate to each variety.
2. Fertilization shall occur as follows:
 - a. Trees shall be fertilized once in early spring (March) using 20-10-5 Agriform Plant Tabs, 2 per caliper inch, applied inside the drip line or active root zone of the trees in holes 6" - 8" deep.
 - b. Shrubs and groundcover shall be fertilized once in early spring (March 15 to April 15) using a well balanced fertilizer such as "Agro Nurseryman's #3, 7-8-9" for rhododendrons,

azaleas, conifers, broadleaf evergreens; and "Agro Rose and Garden" for deciduous and perennial or herbaceous planting.

Apply according to manufacturer's recommendations on slightly cultivated surface at drip line of plants.

3. All materials must be approved by Owner with Contractor supplying label. If the Contractor changes materials, he must submit any changes to Owner for approval. Other approved fertilizers include "Osmocote 14-14-14," Agro specialized products, or other approved formulations that include well-balanced slow release nutrients and trace elements.
4. Methods of application must be plant specific (except in groundcover areas), and shall follow manufacturer's recommendations.

C. CULTIVATION

1. All planting areas will require some cultivation in the period of one year. The purpose of cultivation is to prevent compaction, allow penetration of air, water and fertilizer through the mulch or surface layer of soil, encouraging proper and healthy plant growth.
2. The frequency of cultivation varies with the plant material type in each planting area or container.
 - a. At rhododendrons, azaleas, broadleaf evergreen and conifers, the mulch only should be cultivated, and only enough to prevent a crusting causing water and nutrients to run off the surface. This should occur approximately twice a year, once at application of fertilizer, and once in July or August.
 - b. Trailing type groundcover areas will require cultivation to encourage lateral growth or runners. Cultivation should avoid damage to stoloniferous growth or damage to newly rooted runners. Upon coverage, cultivation is not needed in trailing type groundcover areas.
3. Cultivation can be accomplished with any normal piece of equipment traditionally used and appropriate to the type of area being cultivated.

D. MULCH

1. Refurbishing of mulch should occur periodically in all planting areas as needed to maintain moisture and reduce weed growth.
2. Mulch is reduced by absorption into growing layer of soil, by wind or water, erosion, and by natural decomposition. Over application of mulch can also be detrimental to good healthy plant growth by covering crowns of plants with mulch depth. Therefore, use good horticultural sense in reapplication of mulch.
 - a. Rhododendrons, azaleas, broadleaf evergreen, conifers:
Mulch should not exceed 1/2" depth within drip line of plants. Reapply only when surface root zone is exposed. Maximum of once per year.

- b. Other trees, shrubs, groundcover:
Apply as necessary to fulfill needs stated in "A" above, not to exceed and accumulated maximum depth of 2".
3. The only acceptable mulch is composted sawdust, very dark in color, such as "Steerco" or other approved product.
4. Application method shall consider health and protection of roots, branches and crowns of plants where mulch is applied.

E. PRUNING/STAKING/GUYING

1. All plants may at some time require pruning. No pruning should occur until the maintenance contractor understands the design philosophy of the planting plan. Then pruning shall be done in such a fashion as to fulfill the ultimate intent of the design. Staking and guying shall be maintained only until the plant is capable of support on its own. Stakes and guys shall be evaluated and loosened (adjusted) through the first year and in general should be reviewed at the end of the hardening off period after the first growing season. Guys and stakes shall be maintained only when an insufficient root system creates inadequate support.
2. Maintenance contractor shall perform work related to pruning, staking and guying as follows:
 - a. Trees:
Shall be pruned between December 1 and February 15, to include shaping, thinning or correction tasks. Other light pruning can occur as needed in the remaining seasons, i.e.: sucker growth or pruning for access, broken or damaged branches, etc. Staking and guying shall be checked a minimum of 3 times in the first year, adjusting wires at trunk and verticality. In general, remove all staking after the first year as appropriate to the plants.
 - b. Shrubs and groundcover shall be pruned for shape between December 15 and February 15, and again in late June if appropriate.
3. Only sharp (non-anvil) type shears and sharp pruning saws may be used to provide a clean, straight cut. Damaged tissue must be removed and all cuts over 1/2" diameter must receive a liberal drenching of common rubbing alcohol. Use no asphalt in dressing.
4. Only the highest horticultural methods may be used by experienced workmen for pruning. NO inexperienced person shall do any pruning.
5. Shearing is not an acceptable pruning practice.

F. INSECT/PEST CONTROL

1. All plantings may at some time require corrective insect and/or pest control. Contractor shall maintain close inspection on each trip to the site to insure immediate identification of disease or insect infestation. An integrated pest management program is recommended. However, it is acknowledged that other preventative methods, i.e. spraying, may be required. When

necessary and as approved by Owner, the appropriate pesticide (spray, dust) shall be applied in accordance with state and local regulations. This is to be corrective rather than preventative.

2. Spray only as required to control disease or insect infestation, and as necessary to break egg or spore cycle reoccurrence.
3. Materials and methods must be in accord with state and local regulations. Only licensed applicators shall accomplish the work.

G. LEAF AND DEBRIS PICK UP

1. All hard surfaces within this contract area shall have all litter and fallen leaves picked upon an orderly basis.
2. Maintenance contractor shall remove litter and fallen leaves on a weekly basis as agreed to by the Owner.

5. HARD SURFACE MAINTENANCE

- A. All hard surfaces (horizontal); walkways, terraces, paths, dock, etc; within the project areas shall be blown or washed clean unless directed otherwise by Owner.
- B. Cleaning shall be accomplished on a weekly basis at the same time as litter and leaf pick up. Contractor should accomplish this task when it least disrupts traffic and uses of these areas. Use of power equipment shall be considerate of time of day and disruption to building users.
- C. Contractor shall power wash surfaces clean with high pressure hose and nozzle on an annual basis in April .

6. DRAINAGE SYSTEMS MAINTENANCE

- A. Contractor shall be responsible for periodically monitoring all surface water in catch basins, yard drains, etc., within the project area.
- B. Monitoring shall occur on an annual basis or as appropriate to the needs of areas or drains, i.e. areas with high sedimentation shall be reviewed more frequently, especially in fall and winter.
- C. Contractor shall remove all debris or obstructions in drain and boxes to allow for fast and efficient surface water runoff. Catch basins or drains that accumulate cigarette butt filters shall be cleaned frequently to prevent visual accumulation as well as physical blockage.
- D. Contractor shall monitor all planting areas and report any drainage problems immediately to Owner in writing.

7. IRRIGATION MANAGEMENT

- A. Contractor shall be responsible for maintenance of entire irrigation system from the backflow prevention device through all heads and subsurface emitters, as well as the automatic controller.
- B. Contractor's work shall include fall winterization of system, spring activation and monthly monitoring to include adjustment to insure proper rates of water through the irrigation season.

- C. Contractor must replace all damaged or non-functioning equipment with exactly the same properly functioning equipment. Substitution will be considered only if written change order request is processed. Contractor shall maintain on hand or have access to all equipment within 24 hours to prevent damage to plantings. All replacement equipment must be itemized and invoiced along with labor cost, as required by contract.

8. WATER FEATURE

- A. Contractor shall test the fountain for pH, alkalinity and Silver/Copper levels on a regular basis. During the summer and periods of warm weather the water feature shall be tested on a weekly basis. During the remainder of the year the water feature shall be tested once a month.
 - 1. pH level : 7.2 - 7.6
 - 2. Alkalinity: 80 ~ 150 ppm
 - 3. At start up and peak use add powdered chlorine (calcium hypochloride)
- B. Contractor shall remove all debris out of the holding tanks on a regular basis. Check the strainer basket at the same time as debris removal. Contractor shall check water levels in the holding tanks for the underwater lights prior to turning them on.

9. AQUATIC PLANTS

- A. Contractor shall divide the plants to ensure that aquatic plant growth is controlled and the containers do not become overcrowded. Only the highest horticultural methods may be used by experienced workmen.
- B. If it is necessary to periodically drain the water feature for cleaning and maintenance, the Contractor shall remove and store the aquatic plants in a manner so that the plants do not dry out.

10. PLANT REPLACEMENT

- A. Any plant that is either dead or in unsatisfactory condition, as determined by Owner or Maintenance Contractor shall be removed from site and shall be replaced as soon as conditions permit within the normal planting season. All replacement plants shall have guarantee period initiated for one year. Contractor shall identify and if appropriate do all work necessary to prevent replacement plants from a similar demise.
- B. Replacement Materials:
All replacement plants shall be of the same variety, size and root condition of existing adjacent plant materials and shall include any new growth that may have occurred since planting, such that replacement plants match existing plants of the same variety. Contractor shall fertilize, stake, guy and/or wrap as appropriate.
- C. Plant replacement shall cause the least disruption to existing and adjacent plantings such that upon completion, the area looks whole, with mulch replaced and beds neat and well groomed.
- D. All replacement cost shall be itemized for review by Owner to include:
 - 1. Date of work
 - 2. Name of workman

3. Tasks completed
 4. List of material itemized with cost
 5. Mitigating measures taken to prevent similar problems from occurring in future.
 6. Name of person other than Contractor requesting work be done.
 7. Concerns regarding problem or work completed.
- E. Billing must be submitted in a timely fashion, not to exceed 2 weeks or next billing cycle after completion of work. Contractor shall use % markup and hourly pay schedule as submitted in proposal.

11. ITEMS NOT IN CONTRACT

The items noted below are not part of these guidelines. The maintenance standards identified above are intended for a use of the site consistent with private property by the owner and occupants of the building.

- A. Maintenance of site furniture, subsurface drainage, underground electrical, general building maintenance or repair of building, vandalism or theft, unless specifically outlined herein.
- B. Follow-up fertilizing required under the installation contract.
- C. Any maintenance, replacement or repair to vegetation/plants (including aquatic), hardscape, drainage system, irrigation system, water feature, and related improvements caused by Theft and Vandalism.
 - (i) Contractor shall immediately repair, replace or remove results of any theft or vandalism, specifically dealing with plants, planting soil, or irrigation. His work shall not include horizontal or vertical surfaces, furniture, lights, or any surfaces relating to the buildings. However, contractor shall notify Owner of any vandalism observed on site.
 - (ii) All damage as a result of theft or vandalism shall be repaired, replaced or removed within 24 hours of observation by Contractor.
 - (iii) If materials are reasonable to repair, do so. If not, remove immediately and replace with material of like size, color, quantity, etc., to make the project look whole. If proper size or material cannot be found, contact Owner for decision regarding procedure.
- D. Initial activation of irrigation system.
- E. Extraordinary Maintenance . Extraordinary maintenance shall mean the additional maintenance work resulting from the public's use or activity of the site. Extraordinary maintenance that is not covered by these standards includes without limitation:
 - Scope of Work on a schedule that is more frequent than noted above.
 - Pruning, staking, and guying to address damaged or vandalized plants.
 - Removal and disposal of litter and debris (which is recommended on a daily basis).
 - Pressure washing is recommended on an as-needed basis, no less than quarterly, due to the high traffic use.

- Monitoring Drainage Systems is recommended on a quarterly basis because of the public use.
- Cleaning and maintenance of site furniture including benches and handrails.
- Removal of animal feces and related debris (recommended on a daily basis).

F. Opening and closing of the Scenic Viewing Overlook

E N D O F G U I D E L I N E S



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: DAVE BRERETON, INTERIM PUBLIC WORKS DIRECTOR *Dave*
SUBJECT: SUBGRANTEE AGREEMENT FOR EARTHQUAKE MITIGATION
DATE: OCTOBER 2, 2001

INTRODUCTION/BACKGROUND

The attached agreement with Pierce County Department of Community Services will provide mitigation for the effects of the February 28, 2001 earthquake. The attached agreement enables the receipt of Block Grant funds in the amount of \$3,000 for reimbursement costs incurred for inspection and repair of a damaged water main and for hiring a consultant to inspect the City's water tanks for structural damage. Also attached is a letter from the City's insurance carrier, Association of Washington Cities (AWC) that expresses the City's insurance for the receipt of these funds. This funding is for work and consultant services that already have been completed.

The intent of this Agreement is to assist the City in our earthquake mitigation activities by reimbursing us for repair and consultant costs.

FISCAL CONSIDERATIONS

Pierce County, through its Department of Community Services, is providing \$3,000 to reimburse the City for costs previously incurred for inspecting and repairing a damaged water main and for hiring a consultant to inspect the City's water tanks for structural damage.

RECOMMENDATION

I recommend that the Council authorize execution of the Subgrantee Agreement for Earthquake Mitigation, in an amount not to exceed three thousand dollars and no cents (\$3,000.00).

**SUBGRANTEE AGREEMENT
FOR EMERGENCY SERVICES**

**CITY OF GIG HARBOR
EARTHQUAKE MITIGATION**

Start: February 28, 2001

End: July 1, 2001

By:

Pierce County Department of Community Services
Community Development Division

Subgrantee:

City of Gig Harbor

Contact: Maureen Whitaker
Public Works Dept.

Phone: (253) 851-8145

Subgrantee Agreement
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ERROR! BOOKMARK NOT DEFINED.



PIERCE COUNTY

Title: City of Gig Harbor Earthquake Mitigation
Starting Date: February 28, 2001
End Date: March 11, 2001
FY 99: \$3,000.00
Subgrantee: City of Gig Harbor
Contact: Maureen Whitaker
Telephone: (253) 851-8145

**SUBGRANTEE AGREEMENT FOR
EMERGENCY MITIGATION PROJECT**

Between PIERCE COUNTY, through its Department of Community Services (identified in this document as the County or "DCS") and the **City of Gig Harbor** (identified in this document as the Subgrantee), for the project identified as **City of Gig Harbor Earthquake Mitigation**, which is a federally funded project through Block Grant B-99-UC-53-0002 from the U.S. Department of Housing and Urban Development. The parties are desirous of entering into an agreement as follows:

WITNESS: The parties hereto agree to faithfully perform the following services in accordance with stated terms and conditions.

I. SCOPE OF SERVICES

- A. The intent of this Agreement is to assist the City of Gig Harbor in its earthquake mitigation activities by reimbursing them for costs incurred for inspection and emergency repairs of damage to facilities and infrastructure incurred during the February 28, 2001 earthquake event.
- B. To accomplish the intent of this Agreement, the Subgrantee and the County shall perform the services described in Exhibit A, which is made a part of this Agreement.

II. CONSIDERATION

- A. In consideration of the mutual promises given, and the benefits to be derived from this Agreement, the County agrees to provide Block Grant funds in the amount of: \$3,000.00 (Three Thousand dollars) to accomplish the Scope of Services described above. The project budget and applicable financial requirements are provided as Exhibit B, which is made a part of this Agreement.
- B. The project tracking and accounting codes for this project will be:

BARS NO. 134.999.3651.55950.49.0000
- C. This code should be referenced in all documents and reimbursement requests forwarded to DCS.



III. PERIOD OF PERFORMANCE

The Agreement shall be effective February 28,2001 and, subject to Article IV of Exhibit D, and shall be completed no later than March 11, 2001, or until all funds are expended, whichever occurs later.

IV. INSURANCE AND BONDS

The Subgrantee and its Contractors and Consultants shall maintain insurance and bonds as specified in Exhibit C.

V. GENERAL TERMS AND CONDITIONS

The general terms and conditions of this Agreement are provided as Exhibit D, which is made a part hereof.


PIERCE COUNTY
CONTRACT SIGNATURE PAGE

Contract # _____

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____
20____.

CITY OF GIG HARBOR:

Signature and Title of Signatory Authorized by law.

 _____

Typed Name: Gretchen Wilbert

Title: Mayor

Federal Tax I.D. No. 91-6001435

Address: 3105 Judson Street.
Gig Harbor, WA 98335

Contact Name: Maureen Whitaker

Phone: (253) 851-8145

PIERCE COUNTY

Community Development Date

Prosecuting Attorney (as to form only) Date

Risk Management Date

Budget and Finance Date

Department Manager Date

N/A

County Executive Date
(if over \$250,000)

STATEMENT OF WORK**I. GENERAL**

The intent of this Agreement is to assist the City of Gig Harbor in its earthquake mitigation activities by reimbursing them for costs incurred for inspection, emergency response and emergency repairs of damage to facilities and infrastructure incurred during and immediately after the February 28, 2001 earthquake event.

A. SUBGRANTEE RESPONSIBILITIES:

1. The Subgrantee shall comply with all noted laws, regulations, requirements and conditions of this Agreement.
2. The City will plan and implement a program of inspections and mitigation actions as follows:
 - a. The City will inspect its facilities and infrastructure, repairing the water main break at Vernharsdson and Wheeler Streets with its staff.
 - b. The City will have a structural engineer inspect the City's water tanks for any possible damage.
 - c. The City will provide materials and will mobilize equipment in support of the water main break.
3. Contract compliance shall be evidenced by the City's report that all of the foregoing activity has been accomplished.
4. Failure to implement the project or to demonstrate substantial progress within 90 days of signature of this Agreement, or to meet an average of 90 percent of the performance criteria for three consecutive months shall cause DCS to re-evaluate the need for and methods of the project. The result of such re-evaluation may necessitate re-structuring of the project; redefinition of goals and objectives; or termination of the Agreement for lack of need, ineffective or improper use of funds, and/or failure to implement the project in a timely and reasonable manner.
5. The Subgrantee shall provide a single report of completion by August 17, 2001 or at such a later date as may be agreed upon.

B. COUNTY RESPONSIBILITIES

To accomplish the intent of this project the County shall:

1. Provide administrative and financial oversight and direction in accordance with established laws and regulations.
2. Provide technical assistance to the Subgrantee and its contractors and subcontractors, particularly regarding compliance with federal and local laws and regulations and in development of processes and procedures to assure attainment of project goals and objectives.
3. Monitor and evaluate program performance against performance criteria noted above.
4. Pay, on a timely basis, all reasonable requests for payment, which are eligible and appropriate for payment, and which are supported by sufficient documentation.

BUDGET AND FINANCIAL REQUIREMENTS**I. APPLICABLE REGULATIONS AND RESTRICTIONS**

It is understood that Block Grant funds provided by this Agreement, and program income generated by this project, are federal funds administered by the County and are subject to those regulations and restrictions normally associated with federal programs including: OMB Circular A-21, A-87, A-110, A-122, A-128 and A-133 (as appropriate), the Washington State BAR's Manual, and other such uniform administrative requirements for grants-in-aid now in effect or which hereafter may be made applicable by local, state or federal laws or regulations. All of the above are incorporated in this Agreement by reference.

II. APPROVED USES, GRANT FUNDS

It is expressly understood that Block Grant funds may only be used for costs applicable to this Agreement which are included in the attached, approved project budget, may not be used for the general administration or operation of the Subgrantee, and may not replace non-federal funds in any jointly funded project.

III. INAPPROPRIATE FUNDS OBLIGATION

A. Block Grant funds shall not be obligated for:

1. Costs incurred prior to issuance of a formal Notice to Proceed, except as may be authorized for payment of the Subgrantee's Surety Bond, or such emergency services as may be authorized by the County in Exhibit A.
2. Any action subsequent to an order from the County for suspension or termination of the project, except as may be reasonably necessary for the protection of life and property; which could not otherwise be avoided; or which is otherwise eligible if the action precipitating the order for suspension or termination is found to be acceptable to the County.
3. Costs subsequently found to be ineligible or inappropriate pursuant to federal regulations.

B. The Subgrantee shall refund to the County any payment or partial payment expended by the Subgrantee or its Contractors and Consultants, which is subsequently found to be ineligible, inappropriate or illegal.

IV. PAYMENT REQUESTS

Payment shall be by periodic request from the Subgrantee on its letterhead for approval by the County, for payment or reimbursement of costs actually incurred, or profit earned, supported by appropriate documentation, which proves beyond reasonable doubt that such payments are eligible and appropriate. Specific details regarding payment procedures may be worked out between the parties. The Subgrantee is prohibited from submitting claims in excess of actual requirements for carrying out the program. At a minimum, Subgrantee shall submit a payment

request at least once during any month in which the Subgrantee or its contractors or consultants has expenditures of \$1,000 or more.

V. MULTIPLE YEAR FUNDING

Subgrantees whose projects are funded by multiple agencies or from multiple funding years, shall indicate in the project budget the agency and/or funding year from which the funds derive, and how those funds will be utilized.

VI. PROGRAM INCOME

Program income generated as a result of this project shall only be utilized by the Subgrantee, as authorized in Exhibit A, Section II.A.4.e, or by a Change Order to that Exhibit, or to this Agreement. When program income is authorized to be utilized by the Subgrantee, that program income shall be substantially disbursed/expended before requesting release of additional Block Grant funds from the U.S. Treasury.

VII. UNEXPENDED FUNDS AND INCOME

At the conclusion of this Agreement, all unexpended Block Grant funds, any uncollected and/or unexpended program income remaining in Subgrantee's accounts, and any remaining equipment or operation supplies with a value in excess of \$5,000, shall be immediately returned to the account of the County unless specifically authorized to the contrary by Exhibit A to this Agreement or by a Change Order to that Exhibit.

**PIERCE COUNTY
BUDGET SUMMARY OF PROPOSED EXPENDITURES**

(PHYSICAL IMPROVEMENT PROJECTS)--

SOURCE OF FUNDS

LINE ITEM ACTIVITY	CDBG	FEDERAL	STATE	OTHER	TOTAL	TOTAL
Funds Allocation	Funds Breakdown					
Staff Costs for Inspection, Mitigation & Emergency Response	\$1,904.82				\$1,904.82	
Consultant Inspection costs (Water Tanks)	\$510.00				\$510.00	
Permits & Fees						
Land Acquisition						
Site Development & Landscape						
Utilities (Water and Sewer)						
Buildings (New Construction)						
Roads and Sidewalks (Paving)						
Building Renovation (includes accessibility)						
Equipment Mobilized	\$344.44				\$344.44	
Materials Used	\$240.74				\$240.74	
20% WSST, etc.						
TOTAL	\$3,000.00				\$3,000	
PREPARED BY:				PHONE:		

INSURANCE AND BONDS**I. GENERAL**

The following insurance and bonding requirements shall be applicable to the Subgrantee, its contractors and consultants. *Note: Pierce County is to be named as an additional insured on all insurance policies.*

II. INSURANCE (Not Required)

The Subgrantee and its contractors and consultants shall carry throughout the life of this Agreement, General Liability insurance, Comprehensive Automobile Liability Insurance and such other coverage as may be appropriate. The Subgrantee shall complete a Certificate of Insurance, which is to be made part of this Agreement, such liability coverage to be not less than \$1,000,000.

III. BOND (Not Required)

The Subgrantee shall maintain, throughout the life of this Agreement, an annual Fidelity or Performance Bond in an amount not less than 25 percent of the value of this Agreement.

IV. BID BOND (Not Required)

For any competitive construction bids required as part of this project, each bidder shall be required to submit with its bid, a bid bond in an amount not less than 5 percent of the value of the base bid, or in lieu of such bond, to provide other acceptable security in a like amount.

V. CONSTRUCTION, PERFORMANCE & PAYMENT BONDS

Each construction contractor on this project shall be required to maintain, throughout the life of any construction contract, a 100 percent performance bond. Each construction contractor shall also maintain throughout the life of any construction contract, a payment bond, guaranteeing payment to subcontractors and suppliers in an amount equal to the total amount of work and materials to be subcontracted and/or purchased.

VI. HOLD HARMLESS

A. The Subgrantee, and its contractors, subcontractors and consultants, agrees to defend, indemnify, and save harmless Pierce County, its appointed and elected officers and employees from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys fees and costs by reason of any and all claims and demands upon the County, its appointed or elected officers or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Subgrantee, its contractors, subcontractors or consultants, and Pierce

County, its appointed and elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officers or employees.

B. If the claim, suit, or action for injuries, death, or damages as provided for in the preceding paragraph is caused by or results from the concurrent negligence of:

1. The indemnitee or the indemnitee's agents or employees, and
2. The indemnitor or the indemnitor's agents or employees, the indemnity provisions provided for in the preceding paragraph shall be valid and enforceable only to the extent of the indemnitor's negligence.

C. The Contractor and any Subcontractor(s) agree that the obligation to indemnify, defend and hold the County harmless as provided above extends to any claim brought by or on behalf of any employee of the Contractor or its Subcontractor(s). This provision, if applicable, is mutually negotiated by the parties to this Contract pursuant to RCW 4.24.630, and waives employer immunity granted by statute only to the extent necessary to carry out the promise of indemnification contained above.

GENERAL TERMS AND CONDITIONS

I. CHANGES AND AMENDMENTS

A. All changes and amendments to this Agreement, except for the return of unused funds following project completion, shall be by written, formal Change Order in a style and form acceptable to the County.

B. No change or amendment to this Agreement shall be implemented pending execution by both parties of the formal Change Order, except when immediate implementation of the change or amendment shall be necessary and reasonable to protect life or property, or could not otherwise be avoided. In such instance, verbal confirmation shall be obtained as quickly as reasonably possible and a formal Change Order issued within three working days.

II. RELATIONSHIP

The relationship of the Subgrantee to the County shall be that of an independent agency. The Subgrantee shall have no authority to execute contracts or make agreements or commitments on behalf of the County and nothing in this Agreement shall be deemed to create the relationship of employer/employee or principal/agent between the parties.

III. ASSIGNABILITY

The Subgrantee shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement to any party without prior written consent of the County.

IV. SUSPENSION AND TERMINATION

A. There are five reasons for suspension or termination of this agreement. They are:

1. **By fulfillment.** The contract will be considered to be terminated upon fulfillment of its terms and conditions.

2. **By mutual consent.** The Agreement may be terminated, or closed in whole or in part at any time if both parties consent to such termination or closure, the terms of which shall be documented in a Change Order to the Agreement.

3. **By 15 days notice for convenience.** Pierce County may suspend or terminate this Agreement in whole or in part, for convenience, upon 15 days written notice to the Subgrantee.

4. **For cause.** Pierce County may suspend or terminate this Agreement in whole or in part, for cause, when the Subgrantee has failed in whole or in part to meet its commitments and obligations as outlined below and when Pierce County deems continuation to be detrimental to its interests. Cause includes:

- a) failure to comply with the terms and conditions of this Agreement, or to substantiate compliance;
- b) ineffective, improper or illegal use of project funds or resources.
- c) provision of materials, information, reports or documentation which is incomplete, incorrect or false, either knowingly or inadvertently;
- d) failure to implement the project or to proceed thereon in accordance with approved project schedules;
- e) any illegal act; or
- f) Failures to resolve in a timely fashion, audit findings associated with this or other federally-funded programs.

5. **By impossibility.** Pierce County may suspend or terminate this Agreement in whole or in part if, for any reason, the carrying out of this Agreement in the time and manner specified is rendered unfeasible or impossible.

B. In the event of suspension or termination for convenience or cause, Pierce County shall provide formal, written notification of that fact to the Subgrantee by certified letter, or by letter requiring the Subgrantee's acknowledgement of receipt.

C. Upon receipt of such written notification, the other party shall immediately take action to comply, ceasing or stopping at its earliest opportunity such operations as may reasonably be stopped without endangering life or property. All actions for cause covered by the notice are to be fully suspended or terminated as quickly as possible but no more than five calendar days following receipt of said notification. All actions for convenience covered by the notice are to be fully suspended or terminated as quickly as possible but no more than 15 days following receipt of such notification. When additional actions of the Subgrantee are required to protect life or property, it shall immediately notify Pierce County in writing of such actions and shall proceed to implement any further written instructions of Pierce County.

D. In the event of such suspension or termination by Pierce County, the Subgrantee may recover any reasonable and otherwise allowable costs incurred in compliance with written direction of Pierce County relative to activities required to complete outstanding work or additional work resulting from such suspension or termination.

E. Pierce County may withhold or suspend payments due under this Agreement for any lawful purpose, but shall provide written instruction to the Subgrantee within five working days indicating actions which may be taken by them to release payment or remove suspension.

F. Termination of this agreement by the County at any time, with or without prior notice, shall not constitute a breach of this agreement.

G. Actions by either party under this Article shall not constitute a waiver of any claim by either party arising from conditions or situations leading to such suspension or termination.

V. PROCUREMENT, SUBCONTRACTS

The Subgrantee may, upon the County's prior review and specific written approval of the contract instrument, enter into any contract or procurement action authorized or necessary for the successful completion of this Agreement (other than contracts for incidental procurements not directly related to the accomplishment of this project which do not require County approval). All procurement actions and contracts other than incidental procurements shall be structured in accordance with applicable state and federal law relating to contracting by public agencies. Contact the County for specific language to be incorporated in each contract or procurement action.

VI. SEVERABILITY

If any provision of this Agreement, or portion thereof is held invalid, the remainder of this Agreement shall not be affected, providing the remainder continues to conform to applicable federal and state law and regulations.

VII. RECORDS

The Subgrantee shall maintain all project records required by applicable federal, state and county regulations, which are incorporated herein by reference. Project records must be retained for a period of at least four (4) years after completion or closure of the project. The public shall be granted reasonable access to all "public records".

VIII. ACCESS, EXAMINATION, MONITORING AND AUDIT:

A. The County, the State Auditor, HUD, a selected independent auditor, or their delegates shall have the right of access to, and the right to examine, monitor and copy all business records, books, papers and documents relating to the grant, pursuant to appropriate state and federal regulations, requirements and standards, all of which are incorporated herein by reference. Such access, examination and monitoring may include, but is not limited to, inspections and reviews on site, or in the office of the Subgrantee, or any contractor, subcontractor, or supplier receiving CDBG funds. Client confidentiality will be respected and maintained to the greatest possible degree.

B. Each local government or non-profit recipient (Subgrantee) of federal funds from any source is required to obtain periodically, an audit of its activities which shall meet or exceed the criteria for audits of federal programs set forth in OMB Circulars A-110, A-128 and A-133 (as applicable). The Subgrantee shall be obligated to resolve findings relating to use of CDBG funds in a timely manner.

C. Prior to commencement of this project, if the Subgrantee has recently used federal funds, the Subgrantee shall furnish to the County for review a copy of its latest audit including all findings related to the use of CDBG funds, and the Subgrantee's resolution

of those findings. Similarly, within 30 calendar days of the completion of any subsequent audit, the Subgrantee shall provide the same information noted above to the County. If warranted by audit findings, the Subgrantee's failure to comply with applicable laws and regulations relating to use of CDBG funds, or the Subgrantee's failure to resolve such findings in a timely manner, Pierce County may apply appropriate sanctions including the suspension of this Agreement, withholding a percentage of payments due, or disallowance or withholding of Subgrantee's overhead costs as specified by federal regulations.

IX. CODE OF CONDUCT

A. No officer, employee or agent of the Subgrantee shall participate in the selection, award, or administration of activity funded in whole or in part with CDBG funds if a conflict of interest, real or apparent, would exist; nor shall their families, or those with whom they have business ties, so benefit.

B. In addition to the above, no official, employee or agent of any federal, state or local government for the area in which this project is located, nor members of their families, nor those with whom they have business ties, have or acquire any interest, direct or indirect, in any contract or subcontract or its proceeds for work accomplished in support of this Agreement, nor shall they have or acquire any interest, direct or indirect, in the project area which would conflict in any manner or degree with this project.

X. RIGHTS IN DATA

The County and HUD retain a non-exclusive, royalty free, and irrevocable right to duplicate, use for their own purposes, disseminate, disclose, or authorize others to utilize all data and materials generated and/or provided hereunder.

XI. PROPERTY, MATERIALS AND OPERATING SUPPLIES

A. Real property acquired or improved by Block Grant funds provided by this Agreement are subject to a reversion of assets provision limiting the Subgrantee's right to dispose of said property or to utilize it for a purpose other than that specified in this Agreement, for a period of time indicated below. This provision will be implemented through a deed of trust in favor of the County, placed on the property at the time this Agreement is entered into or at such later time as may be acceptable to the County. Such right will be equivalent to the percentage share of Block Grant funds provided in relation to the worth of the real property at the time of initiation of the projects(s). Any circumstance affecting that property other than those stated in the Subgrantee's application for funding, shall require the specific approval of Pierce County and shall be incorporated in Exhibit A to this Agreement or in a Change Order to that Exhibit. In the event of a proposed change of use or ownership, the Subgrantees shall contact the County for appropriate disposition of this provision.

Value of Grant	Length of Interest
Under \$7,500	None
\$7,501 to \$25,000	5 Years

\$25,001 to \$100,000
\$100,001 and up

15 Years
25 Years

NOTE: Additional CDB Grants received during an active 'length of interest', or an increase in the value of this grant by Change Order to the Subgrantee Agreement, shall be cumulative when determining the 'Value of Grant' and the county's 'Length of Interest' and shall increase the length of that interest, and the Deed of Trust may be revised accordingly.

B. Disposition of real property acquired in whole or in part with Block Grant funds shall be at current appraised fair market value. However, that property may be disposed of for lesser value, including donation, if the disposition at the lesser value is necessary to meet one of HUD's national objectives and is permissible under state and local law. When disposition is recommended by the Subgrantee for a lesser value, or if the County should determine that disposition for such lesser value is in the best interest of the program, those reasons shall be fully documented.

C. Non-expendable equipment, materials, operating supplies and assets other than real property, purchased in whole or in part with Block Grant funds, whose per unit (or total value for supplies) fair market value at the time of completion of use is in excess of \$5,000, are the property of the Block Grant program and are to be utilized, maintained, inventoried, controlled, and disposed of pursuant to applicable federal regulations. The Subgrantee shall be responsible for loss or damage to all such equipment, material and assets in its care and, after completion of use, shall return all such equipment, materials and assets to the County for disposition within 30 days following completion of the project(s), unless otherwise specified.

D. If such equipment, materials, operating supplies or other assets are partially funded from other sources, the County shall share any funds received as a result of said disposition at a percentage of value received equal to the percentage of the original costs provided by the individual funding sources.

E. Any equipment, materials, operating supplies and other assets whose per unit (or total value for supplies) fair market value at time of project completion or final use is less than \$5,000, may be retained or disposed of by the Subgrantee without further obligation to the County. Any asset, whose fair market value is in question, should be referred to the County for review before any disposition action is taken by the Subgrantee.

XII. COMPLIANCE WITH FEDERAL REGULATIONS

A. The Subgrantee and all its consultants and contractors shall comply with the following federal laws and regulations, whenever and wherever they are applicable. These laws and regulations are incorporated in this Agreement by reference:

1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) relating to nondiscrimination in performance of this project and to the benefits deriving from it as implemented by HUD regulation 24 CFR 570.601(a).
2. Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) as amended, relating to nondiscrimination in housing as implemented by HUD regulation 24 CFR 570.601(b).
3. Executive Order 11063 relating to non-discrimination in housing as amended by Executive Order 12259 and as implemented by HUD regulation 24 CFR 570.601(c).
4. Section 109 of the Housing and Community Development Act of 1974 as amended, dealing with non-discrimination in program benefits because of race, religion, color, age, national origin, sex or disability as implemented by HUD regulation 24 CFR 570.602.
5. The construction labor standards and wage rates set forth in Section 110 of the Housing and Community Development Act of 1974 as amended and as implemented by HUD regulation 24 CFR 570.603.
6. Executive Order 11246 dealing with nondiscrimination in employment as amended by Executive Orders 11375 and 12086 and as implemented by HUD regulation 24 CFR 570.607(a).
7. Section 3 of the Housing and Community Development Act of 1974 as amended, dealing with employment and training of County low-income residents as employees and trainees and utilization of Pierce County business as contractors, subcontractors, and suppliers as implemented by HUD regulation 24 CFR 570.607(b).
8. Executive Order 11988 relating to evaluation of flood hazards and the flood hazard and insurance protection requirements of Section 102(a) and 202(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) as implemented by HUD regulation 24 CFR 570.605.
9. The relocation, acquisition and displacement requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as implemented by HUD regulation 24 CFR 570.606.
10. The Lead Based Paint Poisoning Prevention Act (42.U.S.C. 4801 et seq.) as implemented by HUD regulation 24 CFR 570.608.

11. The regulations, policies, guidelines and uniform administrative requirements of OMB Circulars A-21, A-87, A-110, A-122 and A-128 as they relate to the acceptance and use of Federal funds as implemented by HUD regulation 24 CFR 570.610.

12. The National Environmental Policy Act of 1969 and other statutory environmental requirements as implemented by HUD regulation 24 CFR Part 58.

13. Executive Orders 11625, 12138 and 12432, and Public Law 95-507, dealing with the use of minority and women owned business enterprises as implemented by HUD regulation 24 CFR 85.36(e).

14. The provisions of the Hatch Act limiting political activities of government employees.

15. Executive Order 11288 relating to the prevention, control and abatement of water pollution.

16. HUD Regulations for implementing the Community Development Block Grant Program contained in 24 CFR 570.

B. **Note:** Copies of applicable laws and regulations are available upon request from the Department of Community Services. A listing of these applicable laws and regulations are to be incorporated in each contract, subcontract and consultant agreement issued by the Subgrantee or its contractors.

XIII. PROJECT ELIGIBILITY

A. National Objectives.

1. All physical improvement projects authorized under the Block Grant program must meet one of three national objectives. The project must:

- a) Principally benefit lower-income individuals (or families),
- b) Eliminate slums and/or blight, or
- c) Meet an urgent need.

Detailed definitions of these objectives are set forth in HUD regulations.

B. Facility Eligibility By Service To Lower-Income

1. Facilities constructed, improved, renovated, etc. with Block Grant funds to serve lower-income individuals may be considered eligible if they serve an area in which the majority of residents are lower-income or if the clients they serve are predominantly lower-income (including those groups presumed to meet lower-income requirements specified in (b) below).

a) All Pierce County residents (individuals or families) except residents of the City of Tacoma, whose family income equals or is less than the HUD Section 8 Income Guidelines (which are incorporated in this Agreement by reference) shall be considered as lower-income for the purposes of determining whether clients served are lower-income unless specified to the contrary in Exhibit A.

b) Unless specific evidence is provided to the contrary, the following groups of individuals shall be presumed to automatically qualify as lower-income individuals or families for determining if clients served are lower-income:

- (1) Seniors;
- (2) Physically and/or mentally handicapped;
- (3) Battered spouses;
- (4) Abused children;
- (5) Homeless persons;
- (6) Persons living with HIV/AIDS
- (7) Illiterate persons; and
- (8) Migrant farm workers.

2. Under emergency or crisis situations, the need for a determination of eligibility for the provision of public services is waived and any individual or family may be provided emergency or crisis services as an integral part of a program principally structured to assist eligible individuals. Therefore, any clients provided emergency services through a facility will not be included in monitoring done to determine if the facility principally benefits lower-income individuals or families.

Questions regarding eligibility or the definition of direct/indirect benefits (services) shall be referred to the Pierce County Department of Community Services.

C. Monitoring of Community Facilities To Verify Eligibility

1. Community facilities determined to be eligible for assistance because they eliminate slums and blight, because they meet an urgent need, or because they serve an area, which is predominantly lower-income, require no monitoring to verify that they meet the national objectives.

2. Community facilities where direct services or benefits to individuals or families are provided, and whose eligibility is based on serving lower-income clients, shall be periodically monitored by the County to verify client eligibility for a period of at least 5 years following the expenditure of the last project funds. The majority of individuals or families receiving direct services or benefits from services provided by or through this facility, shall be required to meet one or more of the eligibility criteria listed in paragraphs B.1., 2., and 3. above in order for the facility to be

considered to have met the national objective to principally benefit lower-income persons or families.

3. Individuals or families receiving indirect services or benefits, such as attendance at general meetings or receiving literature or documents intended for general distribution, need not meet eligibility criteria.

4. If the facility providing direct public services or benefits to individuals or families received partial construction, renovation or improvement funding from another source which does not impose eligibility requirements, it still must be demonstrated that the CDBG funded portion meets the national objectives. To do so, the County will monitor clients served to determine if the ratio of lower-income clients served to all clients, is equal to, or greater than the percentage of CDBG funds to total funds received (i.e.: if Block Grant funding equals 75 percent of total facility funding, then at least 75 percent of the clients served must be lower-income).

5. Records documenting client eligibility for direct services or benefits, used to demonstrate facility eligibility, shall be maintained for at least 3 years following the completion of the specific facility monitoring activity.

XIV. AFFIRMATIVE ACTION

If the Subgrantee has an established Affirmative Action Plan in place, it shall furnish a copy to the County as part of this Agreement. Where the Subgrantee has no existing Affirmative Action Plan, it will complete and abide by the attached Affirmative Action Plan. When new full-time or part-time employees or trainees are hired, the Subgrantee should make a "good faith" effort to hire women, minorities, and lower-income Pierce County residents for all positions to be filled.

XV. DEBARRED CONTRACTORS:

The Subgrantee, and its consultants and contractors shall not fund, contract with, or engage the services of any consultant, contractor, subcontractor, supplier, or other party who is debarred, suspended, or otherwise ineligible to receive federal funds. The names of all contractors, subcontractors, consultants, suppliers, and other parties who will receive federal funding under this project shall be checked and approved by the County before entering into any agreement with them for the provision of goods or services on this project.

XVI. DRUG FREE WORKPLACE

The Subgrantee shall maintain a drug free workplace(s) throughout the life of this Agreement.

XVII. LOBBYING CERTIFICATION

A. The Subgrantee certifies that, to the best of its knowledge and belief:

1. No federal appropriated funds have been paid, or will be paid by, or behalf of the Subgrantee, or any of its elected or appointed officials or employees, to any person for influencing, or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
2. If funds other than federal appropriated funds have been paid, or will be paid to any person for influencing, or attempting to influence, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federally funded agreement, the Subgrantee shall complete and submit to the County, a federal Standard Form-LLL, "Disclosure Form To Report Lobbying" in accordance with its directions. The form is available from DCS upon request.
3. The Subgrantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

XVIII. RELIGIOUS ACTIVITY

A. The First Amendment to the Constitution of the United States of America prohibits Congress from enacting any laws respecting the establishment of religion. Subsequent interpretations have resulted in a policy of separation of church and state. To ensure compliance with that constitutional prohibition, regulations have been established for the Community Development Block Grant (CDBG) program limiting involvement with religious organizations.

B. Where Subgrantees or owners of property receiving assistance from CDBG funds are pervasively sectarian organizations, sponsor religious activity of any sort, or have a degree of affiliation with one or more pervasively sectarian organizations, the following shall apply:

C. CDBG funds will **not** be used for the acquisition, improvement, rehabilitation, renovation, or construction (including historical preservation or removal of architectural barriers) of any structure or property owned and/or operated by a pervasively religious organization where that structure or property is used for conducting religious worship services, or for promoting religious interests **unless**:

1. The structure or property is used for a wholly secular purpose;
2. The structure has been leased to or purchased by a wholly secular organization;
3. The assistance is provided directly to the wholly secular organization;
4. The structure or property is open to all persons without any religious preference, prohibition, barrier or restraint;
5. The lease payments or acquisition value do not exceed fair market rates;
6. Any improvements to non-leased facilities are paid for with non CDBG funds;
7. Lessee and lessor enter a formal, binding agreement for leasing the structure or property for the useful life of the improvement accomplished with CDBG funds or the length of the CDBG interest specified in Article XI A, whichever is shorter; and;
8. In the event that the lease does not continue for the useful life of the improvement or the length of the CDBG interest, whichever is shorter, that a pro rata portion of the fair market value of the property and/or structure at the time of the discontinuation, proportional to the percentage of CDBG funds used to acquire and/or improve the property and/or structure, be returned to the CDBG program, or such other arrangement be reached which is agreeable to all parties.

D. Finally, where secular structures funded in whole or in part with CDBG funds are leased, rented, loaned, provided, or used by any religious organization of activity, for any purpose, religious fixtures, signs, representations, etc., may **not** be permanently attached to such secular structure. Such items may be displayed when, and **only** when the religious activity is taking place.

XIX. ACCESSIBILITY FOR PERSONS WITH DISABILITIES

To meet the requirements of Section 504 of the Rehabilitation Act of 1973 pertaining to program accessibility for persons with disabilities, and implementing HUD regulations, each Subgrantee is required to assess its capability for compliance therewith, and for compliance with the Americans with Disabilities Act of 1990. Each Subgrantee is required to complete, and submit for review with the signed Agreement, the enclosed Section 504 Checklist, and such of its attachments as may

be appropriate. The County will review and evaluate each Checklist, and will inform the Subgrantee of any areas of apparent concern.

XX. NON-CITIZENS

Persons who are residents of the United States, but who are NOT citizens thereof, shall **NOT** be denied services, or the benefits to be derived therefrom, under this contract, as a result of their citizenship status.

XXI. ENDANGERED SPECIES

Federal construction projects are subject to the provisions of the Endangered Species Act. No activities shall be knowingly undertaken by subgrantee that might possibly have a detrimental effect on any endangered or threatened species without an appropriate biological assessment and environmental determination. The subgrantee, its consultants and contractors are advised to immediately notify DCS of any activity associated with the project they believe might be detrimental to those species and not to proceed until formally notified to do so by DCS.

XXII. VOLUNTEER LABOR

Volunteer labor utilized by Subgrantees on physical improvement projects is exempt from Davis-Bacon prevailing wage requirements providing that such volunteers receive no more than limited compensation, benefits, expenses, etc. for their services and that such volunteers are not otherwise employed on the project in any construction capacity. Any use of volunteer labor must be fully documented by the Subgrantee and pre-approved by Pierce County.



ASSOCIATION OF WASHINGTON CITIES

1076 Franklin St. SE
Olympia, WA 98501-1346

Phone: 360-753-4137
Toll Free: 1-800-562-8981
Fax: 360-586-7550

Website: www.awcnet.org

September 10, 2001

Pierce County
Department of Community Services
8815 South Tacoma Way, Suite 202
Tacoma, WA 98499-4588

**RE: Letter of Coverage for the City of Gig Harbor
Subgrantee Agreement for Earthquake Mitigation**

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

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

All Risk Property Coverage	\$500 million per occurrence
Liability Coverage	\$5 million per occurrence
Employee Fidelity Blanket Coverage	\$1 million per occurrence
Comprehensive Auto Liability	\$5 million per occurrence

The policy term is from January 1, 2001 to January 1, 2002. *AWC is not an insurance company and therefore cannot name an additional insured.* However, our coverage agreement allows our coverage to be extended to another party by contractual agreement.

Please give me a call if you have any questions related to coverage.

Sincerely,

Brenda Mingo
Insurance Services Analyst

/blm

c: Maureen Whitaker, City of Gig Harbor
Gig Harbor underwriting file



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 BRERETON, INTERIM PUBLIC WORKS DIRECTOR *Dave*
SUBJECT: INSPECTION SERVICES – AMENDMENT TO CONSULTANT SERVICES CONTRACT
DATE: OCTOBER 2, 2001

INTRODUCTION/BACKGROUND

On May 8, 2000 the Council approved the Consultant Services Contract with John Tevis, P.E., to provide construction inspection services during the construction of the East-West Roadway Project.

The estimated time remaining on the project are approximately thirty working days. In order to finish the inspection on the East-West Roadway Project, and due to Mr. Tevis' understanding and familiarity of the project, Council approval of the Amendment to Consultant Services Contract is being requested.

FISCAL CONSIDERATIONS

As identified in the 2001 budget, two temporary construction inspectors were required to assist in the inspection of the East-West Roadway and other capital city projects as well as the high volume of private development construction projects anticipated for this year. Amendment No. 1 for the additional inspection services is in the amount of \$11,661.00, for a total not to exceed amount of \$44,720.00. Sufficient funds are available for this work.

RECOMMENDATION

I recommend that the Council authorize execution of the Amendment to Consultant Services Contract with John Tevis, P.E., for inspection services for the East-West Roadway Project in an amount not to exceed Eleven thousand six hundred sixty-one dollars and no cents (\$11,661.00).

**AMENDMENT TO CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
JOHN M. TEVIS, P.E.**

THIS AMENDMENT is made to the AGREEMENT, dated September 12, 2000, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and John M. Tevis, P.E., a sole proprietor organized under the laws of the State of Washington, located and doing business at 430 Warrior Street SE, Olympia, Washington 98503 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the construction of the East-West Roadway Project, CSP-9801 and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agreed to perform the services, and the parties executed an Agreement on September 12, 2000 (hereinafter the "Agreement"); and

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

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

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

Section 2. Amendment to Compensation. Section II(A) of the Agreement is amended to require the City to pay compensation to the Consultant for the work described in **Exhibit A** to the Amendment in the amount of: Eleven thousand six hundred sixty-one dollars and no cents (\$11,661.00). This Amendment shall not modify any other of the remaining terms and conditions in Section II, which shall be in effect and fully enforceable.

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____
day of _____, 2001.

THE CITY OF GIG HARBOR

By: *John M. Tevis*
Its Principal

By: _____
Mayor

Notices to be sent to:

CONSULTANT
John M. Tevis, P.E.
430 Warrior Street SE
Olympia, Washington
(360) 459-8492

Stephen Misiurak, P.E.
City Engineer
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335
(253) 851-8145

APPROVED AS TO FORM:

City Attorney

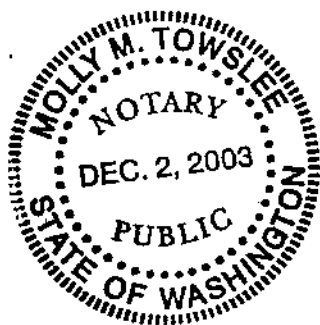
ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

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

Dated: 9/26/01



Molly M Towslee

Molly M. Towslee
(print or type name)

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

Gig Harbor

My Commission expires: 12/2/03

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:_____

Supplemental Exhibit A - Schedule of Rates and Estimated Hours

Estimated working days remaining on the East-West Roadway Project contract - 50 working days

Estimated Time:

Services	Estimated Hours	Total Hours
Daily Inspection	8 hrs. x 50 days	400 hours
Billing preparation	2 mos. @ 1 hr per mo.	2 hours
Possible overtime	3 days @ 8 hrs/day	<u>24 hours</u>
	Total	426 hours

Estimated Costs:

Title	Hourly Rate/Hours	Estimated Cost	Contract Total
Construction Inspection	\$26.00 x 400 hrs.	\$10,400.00	
Overtime	\$39.00 x 24 hrs.	\$ 936.00	
Mileage	\$0.325 @ 20 miles/day	<u>\$ 325.00</u>	
	Supplemental Total		\$11,661.00
	Original Contract Total		<u>\$33,059.00</u>
	Total as amended		<u>\$44,720.00</u>

Prepared by John M. Tevis, P.E.
9/16/01

has been distributed.

The article in Sept. 9th newspaper pushed me into writing a note.
I lived in Big Harbor (Rose-
dale for 7) (Arletta 10) 17 years and
loved every day of it. I grew very
interested in the Spinnaker Ridge
area at the time the gate was put in.

I knew down deep in my heart
that "Money" would someday change
it. Now maybe it isn't money,
but "people in a hurry".

There is far too much hurrying
& rushing in our world of today.
I can only see it getting worse.

Please, on my bended
knees, I pray that the
people of Big Harbor work
together to keep, yes I
said KEEP Spinnaker
the way it is. News-



paper mentioned six (6) very important points on the matter of leaving it be.

To be a quiet peace full of people who can feel safe. Where else can people go where there is not speed, beer cans litter falling out of cars windows.

If this issue was or is put on a voters ballot and I still lived out there I'd vote a resounding YES.

Thank you for reading this,

M. B. Fuller
401 No. G Str.
309

Tacoma, Wa
98403

has been distributed

Linda S. Fleming
3444 Erickson Drive #107
Gig Harbor, WA. 98335
U.S.A.
Email redwingbb@peoplepc.com

RECEIVED

SEP 18 2001

CITY OF GIG HARBOR

September 16, 2001

Mayor Gretchen Wilbert
Gig Harbor City Council Members
3105 Judson Street
Gig Harbor, WA. 98335

Dear Madam Mayor and Members of the Gig Harbor City Council,

The purpose of this letter is to give my opinion in the on-going debate about the gate across Erickson Street at the top of Spinnaker Ridge.

I am fairly recently moved to this area, so I have only seen the gate or the saw horse barriers down for 2-3 days. During this time I observed several young drivers' who made the trip up the hill and across the "T" intersection, a road race course. I also have observed around the neighborhood on my walks with my dog, that at night some drivers are leaving the roadways and racing up and around hills belonging to the car wash. They also swerve over onto the "Norwegian Wood" apartment property in order to negotiate the Erickson to McDonald St. turn at a high speed. I have even seen figure-eights from tires in the mud directly behind the Medallia Medical Center and Wesley Inn. I hear the screeches at night when the road races are on and I suspect that some drinking may be involved also.

The reason I call this to your attention of to help support my opinion that the gate should be left standing. Besides the speed road races there are other factors that would make it dangerous to remove it.

They are as follows:

1. The Norwegian Wood Apartments are located on both sides of Erickson Street. On the corner of McDonald and Erickson is a children's playground. The children often cross from the one side of Erickson to the playground and cannot be seen by a driver part-way up the hill on the Harbor side.
2. Many people walk their dogs in Sound View Park by the new City Hall site. They often use the back chain link fence trail and come out to Erickson right at the top of the hill and from behind shrubbery.
3. There is a stop sign on the corner of Mc Donald and Erickson but it is hard to see traffic coming from the right hill side.
4. There are 2 drive ways from the Norwegian Wood Apartments quite close to the T intersection of McDonald and Erickson.
5. Further west towards Gateway Publishing there is a driveway to the Laurelwood Apartments and the Pierce County Shuttle is often stopped in front of the apartments making vision beyond poor.
6. Gateway Publishing has hugh trucks that must sometimes stop and back up into their parking lot which can completely block traffic for some minutes.
7. Lastly, Erickson Street, as it continues down through the condominiums, is paved and graded as a drive way not a road. I doubt that a medium sized truck could go around the corners without tipping. Also some of the condo driveways make it necessary for driver's to back directly onto Erickson in order to leave their garages.

I feel that it would be totally unsafe and inappropriate to allow through traffic on Erickson Street.

I'm sure, if you take the time to visit the area, my points will become obvious to you.

I hope that you will consider leaving the gate standing as it is.

Thank you for your time in reading my opinion.

Sincerely,

Linda S. Fleming
Linda S. Fleming

cc: John Gorow