

Gig Harbor City Council Meeting



**October 22, 2001
7:00 p.m.**

**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
October 22, 2001 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

PRESENTATION: Special Olympics Presentation to GHPD.

PUBLIC HEARING: 2002 Revenue Sources.

CONSENT AGENDA:

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

1. Approval of the Minutes of City Council Meeting of October 8, 2001.
2. Correspondence/Proclamation:
3. Hold Harmless Agreement - Pierce Transit.
4. Easement Agreement - 54th Avenue Business Park.
5. Easement Agreement - Northharbor Business Park.
6. Easement Agreement - Hollycroft, LLC.
7. Maintenance Agreement - Copiers.
8. Approval of Payment of Bills for October 22, 2001.
Checks #34194 through #34342 in the amount of \$785,690.75.

OLD BUSINESS:

1. Resolution - Initiate Procedure to Vacate a Portion of Erickson Street.
2. Agreement for Use and Maintenance - Sunshine.
3. Resolution - Modification of Concomitant Agreement/Tallman and Alteration of Plat for Mallard's Landing.

NEW BUSINESS:

1. First Reading of Ordinance - 2002 Property Tax Levy.
2. Resolution - Purchase Authorization for Play Toy.

STAFF REPORTS:

1. GHPD - September Stats.
2. Finance Department - Third Quarter Financial Report.

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

ANNOUNCEMENT OF OTHER MEETINGS:

Budget Worksessions: Monday, November 5th and Tuesday, November 6th and 6:30 p.m.

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

ADJOURN:

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DRAFT

GIG HARBOR CITY COUNCIL MEETING OF OCTOBER 8, 2001

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

CALL TO ORDER: 7:03 p.m.

Mayor Wilbert explained that after the Pledge of Allegiance, she wanted to play a song that had been written by a local artist, Lorraine Hart, in tribute to the families of the fallen firefighters in New York as a result of the events of September 11th. The song, "Shoulder to Shoulder" was sung by Lorraine, with backup music performed by friends, and was intended to be sent to the families along with a scrapbook of sentiments from anyone wishing to send their message. Mayor Wilbert added that a scrapbook was going to be in the Conference Room and invited anyone who wished to add his or her thoughts.

PLEDGE OF ALLEGIANCE

After the audience recited the Pledge of Allegiance, the song by Lorraine Hart was played, and Mayor Wilbert introduced Lorraine and her husband, Matthew.

LIFESAVING AWARD:

Chief Mitch Barker said that he was honored to present the departmental Lifesaving Award to Lt. William Colberg. He read the accommodation that was given to Lt. Colberg and Lt. Wes Tucker, Sumner, for their lifesaving efforts in reviving a woman in cardiac arrest during the Western Washington Fair, and presented Lt. Colberg with the Lifesaving Award.

PUBLIC HEARINGS: Erickson Street.

Mayor Wilbert opened the Public Hearing on Erickson Street at 7:15 p.m. Mark Hoppen gave a history of Erickson Street and the gate.

John Gorow - 6887 Mainsail Lane. Mr. Gorow explained that he is the president of the Spinnaker Ridge Community Association. He asked that the letter he handed out at the August meeting become part of the public record, and passed out an addendum to that letter. He outlined the Association's concerns regarding the safety of their neighborhood, the essence of their request to allow the gate on Erickson to remain. He compared this neighborhood to others within city limits to illustrate such issues as traffic conditions, common areas, and street construction. He stressed that there are no other public streets in a neighborhood that bisect a common area in which residents had been required to pay the upkeep. He added that the recent complaints regarding the gate stemmed from the inconvenience from the recent construction on Kimball Drive, which is now completed, and that the continued closure of Erickson would not constitute a public health and safety issue. He explained that the Association had met with the Fire Marshal

regarding safety options, and offered to meet again with the city and Fire Department officials to discuss the issue further. He added that the Association would accept the option of vacating the street, pointing out that the city did not incur any expense to construct the street, and that the code allowed for a vacation of a street at no cost. He concluded by asking Councilmembers to remember that they were not being asked to close an open street, but to open a dead-end street of 15 years.

Diana Sanford - 6846 Windlass Lane. Ms. Sanford said that Spinnaker Ridge was a wonderful neighborhood, and that she bought property there because of that. She added that the gate keeps it a neighborhood, and without the gate it would become just a bunch of houses.

James Reardon - 3171 Soundview Court. Mr. Reardon said that he thought it would be unfair to open the street after fifteen years, adding that it would change the character of the neighborhood.

Donald Weil - 4026 No. Waterview, Tacoma. Mr. Weil said that he represented someone at 3334 Erickson, Apt. #6. Mr. Weil talked about the audience being well-organized and "stacked." He compared the discussion about the gate with recent dialogue regarding the Narrows Bridge and the location of large grocery stores. He said that in the past, the citizens were separated east from west, adding that in today's world, that this separation was inappropriate and that the gate separating the neighborhoods represents walls, walls which should come down. He advised the Council to listen to the expertise of the city engineer and other safety personnel. He talked about the different neighborhoods, adding that each has taxpayers that have the right to a rapid emergency response time. He suggested that the Councilmember who lives in Spinnaker Ridge should not vote on the issue as it appears to be a conflict of interest, and that the city consult their with the attorney regarding any liability issues with emergency response time if the gate were to remain closed.

Patricia Smith - 9804 41st Ave. Ms. Smith said that she support the residents in Spinnaker Ridge. She said that she was tired of people in Gig Harbor being put down for having the privileges that they have been worked hard to achieve. She said that the residents have lived for fifteen years with a gate, and that they have the right to have the kind of neighborhood they have worked toward. She concluded that it would be unsafe to have emergency vehicles going through the area with the current pedestrian traffic.

There were no further comments, and the Mayor closed the public hearing at 7:51 p.m.

CONSENT AGENDA:

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

1. Approval of the Minutes of City Council Meetings of 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.

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

OLD BUSINESS:

1. Erickson Street. Mark Hoppen explained that this would be the time to resolve this issue, as this was the third time that it had come up since he has worked for the city. Councilmember Ruffo asked if there had been any problem for the community regarding emergency response time in the last fifteen years that the gate had been in place. Mark Hoppen responded that he was unaware of any problem.

Councilmember Owel asked for clarification regarding her ability to vote on the issue. Carol explained that because this was a legislative matter, not a quasi-judicial, the Appearance of Fairness Doctrine would not come into play, and Councilmember Owel, as a resident of Spinnaker Ridge, would not have to recuse herself.

Councilmembers discussed the options. One option would allow the gate to remain and initiate the vacation of the portion of the street from McDonald Avenue to Soundview Drive, requiring the installation of a remote-actuated gate in the place of the current gate. Another option would open the gate to through traffic with improvements at the intersection of McDonald and Erickson. Councilmember Picinich said he wished to make a motion to allow the street to remain closed, and to initiate the vacation process.

Councilmember Dick added that unless Council agreed that the street should be opened, nothing need to be done and the street could remain as it is, without the requirement for vacating the street.

Councilmember Ruffo said that people who purchased homes in that community did so in reliance of how the neighborhood was configured, nothing in the record shows that the gate is detrimental to the community, and that any decision should protect what currently exists.

Councilmember Owel clarified that because the Spinnaker Ridge community expends so much in the maintenance of the area, including the city right-of-way, there is a dramatic difference in appearance. She discussed the neighborhood covenants, and the impact upon those covenants if the road were to be opened to through traffic. She said that if vacation were allowed, it would not mean that the public would not be welcome in the same basis that they are now for pedestrian and bicycle traffic, and that Spinnaker Ridge did not wish to become a "gated community." She said that vacation would address a lower impact of use of the streets in the neighborhood.

Councilmember Young pointed out that vacation of the street would put the maintenance responsibility upon the neighborhood, not the city. He then talked about the fact that Spinnaker Ridge was the only private, planned development with a public street through the common area. He said it would be his preference to vacate the street so that the residents could choose their own fate.

Councilmember Pasin recommended that a gate be designed to allow passage by emergency vehicles and to leave the street public. He said that vacation of the street would not allow for long-term flexibility of having the street available.

Councilmember Ekberg said he was not in favor of vacating the street. He explained that it is not a dead-end street or cul de sac, but a city street with a gate, adding that it should not have been gated sixteen years ago. He said that there are no unique situations, such as steepness of road, driveway or pedestrian access that do not exist on other city streets. He said that vacating the street would not solve the problem, but opening the street would give the citizens an opportunity for more traffic choices. He said that he would not be in favor of opening the street until a cost estimate could be obtained to install a traffic circle and pedestrian improvements.

Carol Morris, Legal Counsel, advised Council that a motion this evening would not be to vacate the street, but to initiate the vacation process, as the criteria for vacating would need to be addressed. Councilmember Young said like to see what the improvements to open the road would cost as a comparison for the final decision. Carol explained that this would be one of the factors that needed to be addressed in the vacation process. She added that a recommendation would have to come from the Public Works Director for what needs the city might have for the street in the future for the record.

Mayor Wilbert said she was originally in favor of opening the street, but after hearing the discussions, she thought it was a safety issue and that the gate should remain. Councilmember Picinich made the following motion.

MOTION: Move to direct staff to come back at the next meeting with a resolution to initiate the process to vacate Erickson Street from McDonald Street to Soundview pursuant to Gig Harbor Municipal Code 12.14.018(D), change the name of the street and install a remote-activated gate, and to stress that it will remain open to pedestrian traffic.
Picinich/Owel -

Carol Morris clarified that the city could retain easements through the vacation process to allow pedestrian passage, and to require an opticon gate.

Councilmember Dick spoke against the motion, adding that it would not be wise to vacate the street. He said that the public should be allowed to use the street regularly, and important to retain the use of the street for the future. There was further discussion on what could happen in the future that would indicate opening the street to through traffic.

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RESTATED MOTION: Move to direct staff to come back at the next meeting with a resolution to initiate the process to vacate Erickson Street from McDonald Street to Soundview pursuant to Gig Harbor Municipal Code 12.14.018(D), change the name of the street and install a remote-activated gate, and to stress that it will remain open to pedestrian traffic.

Picinich/Owel - a roll call vote was taken (twice) with the following results:

Councilmembers Ekberg, no. Young, yes. Pasin, no. Owel, yes. Dick, no. Picinich, yes. Ruffo, yes. The motion was approved four to three.

Councilmember Young pointed out that this was not the final decision of the Council, and that it would return at the next meeting. Councilmember Ruffo asked if the gate were to remain closed until a final decision was made. It was agreed that the gate would remain closed until the resolution returned at the next meeting.

Mayor Wilbert announced a short recess of the meeting at 8:29 p.m. The meeting reconvened at 8:39 p.m.

NEW BUSINESS:

1. Agreement for Use and Maintenance - Sunshine. Carol Morris explained that the Hearing Examiner approval of the Sunshine Project and the shoreline substantial permit for this project required public access areas to be provided by the developer. She added that two such areas were provided, and that the Hearing Examiner provisions required an agreement with the city to pay for costs related to high-intensity use of the public areas to be in place prior to issuance of the occupancy permit. She said that whether or not the garden area was to be included in this agreement, and the definition of "high-intensity use" was being brought back before the Hearing Examiner. She said that because the occupancy permit could not be issued until an agreement was in place, the agreement before Council for approval was for a period of approximately one year until the final decision was made, and also to allow the city to determine what the associated costs might be.

Councilmembers discussed the conditions of the agreement and the terms of the development approval. Carol explained that other PUDs do not have a maintenance agreement attached to them, and read the Hearing Examiners provisions requiring the agreement. Mark Hoppen clarified that the figure of \$15,000 came from an estimate of square footage maintenance costs for other public parks. Carol gave a time-line for a decision from the Hearing Examiner, adding that the length and the amount of the agreement could be adjusted accordingly, but until a definition of "high-intensity use" could be determined, it would be difficult to outline the process for the project owners to come forward with a request for assistance.

Councilmembers voiced concern on several terms in the agreement. Carol addressed the termination of the agreement, offering to amend the language to clarify that it would terminate if the parties have not entered into another agreement within a designated time. She then responded to the language regarding the city cooperating to obtain the necessary approvals for exemption

from property taxes, explaining that this language could be stricken from a short-term agreement, then addressed in a future document. Carol then spoke to the concern of city liability in the responsibility of closing the main gate at dusk. She said that she had originally stricken the language, but that the project representatives were interested in keeping it in. She said that she agreed with the potential liability, and a decision to remove the language. She then offered to add language to the last paragraph in section 7 to clarify what payment is required.

Mark Holcomb - Representative for the Sunshine Property Management LLC and the Russell Family Foundation. Mr. Holcomb explained that due to the uniqueness of the project, there is no precedent for this type of agreement. He gave a history of how the agreement came about, describing the areas that are designated to be open to the public. He spoke to the issue of the closing of the gate at dusk, which is a condition of approval from the Design Review Board. He said that during the summer, when it stays light longer in the evening, they would not have staff available to close the gate at a later time, limiting the public.

Mr. Holcomb then addressed the dollar amount, adding that the brevity on the Hearing Examiner's part was to allow flexibility. He said that the family looks at the project as a partnership with the city, stressing that the open space provided is ten times the amount normally required in a project as a result. He talked about the significant amount of people that have been estimated to use the scenic overlook, adding that this same partnership would allow the city and Sunshine group to share the burden of upkeep. He said that the \$15,000 figure came from staff through several meetings.

Mr. Holcomb explained that the property tax language was for the opportunity to explore options with the county for the possible reduction of property taxes in exchange for open space. He said that he was amenable to striking the language in the second sentence where Gig Harbor agrees to cooperate and execute the necessary documents for approval.

Mr. Holcomb addressed termination language for the agreement, stating that the family wishes to complete the process as soon as possible, but he was concerned with unanticipated delays, and being left without an occupancy permit. He then spoke to concern regarding who was responsible for the public areas. He explained that the intent of the multiple thresholds for cleaning was to address all aspects of usage, as the level of use would dictate the need for clean up.

Councilmember Ekberg asked why the city should pay \$15,000 toward upkeep of the open area when the facility was not yet open and "high-intensity use" had yet to be defined, and in addition, the project received value for providing the open space. Mr. Holcomb explained that this should come back on an annual basis to determine the actual cost in upkeep and adjustment to the agreement. He said that this was just a temporary version to obtain the occupancy permit and that the final agreement could contain language regarding an annual review and adjustment to come up with an equitable way to share the cost.

Councilmember Ekberg then voiced concerns on the liability of the gate issue and having the city crew go upon private property to clean. Mr. Holcomb said that those details need to be defined.

He said that the target date to occupy would be around Thanksgiving and staff was asked if a decision could be obtained prior to that date. It was determined to the scheduling of the Hearing Examiner meetings, an interim agreement would be required. Council further discussed the issue of the amount for maintenance, and Carol Morris was directed bring back the amended agreement at the next meeting for discussion and approval. Mr. Holcomb agreed that this timeline would meet their needs, but requested that Ron McConnell be allowed to make the decision because he was the Hearing Examiner who sat in on the hearings. Carol Morris did not recommend that Council agree to this request.

Linda Gair - 9301 No. Harborview Drive. Ms. Gair explained that she was a resident and downtown business owner, and that from day one, the Downtown Waterfront Association has asked the question on how the public would be allowed to use the public space. She said that they have never received a firm committal or cooperation from the Russell Foundation for the hardships that have been placed upon the retail community during construction. She added that the project owners are now asking for the city to pay for the maintenance of this public space, adjacent to a huge building that will generate little to no revenue for the city, and asking for property tax exemptions. She recommended that Council take a closer look at this issue in order to not be "railroaded."

2. Subgrantee Agreement for Earthquake Mitigation - Pierce County Dept. of Community Service. David Brereton, Interim Public Works Director, presented this agreement to provide reimbursement for the work performed in connection with the earthquake of February 28th. He recommended approval of the agreement.

MOTION: Move to authorize execution of the Subgrantee Agreement for Earthquake Mitigation in the amount not to exceed three thousand dollars.
Young/Ruffo - unanimously approved.

3. Consultant Services Contract Amendment - John Tevis. David Brereton explained that this was an amendment to an existing contract with Mr. Tevis, the Construction Inspector for the East-West Roadway, to allow continuity for the completion of four remaining items.

MOTION: Move to 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.)
Young/Picinich - unanimously approved.

STAFF REPORTS:

Update on Donkey Creek Project. John Vodopich gave a quick update on the progress of the Donkey Creek Park Project. He explained that there have been two open houses and two meetings with the Stakeholders group, which has resulted in three general options. An final open house will be held in early November to present a master plan. He added that the SEPA process is 90% complete, and they anticipate Phase II of the project to begin next summer, which would

not include any construction that would involve the stream, and Phase III, consisting of work in the stream, will take place in the summer of 2003.

Councilmember Dick asked about the status of obtaining the Scofield Tidelands property. John Vodopich explained that the city had just received the Aquatic Lands Enhancement Act grant for the purchase of the property. He added that another appraisal was being sought, and that Pat Iolavera and Carol Morris were dealing with this issue.

PUBLIC COMMENTS:

Dick Dadisman - 4206 97th St. Ct. NW. Mr. Dadisman explained that he is the President of the Avalon Woods Homeowners Association. He referred to his letter to Councilmembers outlining the neighborhood concerns regarding a recent incident where a shotgun slug passed by a neighbor's head, lodging in the side of his house. He said that he had been told that the police investigation was ongoing. He said that the neighbors believe that the slug originated from the Sportsman Club, and that the homeowners in Avalon Woods are extremely concerned with the life safety issues surrounding the close proximity of the Sportsman Club. He asked that the city expedite their investigation efforts, as the homeowners were afraid to let their children play outside, or to walk their dogs. He suggested that the city close the gun club until it could be guaranteed that the operation was safe.

Mark Schaeffer - 9913 41st Ave. NW. Mr. Schaeffer said that he was a homeowner and father, and that he was concerned. He said that the gun club had outlived its usefulness and the barriers that used to exist have disappeared through development. He said that it is illegal to shoot guns in the city limits for safety reasons. He said that Avalon Woods has public streets and that the city is liable for what happens. He talked about the common area facing the gun club and the safety concerns.

Dave O'Dell - 4110 97th St. Ct. NW. Mr. O'Dell said he considered this a severe situation, and asked what the Councilmembers had done to address this. He asked why the investigation was taking so long.

Chief Barker explained that there was an on-going investigation, and he would just be speculating if he were to respond at this point. He added that the State Patrol ballistics expert assigned to the investigation was on vacation. He said that he had been in contact with the managers of the Sportsman Club.

David Jepson - 9810 43rd Ave NW. Mr. Jepson said he was also concerned with living on the west side of Avalon Woods and look into the business park and the gun club. He said he has two children. He said that in addition to the safety issue, the noise from the club is unbearable on a Tuesday or Thursday during a tournament. He explained that this has become a serious quality of life issue with a number of citizens, but he does not get the sense that it is a priority with the city. He said that it would be in the best interest of the police to wind up the investigation due to credibility issues. He then addressed the problems associated with the North Harbor Business

Park. He described the noise from compressors, trucks backing up early in the morning, and lights from the gun club, all creating a quality of life issue.

Tracey Tedesco - 9810 41st Ave NW. Ms. Tedesco shared that her two small children's fear of gunfire had increased since the September 11th terrorist attacks. She added that she has stopped her children from riding their bikes and using the sport court until the investigation is concluded. She recommended that the Sportsman Club build an indoor facility to prevent any future incidents.

Mayor Wilbert suggested that the Public Safety Committee of Councilmembers could address the issue and report back.

Mark Schaeffer. Mr. Schaeffer advised the Council that the gun club was not completely fenced or posted as a danger. He said that they had a mentally handicapped adult in the neighbor and feared for his safety.

Don Bennett - 9713 37th Ave NW. Mr. Bennett said that he is very concerned with the safety aspect of his neighborhood. He said that he has never experienced an open gun club in a populated area in any other place he has lived.

Councilmembers briefly discussed the increased activity at the Sportsman Club and the options available. Carol Morris was requested to obtain information on standards for gun clubs to review. Councilmember Young said that he had spoken to several citizens as well as staff, and said that no steps should be taken until the conclusion of the investigation. He added that at that time he would be making recommendations to address these concerns. Councilmembers agreed that it was a priority to get together with the neighbors and work this through. Carol said that an ordinance could be passed at the next meeting to require a fence, then enforce it. John Vodopich explained that during his tenure as the Kitsap County Planning Department, the National Rifle Association range standards were adopted. He said he would check into this for consideration.

Mr. Dadisman thanked council for their action on the fence issues, then suggested that immediate action be taken to close those positions within the club where the potential for firing upon the neighborhood could occur. Mr. O'Dell reminded Council that the residents would fight at the ballot box.

Shirley Tomasi - 11107 Hallstrom Drive NW. Ms. Tomasi, Executive Director of the Cultural Arts Commission, passed out information on the Fisherman's Memorial. She gave a report on the fund-raising activities and invited Council to attend the Vela Luka dancers on Saturday evening. She suggested the possibility of city funds being set aside to continue the process, with any overage to be given back to the city to cover maintenance.

Laura Petroka - Tacoma. Ms. Petroka explained that her boyfriend, John Ancich Jr., recently passed away. She added that he was very passionate about the Fisherman's Memorial project, and the belief that the fishing heritage was a large part of the Gig Harbor charm. She encouraged participation in the funding of the project.

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor Wilbert talked about a letter from Steven Misiurak, City Engineer, thanking everyone involved with the East-West Roadway project.

ANNOUNCEMENT OF OTHER MEETINGS:

1. City Councilmembers Public Forum - Wednesday, October 10th at City Hall.
2. Albertson's Ribbon Cutting Ceremony - 9:00 Wednesday morning. Target's Open House, 5 to 9 pm Tuesday.

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

MOTION: Move to adjourn at 10:25 p.m. to Executive Session for approximately five minutes to discuss pending litigation.
Young/Owel - unanimously approved.

MOTION: Move to return to regular session at 10:30 p.m.
Pasin/Owel - unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 10:30 p.m.
Picinich/Ruffo - unanimously approved.

Cassette recorder utilized.
Tape 627 - Side A 146 - end.
Tape 627 - Side B 000 - end.
Tape 628 - Both Sides.
Tape 629 - Both Sides.
Tape 630 - Side A 000 - 197.

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: DAVID RODENBACH, FINANCE DIRECTOR *DR*
DATE: OCTOBER 15, 2001
SUBJECT: PUBLIC HEARING - REVENUE SOURCES - 2002 GENERAL FUND BUDGET

INTRODUCTION

Chapter 251, Laws of 1995 (RCW 84.55.120) requires a public hearing on revenue sources for the next year's general fund budget. The hearing must include considerations of possible increases in property tax revenues.

General Fund Revenue Summary

Revenue Source	2000	2001 Estimated ending balances	2002 (preliminary)
Property Taxes	\$537,434	\$575,000	\$306,000
Sales Tax	2,545,963	2,775,000	2,776,000
Other Taxes	802,066	898,496	882,250
Licenses and Permits	405,832	372,490	290,100
Intergovernmental Revenues	190,889	72,431	147,100
Charges for Services	167,003	60,681	115,100
Fines and Forfeits	95,721	87,190	90,500
Miscellaneous Revenues	217,394	216,436	1,597,500
Total Revenues	4,962,302	5,057,724	6,204,550
Beginning Fund Balance	1,994,599	1,956,525	1,956,525
Total Resources	\$6,956,901	\$7,014,249	\$8,161,075



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: STEPHEN T. MISIURAK, P.E., CITY ENGINEER *Stm*
SUBJECT: HOLD HARMLESS AND INDEMNIFICATION AGREEMENT
BETWEEN CITY OF GIG HARBOR AND PIERCE TRANSIT
DATE: OCTOBER 17, 2001

INTRODUCTION/BACKGROUND

On March 3, 2001, Pierce Transit's Park and Ride contractor made an adjustment to an existing City storm drainage pipe which required further correction. The City and Pierce Transit discussed the problem and Pierce Transit agreed to repair, adjust, and modify the storm drainage pipe in a manner acceptable to the City. As part of the agreement, Pierce Transit is required to provide and execute with the City a Hold Harmless and Indemnification Agreement. This agreement indemnifies and holds harmless the City from any and all claims and damages arising out of Pierce Transit's adjustment to the storm drainage pipe.

FISCAL CONSIDERATIONS

No funds will be expended for the acquisition of this agreement.

RECOMMENDATION

I recommend that the Council accept and execute the attached Hold Harmless and Indemnification Agreement, which has been crafted and approved by the City Attorney.

RECEIVED
OCT 03 2001
PIERCE TRANSIT

**HOLD HARMLESS AND INDEMNIFICATION AGREEMENT
BETWEEN GIG HARBOR AND PIERCE TRANSIT**

THIS AGREEMENT, made this ___ day of _____ 2001__, between Pierce Transit, a _____, organized under the Laws of the State of Washington and the City of Gig Harbor, a Washington municipal corporation, the parties respectively referred to herein as "Pierce" and "City".

WITNESSETH:

RECITALS

1. Pierce has constructed a Park'n'Ride Lot in the City, located at 6712 Kimball Drive, Gig Harbor, Washington.
2. On March 3, 2001, Pierce's contractor made an adjustment to an existing City storm water drainage pipe without the permission of the City; and
3. The City and Pierce discussed the problem, and Pierce agreed to repair, adjust and/or replace the existing catch basin located at South West corner of Lot 1 of Short Plat 90-08-07-030, and to take other such actions as described in the September 27, 2001 letter to Stephen Misiurak of the City Public Works Department from Douglas Dickinson, Pierce's Facilities Construction Coordinator, attached hereto as Exhibit A; and
4. In addition to the above, Pierce has agreed to indemnify and hold the City harmless for Pierce's actions relating to the storm water drainage pipe and catch basin;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereafter set forth, it is agreed by and between the parties hereto as follows:

- A. All of the recitals set forth above are adopted by the parties as material elements of this Agreement.
- B. Pierce shall defend, indemnify, and hold the City, its officers, officials, employees and agents harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with Pierce's adjustments/repairs of the northern catch basin, retaining wall, wall backfill and adjoining slope described above, except for any injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of Pierce's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Pierce and the City, its officers, officials, employees, or agents, then Pierce's liability hereunder shall only be to the extent of Pierce's negligence.

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

D. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any resulting dispute shall be in Pierce County Superior Court, Pierce County, Washington. The prevailing party in any legal action shall be entitled to all other remedies provided herein, and to all costs and expenses, including attorneys' fees, expert witness fees or other witness fees and any such fees and expenses incurred on appeal.

E. Any invalidity, in whole or in part, of any of the provisions of this Agreement shall not affect the validity of any other of its provisions.

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

G. This Agreement, including its exhibits and all documents referenced herein, constitutes the entire agreement between the City and the Owner, and supersedes all proposals, oral or written, between the parties on the subject.

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

CITY OF GIG HARBOR

PIERCE COUNTY TRANSIT

By: _____

[Handwritten Signature]
WF
By _____

ATTEST:

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY

City Clerk

Carol A. Morris

STATE OF WASHINGTON)
) ss.
COUNTY OF)

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

Dated: _____

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

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that Don S. Mow 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 CEL of Pierce County Transit, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Sandy Byers

Sandy Byers

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing
at: Jacoma
My Commission expires: 3/30/02



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 *Deuel*
SUBJECT: EASEMENT AGREEMENT
- 54TH AVENUE BUSINESS PARK
DATE: OCTOBER 15, 2001

INTRODUCTION/BACKGROUND

As part of the 54th Avenue Business Park project, a sewer main will be constructed to serve the development on private property. This new sewer main will connect the City's sewer main in 96th Avenue NW and the Developer's sewer extension in 54th Avenue. In order to make this connection, the developer is required to grant the City an easement across a portion of property owned by Peninsula Equipment LLC (Parcel No. 0221062071). The easement shall be 20 feet wide and approximately 260 feet long.

The City's standard easement agreement has been prepared to reflect the required easement.

Council approval of the easement agreement is being requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend the Council accept the attached easement agreement.

RECEIVED

OCT 04 2001

CITY OF GIG HARBOR
PUBLIC WORKS DEPT.

AFTER RECORDING, RETURN TO:

The City of Gig Harbor
Attn: City Clerk
3105 Judson Street
Gig Harbor, WA 98335

Document Title: **EASEMENT AGREEMENT**

Grantor: PENINSULA EQUIPMENT LLC, D.B.A. GENE PAPE

Grantee: City of Gig Harbor

Legal Description: *[insert abbreviated legal description here]*
LOT 1 OF LARGE LOT SUBD #1212
The complete legal description may be found on page 7 of the document.
(attached)

Property Tax Parcel No.: R 02-21-06-2-071

Reference No. of Documents Assigned or Released: SEVEN

EASEMENT AGREEMENT

THIS INSTRUMENT, executed this date by and between the City of Gig Harbor, a Washington municipal corporation (the "City" herein), and Gene K. Pape d.b.a. Peninsula Equipment LLC [a/an _____ organized under the laws of the State of Washington], as the owners of the within-described property (the "Owners" herein):

WITNESSETH:

WHEREAS, Owners own a fee simple and/or have a substantial beneficial interest in the following real property, commonly known as R 02 21 06 2 071, _____, Washington 98332, and legally described as follows (the "Property" herein):

ATTACHED PREVIOUSLY RECORDED AUDITOR'S
NUMBER 200108141014

WHEREAS, the City desires an easement for the purpose of monitoring, inspecting, maintaining, operating, improving, repairing, constructing, and reconstructing a _____
Utility Easement;

NOW, THEREFORE, the parties hereto agree as follows:

In consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, Owners hereby convey and warrant to the City, a perpetual, nonexclusive easement, under, over, through and across the Property, for the purposes of monitoring, inspecting, maintaining, improving, repairing, constructing, and reconstructing a _____
Utility Easement
which easement (the "Easement" herein) is legally described as follows:

Attached previously recorded Auditor's
number 200108141014

This Easement is subject to and conditioned upon the following terms and covenants, which both parties promise to faithfully and fully observe and perform:

1. **Responsibility to Repair Damage.** The City shall, upon completion of any work within the Property covered by the easement, restore the surface of the Easement, and any improvements on the Property not owned by the City, disturbed, damaged or destroyed during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. However, the City shall not be required to restore any such improvements installed and/or constructed on the Easement by the Owners subsequent to execution of this Easement Agreement, and as otherwise provided in paragraph "2" below.

2. **Limitations on Owners.** The Owners shall retain the right to use the surface of the Easement. However, the Owners shall not directly or indirectly have the right to:

- A. Erect or install, or cause to be erected or installed, any buildings, structures, pavement, or facilities within the Easement; or

- B. Plant, or cause to be planted, any additional trees, shrubs, or vegetation with deep root patterns which may cause damage to or interfere with the drainage system located within the Easement; or
- C. Develop, landscape, or beautify, or cause to be developed, landscaped, or beautified, the Easement area in any way that would unreasonably increase the costs to the City of restoring the Easement or restoring any Owner-caused or Owner authorized improvements therein; or
- D. Grant any additional or subsequent easement inconsistent with the rights of the City as granted herein. The City shall make the final determination whether any proposed subsequent easement is inconsistent with the City's Easement.

3. **Notice of Entry.** The Owners, their successors and assigns, shall allow access to the Easement by the City, without the City having to give prior notice of its intent to access the Easement.

4. **Indemnification, Hold Harmless.** The Owners hereby release, covenant not to bring suit and agree to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person arising out of or in connection with this Easement, except for injuries or damages caused by the sole negligence of the City.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Owners and the City, its officers, officials, employees, agents and representatives, the Owners' liability hereunder shall be only to the extent of the Owners' negligence.

The provisions of this section shall survive the termination of this Easement.

5. **Dispute Resolution and Attorneys Fees.** If any dispute arises between the Owners and the City under any of the provisions of this Easement which cannot be resolved by agreement of the parties, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party of any such litigation shall be entitled to recover its reasonable attorneys' fees and costs, including any expert witness fees.

6. **Waiver.** No waiver by either party of any term or condition of this Easement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Easement.

7. **Merger.** This Easement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Easement and no prior agreements shall be effective for any purpose.

8. **Severability.** If any of the provisions contained in this Easement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.


9. Easement Binding on Successors and Assigns. This instrument shall be recorded in the records of the Pierce County Auditor at the expense of the Owners and shall inure to the benefit of and be binding upon the Owners, its legal representatives, assigns, heirs and all owners of an after-acquired interest in the Property, and their successors and assigns.

Dated this _____ day of _____, 200__.

CITY OF GIG HARBOR

OWNERS:

By: _____
Its _____


Print Name: Gene K Page

Print Name: _____

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF)

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

Dated: 10-2-1

NOTARY PUBLIC, State of Washington,
residing at: King Co.
My Commission expires: 4-17-3

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

NOTARY PUBLIC, State of Washington,
residing at: _____
My Commission expires: _____

EXHIBIT A



200108141014 3 pg

8-14-2001 04:00pm \$10.00
PIERCE COUNTY, WASHINGTON

Name & Return Address:

Gene K Pape
9512 STATE HWY 16 NW
Gig Harbor WA 98332

Please print legibly or type information.

Document Title (Or transaction contained therein)	<u>Easement</u>
Grantor(s) (Last name first, then first name, middle name)	<u>Pape, Gene K, dba</u> <u>Peninsula Equipment LLC</u> Additional Names on Page ___ of Document
Grantee(s) (Last name first, then first name, middle name)	<u>City of Gig Harbor</u> EXCISE TAX EXEMPT DATE <u>8/14/01</u> Pierce County By <u>[Signature]</u> Auth. Sig
Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section)	<u>Lot 1 LARGE Lot #1212</u> Complete Legal Description on Page ___ of Document
Auditor's Reference Number(s)	
Assessor's Property Tax Parcel/Account Number(s)	<u>0221062071</u>
The Auditor/Recorder will rely on the information provided on this cover sheet. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein. IF YOU REPRODUCE THIS FORM, BE SURE MARGINS REMAIN 3 INCHES AT THE TOP AND 1 INCH ON SIDES AND BOTTOM. gpcovst.lst 2/98	

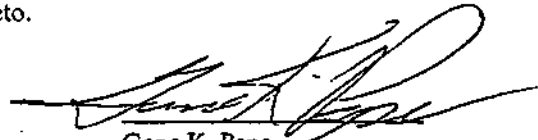
EXHIBIT A

OF THE WESTERLY LINE OF PRIMARY STATE
HIGHWAY 16. EXCEPT THE WEST 30 FEET
THEREOF SITUATED IN PIERCE COUNTY
STATE OF WASHINGTON

That said Grantee shall have the right without prior institution of any suit or proceeding at law, at times as may necessary, to enter upon said property for the purpose of constructing, repairing, altering, or reconstructing said sewer mains, or making connections therewith, without incurring any legal obligation or liability thereof; provided that such construction, repairing, altering, or reconstructing of said sewer mains shall be accomplished in such a manner that the disturbed or destroyed, or in the event they are disturbed or destroyed, they will be replaced in as good a condition as they were immediately before the property was entered upon by the Grantee.

The Grantor shall retain the right to use the surface of said easement, so long as said use does not interfere with the installation and maintenance of the sewer mains and so long as no permanent buildings or structures are erected on said easement.

This easement shall be a covenant running with the land and shall be binding on the successors, heirs, and assigns of both parties hereto.


Gene K. Pape

STATE OF WASHINGTON)

) ss

COUNTY OF PIERCE)

I, the undersigned, a notary public in and for the State of Washington, hereby certify that in this 14 day of August, 2001, personally appeared before me Gene K. Pape to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that he signed and sealed the same as his free and voluntary act deed, for the uses and purposes therein mentioned.

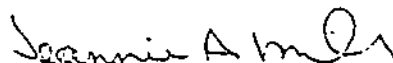

Notary Public in and for the State
of Washington, residing at Pierce.

EXHIBIT A
EASEMENT

This Agreement, made this 14th day of August, 2001, by and between The City of Gig Harbor. Hereinafter termed "Grantee" and Peninsula Equipment LLC, d.b.a. Gene Pape hereinafter termed "Grantor".

WITNESSETH:

That the said Grantor for and in consideration (of the mutual benefit) does by these presents grant unto the Grantee a perpetual right-of-way or easement for sewer mains with the necessary appurtenance through, over and across the following described property situated in Pierce County, Washington, more particularly described as follows:

A strip of land 20 feet in width, 10 feet on each side of the sewer main as constructed on and over the North End of the following described property:

LOT 1 OF LARGE LOT SUBD #1212 EXC N 250 FT
THEREOF DESC AS FOLL COM AT NW CORNER OF NW
OF SEC 06 TH ALG WL1 SD SUBD S 01 DEG 48 MIN 25
SECW 250 FT TH PAR/W N 1/1 OF SD SUBD S 88 D EG 17
MIN 24 SEC E 30 FT TO E R/W L1 OF 131ST AVE NW &
POB TH ALG SD E R/W LI S 01 DEG 48 MIN25 SEC W 340
FT TH PAR/W N LI SE SUBD 88 DEG 17 MIN 24 SEC E
464.27 FT TO WLY R W LI OF P S II #16 TH ALG SD WLY
R/W N 15 DEG 30 MIN 35 SEC W 355.96 FT TO INTERA LI
PAR/W & LY 250 FT S OF N LI OF SD SUBD TH ALG SD
PAR LI N 88 DRG 17 MIN 24 SEC W 358.32 FT M/L TO POB
EAST OF RECORD EXC MIN TRS OUT OF 2-058 SEG L
0031 SP JW

TAX ASSESSORS NUMBER: R 02-21-06-2-071

Also granting to the Grantee and to those acting under said Grantee, the use of a forty- (40) foot temporary construction easement across the above-described property.

Also granting to the Grantee all rights and interest in adjacent property conveyed in easement dated the 4th day of November 1997 more particularly described property:

THE NORTH 250 FEET OF THAT PORTION OF THE
NORTHWEST QUARTER OF THE NORTHWEST QUARTER
OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST
OF THE WILLIAMETTE MERIDIAN, LYING WESTERLY

EXCISE TAX EXEMPT DATE 2/14/01
Pierce County

By  Auth. Sig



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FM: DAVID BRERETON, INTERIM PUBLIC WORKS DIRECTOR
RE: NORTHARBOR BUSINESS PARK
- EASEMENT AGREEMENT
DATE: OCTOBER 15, 2001

INTRODUCTION/BACKGROUND

As part of the Northharbor Business Park project, a water main was constructed to serve the development on private property. The water main is connected to the City's water main in Burnham Drive. In order to make this connection, the developer is required to grant the City an easement across a portion of property owned by Burnham Construction LLC. The easement shall be 15 feet wide and approximately 1,800 feet long.

The City's standard easement agreement has been prepared to reflect the required easement.

Council approval of the easement agreement is being requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend the Council accept the attached easement agreement.

AFTER RECORDING, RETURN TO:

**The City of Gig Harbor
Attn: City Clerk
3105 Judson Street
Gig Harbor, WA 98335**

Document Title: EASEMENT AGREEMENT

Grantor: Burnham Construction, L.L.C., a Washington Limited Company

Grantee: City of Gig Harbor

Legal Description: *Binding Site Plan of Northharbor Business Campus*

The complete legal description may be found on page 2 of the document.

**Property Tax Parcel Nos.: 400102-001-0, 400102-002-0, 400102-003-0, 400102-004-0, 400102-005-1,
400102-006-1, 400102-010-1, 400102-011-0, 400102-012-0, 400102-013-0,
400102-014-0, 400102-016-1, 400102-019-0, 400102-020-0**

**Reference No. of Documents Assigned or Released: 9403090799, 9610210451 and 200002165005,
200108145002 (Binding Site Plans)**

EASEMENT AGREEMENT

THIS INSTRUMENT, executed this date by and between the City of Gig Harbor, a Washington municipal corporation (the "City" herein), and Bumham Construction LLC, a Limited Liability Corporation organized under the laws of the State of Washington, as the owners of the within-described property (the "Owners" herein):

WITNESSETH:

WHEREAS, Owners own a fee simple and/or have a substantial beneficial interest in the following real property, commonly known as Northharbor Business Campus and legally described as follows (the "Property" herein):

Amended Binding Site Plan for Northharbor Business Campus recorded under Auditor's No. 200108145002, Records of Pierce County, Washington, which is an amendment of Binding Site Plans recorded under Auditor's Nos. 9403090799, 9610210451 and 200002165005.

WHEREAS, the City desires an easement for the purpose of monitoring, inspecting, maintaining, operating, improving, repairing, constructing, and reconstructing a water main;

NOW, THEREFORE, the parties hereto agree as follows:

In consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, Owners hereby convey and warrant to the City, a perpetual, nonexclusive easement, under, over, through and across the Property, for the purposes of monitoring, inspecting, maintaining, improving, repairing, constructing, and reconstructing a water main, which easement (the "Easement" herein) is legally described as follows:

See Exhibit "A" attached.

This Easement is subject to and conditioned upon the following terms and covenants, which both parties promise to faithfully and fully observe and perform:

1. **Responsibility to Repair Damage.** The City shall, upon completion of any work within the Property covered by the easement, restore the surface of the Easement, and any improvements on the Property not owned by the City, disturbed, damaged or destroyed during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. However, the City shall not be required to restore any such improvements installed and/or constructed on the Easement by the Owners subsequent to execution of this Easement Agreement, and as otherwise provided in paragraph "2" below.

2. Limitations on Owners. The Owners shall retain the right to use the surface of the Easement. However, the Owners shall not directly or indirectly have the right to:

- A. Erect or install, or cause to be erected or installed, any buildings, structures, pavement, or facilities within the Easement; or
- B. Plant, or cause to be planted, any additional trees, shrubs, or vegetation with deep root patterns which may cause damage to or interfere with the drainage system located within the Easement; or
- C. Develop, landscape, or beautify, or cause to be developed, landscaped, or beautified, the Easement area in any way that would unreasonably increase the costs to the City of restoring the Easement or restoring any Owner-caused or Owner authorized improvements therein; or
- D. Grant any additional or subsequent easement inconsistent with the rights of the City as granted herein. The City shall make the final determination whether any proposed subsequent easement is inconsistent with the City's Easement.

3. Notice of Entry. The Owners, their successors and assigns, shall allow access to the Easement by the City, without the City having to give prior notice of its intent to access the Easement.

4. Indemnification, Hold Harmless. The Owners hereby release, covenant not to bring suit and agree to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person arising out of or in connection with this Easement, except for injuries or damages caused by the sole negligence of the City.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Owners and the City, its officers, officials, employees, agents and representatives, the Owners' liability hereunder shall be only to the extent of the Owners' negligence.

The provisions of this section shall survive the termination of this Easement.

5. Dispute Resolution and Attorneys Fees. If any dispute arises between the Owners and the City under any of the provisions of this Easement which cannot be resolved by agreement of the parties, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party of any such litigation shall be entitled to recover its reasonable attorneys' fees and costs, including any expert witness fees.

6. **Waiver.** No waiver by either party of any term or condition of this Easement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Easement.

7. **Merger.** This Easement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Easement and no prior agreements shall be effective for any purpose.

8. **Severability.** If any of the provisions contained in this Easement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

9. **Easement Binding on Successors and Assigns.** This instrument shall be recorded in the records of the Pierce County Auditor at the expense of the Owners and shall inure to the benefit of and be binding upon the Owners, its legal representatives, assigns, heirs and all owners of an after-acquired interest in the Property, and their successors and assigns.

Dated this _____ day of _____, 200__.

CITY OF GIG HARBOR

By: _____
Its _____

OWNERS: BURNHAM COAST LLC
WADE PERROW member

Print Name:

Print Name: 

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

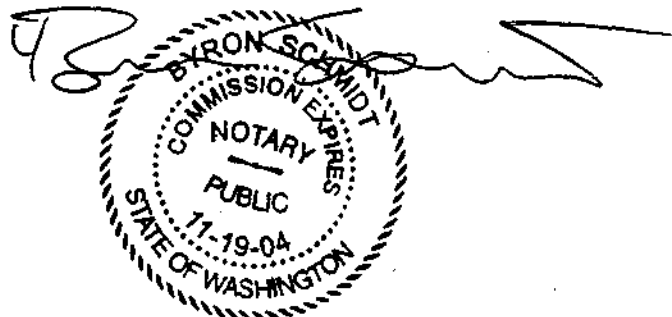
STATE OF WASHINGTON

COUNTY OF PIERCE)) ss.

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

Dated: 8-16-01

NOTARY PUBLIC, State of Washington,
residing at: TACOMA, WA
My Commission expires: 19 NOV 04



STATE OF WASHINGTON)) ss.
COUNTY OF PIERCE)

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

Dated: _____

NOTARY PUBLIC, State of Washington,
residing at: _____
My Commission expires: _____



Northharbor Business Campus
Job No. 595-01-930-016
August 13, 2001

EXHIBIT "A"

LEGAL DESCRIPTION FOR WATER MAIN

EASEMENT A

That easement for ingress, egress and utilities as depicted on Amended Binding Site Plan for Northharbor Business Campus recorded under Recording No. 200108145002, Records of Pierce County, Washington, which is an amendment of the Binding Site Plan and Amended Binding Site Plans recorded under Recording Nos. 9403090799, 9610210451 and 200002165005, respectively, Records of Pierce County, Washington.

EASEMENT B

That portion of Tract A of that Amended Binding Site Plan for Northharbor Business Campus recorded under Recording No. 200108145002, Records of Pierce County, Washington, more particularly described as follows:

COMMENCING at the most southeasterly corner of said Tract A;

THENCE along the easterly line thereof, N 01°11'48" E, 25.00 feet to the TRUE POINT OF BEGINNING;

THENCE continuing along said easterly line, N 01°11'48" E, 20.00 feet;

THENCE N 88°17'13" W, 30.14 feet to the easterly margin of said Easement A;

THENCE along said easterly margin, S 01°42'47" W, 20.00 feet;

THENCE S 88°17'13" E, 30.32 feet to the TRUE POINT OF BEGINNING.

Northharbor Business Campus
August 15, 2001

EASEMENT C

THAT portion of Lots 5A and 6A of Amended Binding Site Plan for Northharbor Business Campus recorded under Recording No. 200108145002, Records of Pierce County, Washington, more particularly described as follows:

COMMENCING at the southwesterly corner of said Lot 6A;

THENCE along the southerly line of said Lot 6A, S 88°17'13" E, 48.00 feet to the westerly margin of said Easement A;

THENCE along said westerly margin, N 01°11'48" E, 188.04 feet to the TRUE POINT OF BEGINNING;

THENCE along the westerly and southerly margin of said Easement A, the following courses:

N 20°08'25" E, 70.05 feet;

N 01°11'48" E, 38.82 feet;

N 41°05'46" W, 35.09 feet;

S 48°54'14" W, 38.04 feet to a point of curvature;

Southwesterly 21.14 feet along the arc of a tangent curve to the right, having a radius of 289.00 feet, through a central angle of 4°11'28";

THENCE S 24°59'38" E, 102.30 feet to the TRUE POINT OF BEGINNING.

EASEMENT D

That portion of Lot 16A of Amended Binding Site Plan for Northharbor Business Campus recorded under Recording No. 200108145002, Records of Pierce County, Washington, being a 15 foot wide strip, lying 7.5 feet to each side of the following described centerline:

COMMENCING at the northwesterly corner of said Lot 16A;

THENCE along the northerly line of said lot, S 87°18'42" E, 150.05 feet to the westerly margin of said Easement A;

THENCE along said westerly margin, S 01°11'48" W, 137.97 feet to the TRUE POINT OF BEGINNING;

THENCE S 86°19'43" W, 52.82 feet to the terminus of said centerline.

Northarbor Business Campus
August 15, 2001

The sidelines of said strip shall be lengthened or shortened so as to begin on said westerly margin of Easement A.

EASEMENT E

THAT portion of Lot 14A of Amended Binding Site Plan for Northarbor Business Campus recorded under Recording No. 200108145002, Records of Pierce County, Washington, being a 15 foot wide strip, lying 7.5 feet to each side of the following described centerline:

COMMENCING at the southwesterly corner of said Lot 14A;

THENCE along the southerly line of said lot, S 87°18'42" E, 150.05 feet to the westerly margin of said Easement A;

THENCE N 42°08'05" W, 75.83 feet to the terminus of said centerline.

The sidelines of said strip shall be lengthened or shortened so as to begin on said westerly margin of Easement A.

See attached Exhibit "B".

Written by: M.R.B.
Checked by: C.A.F.

m:lengtesm-jobs\5951011930\document\59501-1.doc

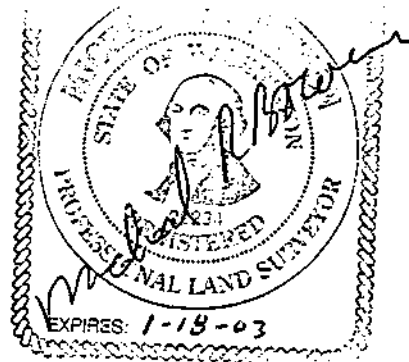
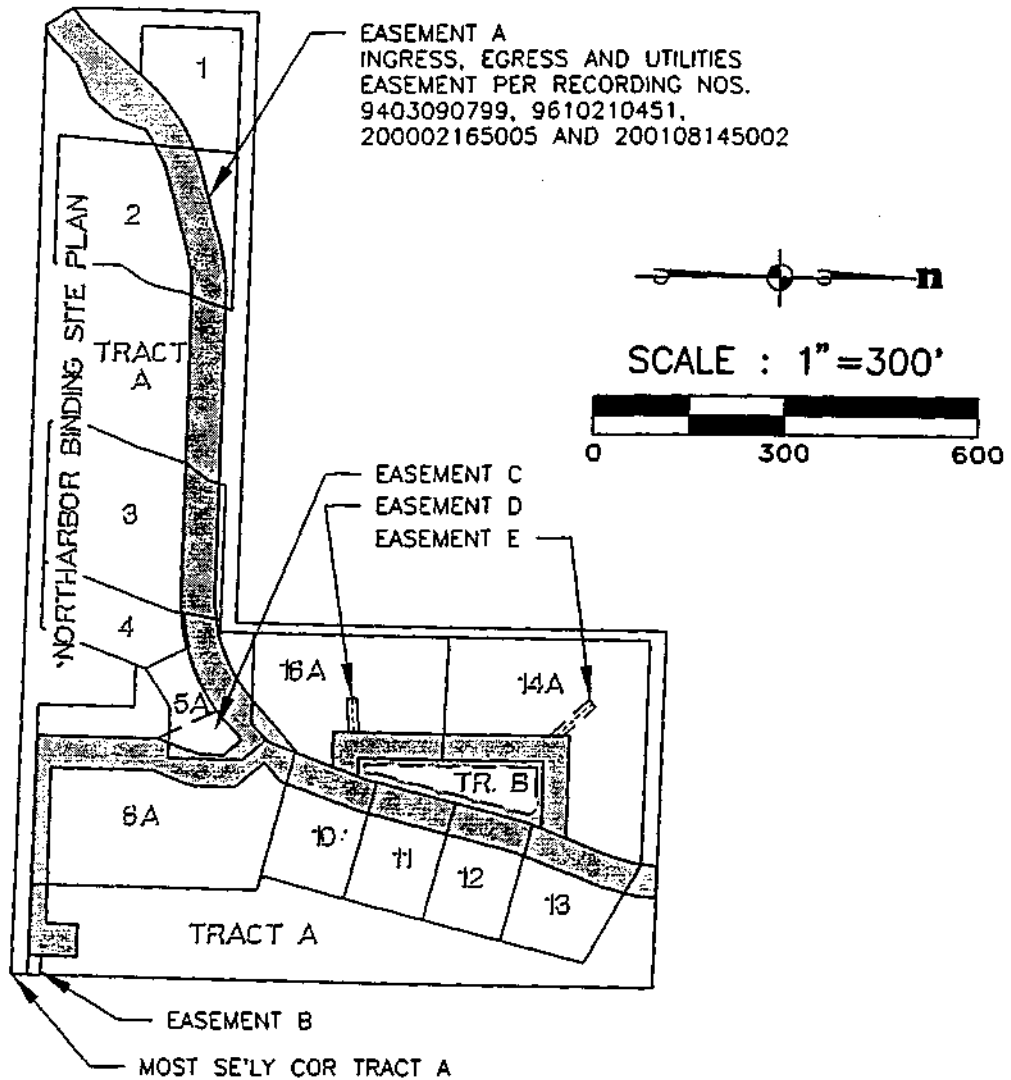


EXHIBIT "B"

TO ACCOMPANY LEGAL DESCRIPTION FOR WATER MAIN

A PORTION OF THE SW 1/4 OF THE SE 1/4 AND OF THE SE 1/4 OF THE SW 1/4 OF SECTION 31, TWP. 22 N., RGE. 2 E., W.M. CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON



CONSULTING ENGINEERS LLC

720 S. 348th Street
Federal Way, WA 98003



FEDERAL WAY (253) 838-8113
BOTHELL (425) 415-8144
BREMERTON (360) 792-3275

www.esmcivil.com

Civil Engineering
Public Works

Land Surveying
Project Management

Land Planning
Landscape Architecture

JOB NO. 595-01-930-016
DRAWING NAME : \\EXHIBITS\CITY-ESMT
DATE : 08-14-01
DRAWN : MRB
SHEET 1 OF 1

Page 9 of 9



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 *DB*
SUBJECT: EASEMENT AGREEMENT
- HOLLYCROFT, LLC
DATE: OCTOBER 15, 2001

INTRODUCTION/BACKGROUND

As part of the Park Plaza project, a water main will be constructed to serve the development on private property. This new water main will connect the City's water mains in Hollycroft and 28th Avenue NW, creating a better-looped system. In order to make this connection, the developer is required to grant the City an easement across a portion of property owned by Hollycroft LLC (Parcel No. 7580000513 and 7580000514). The easement shall be 15 feet wide and approximately 450 feet long.

The City's standard easement agreement has been prepared to reflect the required easement.

Council approval of the easement agreement is being requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend the Council accept the attached easement agreement.

AFTER RECORDING, RETURN TO:

**The City of Gig Harbor
Attn: City Clerk
3105 Judson Street
Gig Harbor, WA 98335**

Document Title: **EASEMENT AGREEMENT**

Grantor: **HOLLYCROFT, LLC.**

Grantee: **City of Gig Harbor**

Legal Description: **LOTS 1 AND 2, PIERCE COUNTY SHORT PLAT NO. 80-297.**

The complete legal description may be found on page 2 of the document.

Property Tax Parcel No.: 758000-051-3 & 758000-051-4

Reference No. of Documents Assigned or Released: _____

EASEMENT AGREEMENT

THIS INSTRUMENT, executed this date by and between the City of Gig Harbor, a Washington municipal corporation (the "City" herein), and HOLLYCROFT, LLC [a/an **LIMITED LIABILITY CORPORATION** organized under the laws of the State of Washington], as the owners of the within-described property (the "Owners" herein):

WITNESSETH:

WHEREAS, Owners own a fee simple and/or have a substantial beneficial interest in the following real property, commonly known as Park Plaza Office Buildings, 2727 Hollycroft Street, Gig Harbor, Washington 98335, and legally described as follows (the "Property" herein):

LOTS 1 AND 2 OF PIERCE COUNTY SHORT PLAT NO. 80-297 IN THE SOUTHWEST QUARTER, OF THE NORTHEAST QUARTER, OF SECTION 17, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M. SITUATE IN PIERCE COUNTY, WASHINGTON.

WHEREAS, the City desires an easement for the purpose of monitoring, inspecting, maintaining, operating, improving, repairing, constructing, and reconstructing a water main and associated appurtenances including piping, valves, hydrants, and meters;

NOW, THEREFORE, the parties hereto agree as follows:

In consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, Owners hereby convey and warrant to the City, a perpetual, nonexclusive easement, under, over, through and across the Property, for the purposes of monitoring, inspecting, maintaining, improving, repairing, constructing, and reconstructing a water main and associated appurtenances including piping, valves, hydrants, and meters, which easement (the "Easement" herein) is shown in Exhibit A and legally described as follows:

EASEMENT: Beginning at the southwest corner of Lot 1, Pierce County Short Plat No. 80-297; thence N 2°06'31"E along the east margin of 28th Avenue NW, 86.56 feet; thence S87°53'29"E, 134.39 feet; thence S59°39'33"E, 107.80 feet; thence N30°20'27"E, 33.00 feet; thence S59°39'33"E, 15.00 feet; thence S30°20'27"W, 33.00 feet; thence S59°39'33"E, 105.53 feet; thence S2°06'32"W, 126.63 feet to the south line of Lot 2 of said short plat; thence N88°55'57"W along said south line, 15.00 feet; thence N2°06'32"E, 8.77 feet; thence N87°53'28"W, 9.00 feet; thence N2°06'32"E, 15.00 feet; thence S87°53'28"E, 9.00 feet; thence N2°06'32"E, 94.16 feet; thence N59°39'33"W, 215.58 feet; thence N87°53'29"W, 115.62 feet; thence S2°06'31"W, 79.61 feet to the south line of said Lot 1; thence N59°39'32" W along said south line, 17.03 feet to the Point of Beginning.

This Easement is subject to and conditioned upon the following terms and covenants, which both parties promise to faithfully and fully observe and perform:

1. **Responsibility to Repair Damage.** The City shall, upon completion of any work within the Property covered by the easement, restore the surface of the Easement, and any improvements on the Property

not owned by the City, disturbed, damaged or destroyed during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. However, the City shall not be required to restore any such improvements installed and/or constructed on the Easement by the Owners subsequent to execution of this Easement Agreement, and as otherwise provided in paragraph "2" below.

2. Limitations on Owners. The Owners shall retain the right to use the surface of the Easement. However, the Owners shall not directly or indirectly have the right to:

- A. Erect or install, or cause to be erected or installed, any buildings, structures, pavement, or facilities within the Easement; or
- B. Plant, or cause to be planted, any additional trees, shrubs, or vegetation with deep root patterns which may cause damage to or interfere with the drainage system located within the Easement; or
- C. Develop, landscape, or beautify, or cause to be developed, landscaped, or beautified, the Easement area in any way that would unreasonably increase the costs to the City of restoring the Easement or restoring any Owner-caused or Owner authorized improvements therein; or
- D. Grant any additional or subsequent easement inconsistent with the rights of the City as granted herein. The City shall make the final determination whether any proposed subsequent easement is inconsistent with the City's Easement.

3. Notice of Entry. The Owners, their successors and assigns, shall allow access to the Easement by the City, without the City having to give prior notice of its intent to access the Easement.

4. Indemnification, Hold Harmless. The Owners hereby release, covenant not to bring suit and agree to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person arising out of or in connection with this Easement, except for injuries or damages caused by the sole negligence of the City.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Owners and the City, its officers, officials, employees, agents and representatives, the Owners' liability hereunder shall be only to the extent of the Owners' negligence.

The provisions of this section shall survive the termination of this Easement.

5. Dispute Resolution and Attorneys Fees. If any dispute arises between the Owners and the City under any of the provisions of this Easement which cannot be resolved by agreement of the parties, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party of any such litigation shall be entitled to recover its reasonable attorneys' fees and costs, including any expert witness fees.

6. **Waiver.** No waiver by either party of any term or condition of this Easement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Easement.

7. **Merger.** This Easement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Easement and no prior agreements shall be effective for any purpose.

8. **Severability.** If any of the provisions contained in this Easement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

9. **Easement Binding on Successors and Assigns.** This instrument shall be recorded in the records of the Pierce County Auditor at the expense of the Owners and shall inure to the benefit of and be binding upon the Owners, its legal representatives, assigns, heirs and all owners of an after-acquired interest in the Property, and their successors and assigns.

Dated this _____ day of _____, 200__.

CITY OF GIG HARBOR

By: _____
Its _____

OWNERS:



Print Name: Gordon D. Rush

Print Name: _____

APPROVED AS TO FORM:

City Attorney

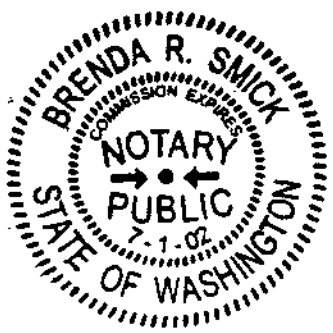
ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF)

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

Dated: 9/13/01



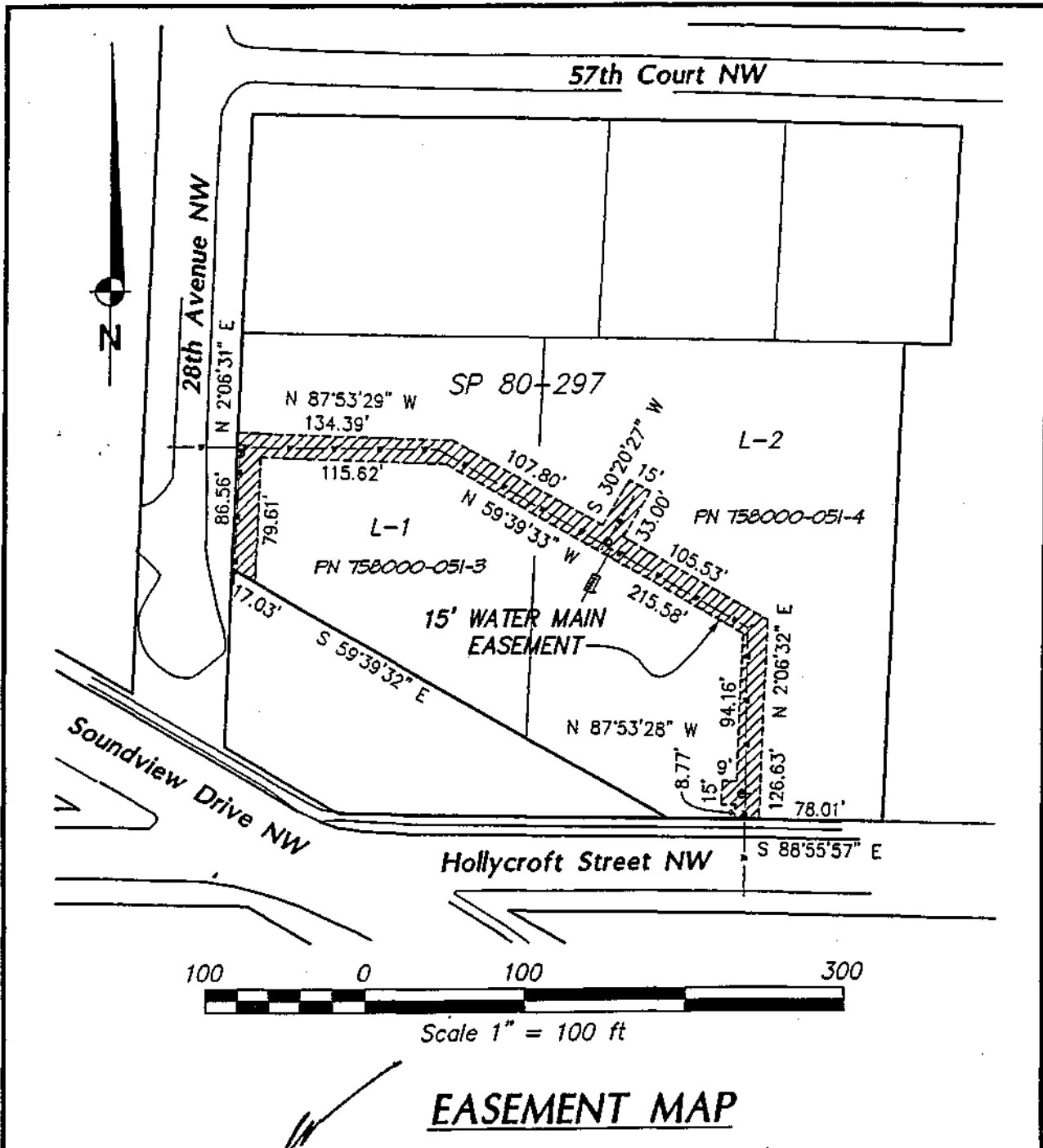
NOTARY PUBLIC, State of Washington,
residing at: Talona
My Commission expires: 7-1-02

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

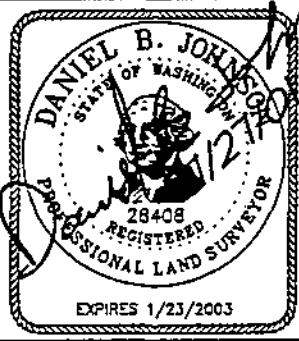
I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of the City of Gig Harbor, to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

Dated: _____

NOTARY PUBLIC, State of Washington,
residing at: _____
My Commission expires: _____



EASEMENT MAP



DRAWING NO. 1462B DATE: 7-27-01

Aspen
Land Surveying
 12904-A Purdy Drive NW
 Gig Harbor, WA 98332
 (253) 857-4265

FOR: **Rush Construction Co.**
 5715 Wollochet Dr. NW
 Gig Harbor, WA 98335

in the SW 1/4 of the NE 1/4,
 Sec. 17, T 21 N, R 2 E, W.M.
 Gig Harbor, Pierce County
 Washington



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MOLLY TOWSLEE, CITY CLERK *MW*
SUBJECT: RENEWAL OF COPIER MAINTENANCE AGREEMENT
DATE: OCTOBER 15, 2001

INFORMATION/BACKGROUND

Attached is a copy of the Supply/Service Contract for the four Minolta copiers. There is no increase in the rate of \$240.00 per month, with a 20,000-copy minimum (per month). Overages will be charged at a .0125 rate. This rate includes toner.

RECOMMENDATION

Move to authorize the Mayor to sign the attached copier maintenance contract.



SUPPLY/SERVICE CONTRACT

RETURN THIS ENTIRE CONTRACT AND PAYMENT TO:
MINOLTA BUSINESS SYSTEMS, INC.
MINOLTA BUSINESS SOLUTIONS INC
 Attention 12674 GATEWAY DR BLDG 2
 Address SEATTLE, WA 98168
 City/State/Zip _____

Account Number 7201421

BILL TO:
 Company City of Gig Harbor
 Attention Molly
 Address 3125 Judson St.
 City/State/Zip Gig Harbor WA 98335
 Phone (253) 851-4278
 Commencement Meter _____
 Model 6600 Serial # 3113093

SHIP TO:
 Company City of Gig Harbor
 Attention Molly
 Address 3105 Judson St
 City/State/Zip Gig Harbor WA 98335
 Phone _____
 Commencement Date 10/4/01 - 10/3/02
 M/A Meter Expiration _____

Comments _____

TERMS AND CONDITIONS

AMOUNT DUE

CHECK ONE:

ANNUAL CONTRACT for a period of one year or _____ copies, whichever comes first.

ANNUAL CONTRACT billed monthly, for a period of one year, based upon minimum monthly volume of 20,000 copies (not less than 10,000) at a charge of .0120 per copy. w/overages .0125

SUBTOTAL 240.00

SALES TAX 21.12

TOTAL DUE 261.12

This contract includes all labor, supplies (based upon published yields) as specified below, parts, and photoconductor (drum); excludes paper and staples.

Incl. bottles/cartridges of black toner Incl. bottles of black starter.

Comments: Full SWS/Sup Renewal

S/R _____
S.O. # _____

by _____
CUSTOMER SIGNATURE DATE

by _____
MBS CREDIT MANAGER DATE

Title _____

by _____
MBS SERVICE MANAGER DATE

When this Agreement is signed by the Customer and the Branch Service Manager, it shall constitute a binding Agreement.

See Reverse Side for Additional Terms and Conditions.



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
SUBJECT: RESOLUTION – INITIATE PROCEDURE TO VACATE A PORTION OF ERICKSON STREET
DATE: SEPTEMBER 3, 2001

INTRODUCTION/BACKGROUND

At the most recent Council Meeting on October 8, 2001, staff was directed to return to Council with a resolution to initiate the process to vacate a portion of Erickson Street from McDonald Street to Soundview Drive pursuant to GHMC 12.14.018 (D).

The requested resolution is attached.

POLICY CONSIDERATIONS

Gig Harbor Municipal Code 12.14.018 (D). Vacations Initiated by Council Resolution states:

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)

RECOMMENDATION

Staff recommends approval of the resolution to initiate the vacation process.

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, TO INITIATE THE PROCEDURE FOR THE VACATION OF A PORTION OF ERICKSON STREET LYING BETWEEN MCDONALD AVENUE AND SOUNDVIEW DRIVE.

WHEREAS, the Gig Harbor City Council desires to initiate the procedure for the vacation of a portion of Erickson Street lying between McDonald Avenue and Soundview Drive, originally created in the plat called Spinnaker Ridge, a planned unit development, Plat No. 783700, recorded under Assessor File No. 8601310176 in Pierce County, Washington.

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

Section 1. A public hearing upon said street vacation shall be held in the council chambers of Gig Harbor City Hall on Tuesday, November 13, 2001, at 7:00 p.m., at which hearing all persons interested in said street vacation are invited to appear.

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

PASSED this ___ day of October, 2001.

Gretchen A. Wilbert, Mayor

ATTEST:

Molly Towslee, City Clerk

Filed with the City Clerk: 10/18/01
Passed by the City Council:
Resolution No.



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 *MHO*
DATE: OCTOBER 17, 2001
SUBJECT: AGREEMENT FOR USE AND MAINTENANCE - SUNSHINE

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. The attached agreement contains changes requested by Council in the October 8, 2001 City Council meeting. Sunshine Property Management has not approved this version of the agreement.

POLICY/FISCAL CONSIDERATIONS

This agreement requires the owner to pay basic maintenance on the building. The agreement also provides for the City to reimburse the owner for costs associated with high intensity public use.

RECOMMENDATION

Staff recommends approval of the agreement, after deciding on a limit for costs associated with high intensity public use.

**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. Within three months ~~The parties contemplate that after the Hearing Examiner has issued a new decision resolving the ambiguities, this Agreement shall terminate. 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. The parties shall then negotiate and enter into a new agreement, consistent with the terms of the final decision rendered after the Hearing Examiner's decision on the issues relating to costs associated with the Scenic View and Garden Areas.~~

The parties understand and agree that this Agreement is a compromise between the parties regarding the costs associated with the Scenic View and Garden Areas and is intended to be effective only until a final decision is rendered. The parties further understand and agree that this Agreement does not constitute and shall not be construed as an admission of responsibility of either party for the activities/payments described herein. Neither parties' actions in entering into this Agreement shall be used against that party in any future matter. The acts of the City in entering this Agreement shall not be precedent for any future agreements between the parties or any other matter.

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). if the Hearing Examiner's final decision requires the City to make any payments to the Owner. 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.~~

The parties agree that "high intensity" use shall have the ordinary dictionary meanings, as follows. "High" shall mean "greater in size, amount, degree, power, intensity, than usual." "Intensity" shall mean "extreme degree of anything, great energy, or vehemence of emotion, thought or activity."¹

The parties agree that at the time that the Scenic View Overlook and/or Garden Areas experience a "high intensity" use, which would be use by the public that is greater in amount, degree or intensity than usual, Owner may apply to the City to obtain reimbursement of costs relating to such "high intensity use." The parties acknowledge that because the Owner is required to pay for basic maintenance under the Hearing Examiner's decision (as it is currently written), the Owner will not apply to the City for any costs included in basic maintenance, but only for costs incurred over and above such basic maintenance costs. In such application, the Owner agrees to provide the City with documentation of all expenses incurred for the high intensity use, such as invoices, bills, etc., showing the amounts incurred by the Owner, the date such amounts were incurred, and specifically describing the area in which the Owner performed activities for which it requests reimbursement. The City agrees to pay the reasonable costs incurred by the Owner relating to such "high intensity use," as long as the application for payment meets the requirements of this section, and as long as the amount does not exceed \$ _____.

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. The Owner has attached documents to this Agreement for the execution by the City in order to obtain such 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 pursuant to Section 5.1.2 of this Agreement 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

¹ Both of these dictionary definitions were taken from *Websters New World Dictionary*, Third College Edition (1988).

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
3105 Judson Street
Gig Harbor, WA 98335

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.

By: _____
Its: _____

GIG HARBOR:

By: _____
Its: _____

ATTEST:

City Clerk, Molly Towslee

APPROVED AS TO FORM:

City Attorney, Carol Morris

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this _____ day of _____, 2001, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the person who signed as President, respectively, of Sunshine Property Management, LLC., 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 Washington,
Residing at _____
My Commission Expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this _____ day of _____, 2001, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Gretchen A. Wilbert, to me known to be the person who signed as Mayor, 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

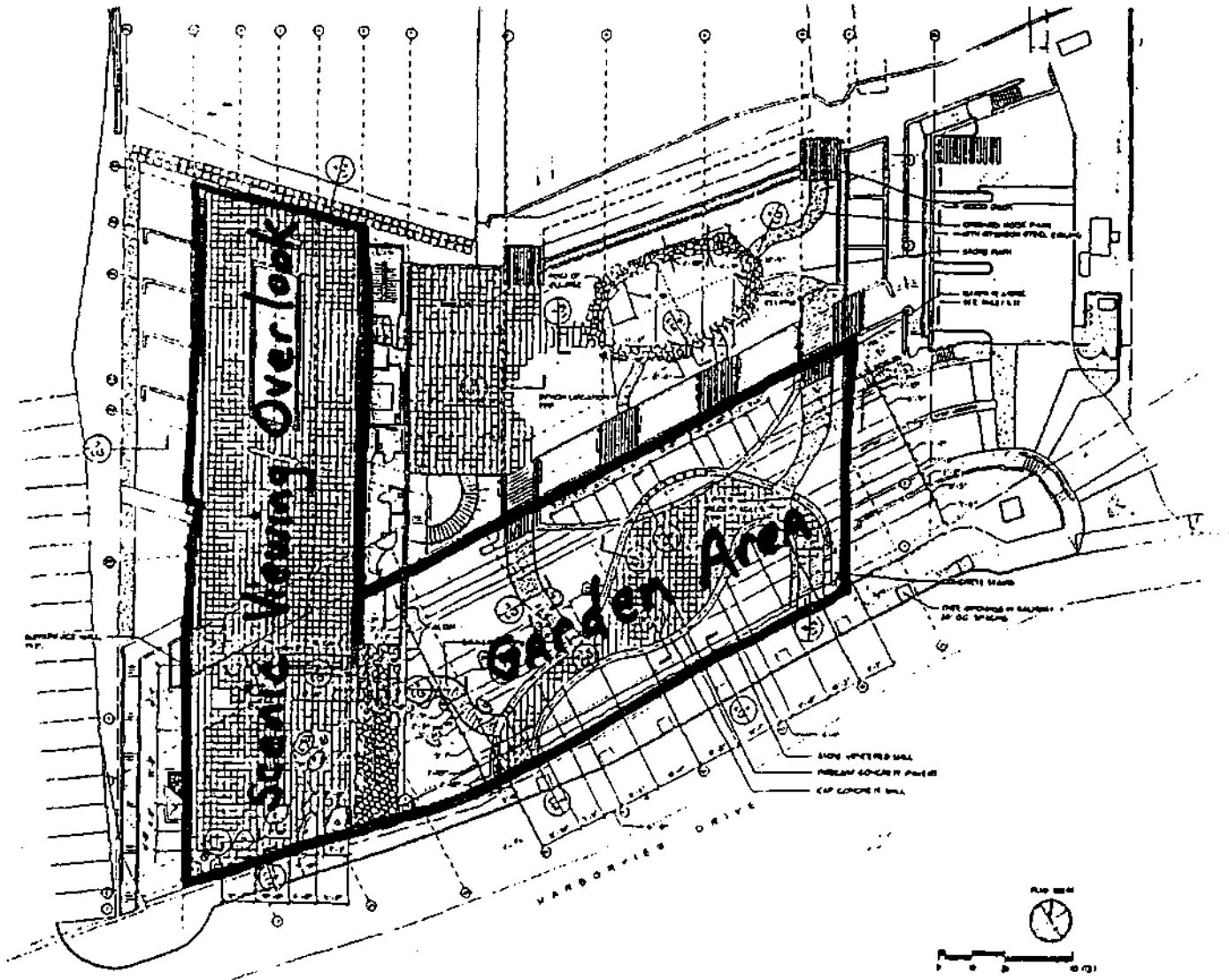


Exhibit 'C'

SUNSHINE PROJECT LANDSCAPE MAINTENANCE GUIDELINES AUGUST 2001

TABLE OF CONTENTS

- 1. SCOPE OF WORK**
- 2. SITE**
- 3. EXECUTION OF WORK**
- 4. TREES, SHRUBS, GROWDCOVERS AND PLANTING BEDS**
- 5. HARD SURFACE MAINTENANCE**
- 6. DRAINAGE SYSTEMS MAINTENANCE**
- 7. IRRIGATION MANAGEMENT**
- 8. WATER FEATURE**
- 9. AQUATIC PLANTS**
- 10. PLANT REPLACEMENT**
- 11. ITEMS NOT IN CONTRACT**

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"

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

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP *J.P.V.*
DIRECTOR, PLANNING & BUILDING SERVICES
SUBJECT: RESOLUTION MODIFYING THE TALLMAN CONCOMITANT
AGREEMENT AND ALTERING THE PLAT OF MALLARD'S LANDING
DATE: OCTOBER 22, 2001

BACKGROUND

The City Council, on August 13, 2001, considered a request from Talmo, Inc. to modify certain conditions in the June 1994 Concomitant Zoning Agreement for the Tallman Annexation (ANX 91-07) and to modify a condition placed on the Plat of Mallard's Landing. Following an open public hearing on the matter, the City Council moved to approve the request as submitted.

RECOMMENDATION

I would recommend that the City Council adopt the Resolution approving the first amendment to the June 1994 Concomitant Zoning Agreement for the Tallman Annexation (ANX 91-07) and amending the Plat of Mallard's Landing.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, RENDERING THE FINAL DECISION OF THE CITY, APPROVING AN AMENDMENT TO THE FINAL PLAT OF MALLARD'S LANDING (SUB 00-01) AND THE CONCOMITANT ZONING AGREEMENT FOR TALLMAN ANNEXATION (ANX 91-07), FOR PROPERTY IN THE GENERAL VICINITY OF WOLLOCHET DRIVE N.W., 46th STREET N.W., HUNT STREET, AND 72nd STREET N.W., GIG HARBOR, WASHINGTON.

WHEREAS, applicant, Talmo, Inc. submitted a request for an amendment to the Final Plat of Mallard's Landing (hereinafter the "Plat") and the Concomitant Zoning Agreement for Tallman Annexation (ANX 91-07) (hereinafter the "Agreement"), which amendments would affect property in the general vicinity of Wollochet Drive N.W., 46th Street N.W., Hunt Street, and 72nd Street N.W., in Gig Harbor, Washington; and

WHEREAS, the City Responsible SEPA Official issued a Determination of Non-Significance (DNS) for the applications on September 14, 2001; and

WHEREAS, an amendment was requested to the Agreement to change the minimum roof pitch from 4/12 for property in the Plat located north and south of Wollochet Drive to instead require that the applicant follow the City's adopted Design Review Manual; and

WHEREAS, because the approved plat included the language of the Agreement, an amendment to the Agreement would also require amendment of the Plat; and

WHEREAS, the City Council held a consolidated open public hearing on the applications on August 13, 2001; Now, Therefore

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

Section 1. Consolidated Open Record Hearing.

A. Notice. The open record hearing before the Gig Harbor City Council was convened on August 13, 2001. All required public notice of the closed record hearing was provided.

B. Appearance of Fairness.

All members of the Council and the Mayor were asked to disclose any ex parte contacts with opponents or proponents of the development, appearance of fairness or conflict of interest matters. The following disclosure was made:

Jim Pasin. Councilmember Pasin stated that he knew the architect on the project. The City Attorney stated that this would not alone require that Councilmember Pasin recuse himself from participation in the hearing. She then asked him whether he believed he could render an impartial decision in this matter, and he said yes.

The members of the public were asked whether anyone had any objection to participation by the Mayor or any Councilmember in this matter. After hearing all of the above, no one objected.

Section 2. Record for the Consolidated Open Record Hearing. The following documents were entered into the record for the Consolidated Open Record Hearing on the applications:

Exhibit No.	Date	Description
1.	August 8, 2001	Request for modification of the Tallman Concomitant Agreement and the Plat of Mallard's Landing.
2.	June 17, 1994	Concomitant Zoning Agreement for Tallman Annexation (ANX 91-07).
3.	August 13, 2001	Draft First Amendment to Concomitant Zoning Agreement for Tallman Annexation (ANX 91-07).

Section 3. Witnesses. Scott Wagner testified at the consolidated open record hearing. Mr. Wagner stated that the amendment was requested for the purpose of conforming to the City's Design Review Manual. He stated that the change would provide a better result for both parties.

Mr. Wagner also stated that he had a concern regarding the need for Section 3 of the proposed First Amendment to the Concomitant Agreement. He wanted an explanation for the statement that the First Amendment and Agreement applied to "build out" of the project. Mr. Wagner stated that a similar provision had not been included in the Agreement and questioned whether Section 3 of the First Amendment was needed.

The City Attorney explained that since the Agreement was executed by the parties, RCW 36.70B.180 was adopted by the Washington State Legislature. That statute (adopted in 1995), provided, in pertinent part, that:

A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, and may not be subject to an amendment to a zoning

ordinance or development standard or regulation or new zoning ordinance or development standard or regulation adopted after the effective date of the agreement.

The above statute would allow the Agreement and First Amendment to be applied to the build out of the plat, but any redevelopment (if the structures are torn down, for example) would have to conform to the City's regulations in place at the time of redevelopment. State law also addresses the expiration of a final plat (RCW 58.17.170).

Section 5. Standard of Review in Consolidated Open Record Hearings.

Amendment to the Concomitant Agreement. There are few regulations applicable to amendment of a concomitant (or development) agreement. "A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW (the Growth Management Act). RCW 36.70B.160. "A development agreement shall be consistent with the applicable policies and goals of the City of Gig Harbor comprehensive plan and applicable development regulations." Gig Harbor Municipal Code ("GHMC") Section 19.08.010(B).

Amendment to the Final Plat. "The plat alteration may be approved or denied after a written determination is made whether the public use will be served by the alteration of the subdivision." GHMC 16.07.004.

Section 5. Analysis of Approval Criteria to Applications. The only change requested by the applicant is to conform to the City's existing Design Review Manual. Through the adoption of the Design Review Manual, the City has made a decision that the regulations in the Manual are consistent with the public use and all other zoning considerations (health, safety and welfare).

By removing the specific requirement that a minimum 4/12 roof pitch be maintained and by substituting the current standards in the Design Review Manual, the proposed development will be more consistent with current policy, city code and development constructed after adoption of the Manual. Furthermore, the amendment would provide for a building design that is superior to one that would be guided by the requirements listed in the original conditions of the Agreement and Plat.

Section 6. Final Decision. The City Council finds that the proposed amendments to the Plat and Agreement serve the public use and are consistent with existing development regulations and policies.

Section 7. Implementation of Final Decision. The applicant is directed to produce a revised drawing of the approved alteration of the Plat, consistent with the requirements of GHMC Section 16.06.001(C). The Mayor is hereby authorized to execute the amended Plat, which, after recording with the Pierce County Auditor, shall become the lawful Plat of the property. Once recorded, two reproducible copies of the Plat shall be filed with the City, one with the Director of the Department of Planning and Building Services and one with the Director of the Department of Public Works, at the expense of the applicant.

The Mayor is hereby authorized to execute the First Amendment to Concomitant Zoning Agreement for Tallman Annexation. The First Amendment shall be recorded with the Pierce County Auditor, and copies of the First Amendment shall be filed as described above.

RESOLVED by the City Council this 22nd day of October 2001.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____

FILED WITH THE CITY CLERK: 10/15/01
PASSED BY THE CITY COUNCIL:
RESOLUTION NO. ____



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR DR
DATE: OCTOBER 22, 2001
SUBJECT: FIRST READING - 2001 TAX LEVY ORDINANCE

INTRODUCTION

This is the first reading of an ordinance setting the 2001 property tax levy for collection in 2002.

POLICY CONSIDERATIONS

This levy assumes passage of I-747, which limits property taxes to a 1% increase over last years' levy. The 2002 budget is built assuming a 1% property tax increase over the current levy. This is approximately \$60,000 less than if a 6% increase were levied.

FINANCIAL

Property taxes are approximately 7% of 2002 General Fund revenue budget and 63% of the Street Fund operating budget.

RECOMMENDATION

Staff recommends adoption of the ordinance upon second reading.

CITY OF GIG HARBOR

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, LEVYING THE GENERAL PROPERTY TAXES FOR THE CITY OF GIG HARBOR FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2002.

WHEREAS, the City Council of the City of Gig Harbor attests that the City population is 6,485; and

WHEREAS, the City Council of the City of Gig Harbor have properly given notice of the public hearing held October 22, 2001 to consider the City's General Fund revenue sources for the 2002 calendar year, pursuant to RCW 84.55.120; and

WHEREAS, the City Council of the City of Gig Harbor has considered the city's anticipated financial requirements for 2002, and the amounts necessary and available to be raised by ad valorem taxes on real and personal property,

NOW, THEREFORE, the City Council of the City of Gig Harbor, Washington **ORDAINS** as follows:

Section 1. The ad valorem tax general levies required to raise estimated revenues for the City of Gig Harbor for the ensuing year commencing January 1, 2002, shall be levied upon the value of real and personal property which has been set at an assessed valuation of \$819,199,016. Taxes levied upon this value shall be:

The 2001 property tax for collection in 2002 is \$1,227,187 which is an increase of \$57,201 and 1% over the 2000 levy, in addition to that resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property.

Section 2. This ordinance shall be certified by the city clerk to the clerk of the board of county council and taxes hereby levied shall be collected and paid to the Finance Director of the City of Gig Harbor at the time and in a manner provided by the laws of the state of Washington for the collection of taxes.

Section 3. This ordinance shall be published in the official newspaper of the city, and shall take effect and be in full force five(5) days after the date of its publication.

PASSED by the City Council of the City of Gig Harbor, Washington, and approved by its

Mayor at a regular meeting of the council held on this ___ day of ____, 2001.

Gretchen A. Wilbert, Mayor

ATTEST:

Molly Towslee
City Clerk

Filed with city clerk:
Passed by the city council:
Date published:
Date effective:



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
SUBJECT: PURCHASE AUTHORIZATION
- PLAYGROUND STRUCTURE AT CITY PARK
DATE: OCTOBER 16, 2001

INTRODUCTION/BACKGROUND

An identified Park and Recreation Objective in the 2001 Budget was the purchase of new playground equipment at City Park. Contract documents and specifications were developed in accordance with RCW 35.23.352. In order to determine whether there were manufacturers of a play toy equipment structure suitable for the City's purposes, the Assistant Public Works Director visited several local jurisdictions parks and playgrounds and determined that the equipment manufactured by Playground Environments International best met the City's needs in construction quality, play events and aesthetics. The City's bid documents specified the manufacturer to be Playground Environments International and the unit was advertised August 15 and 22, 2001. We solicited bids and two bidders bid the project. On August 29, 2001 at 10:00 A.M. the bid was closed, with two bidders responding.

The bids are summarized below:

<u>Bidders</u>	<u>Total</u>
Cascade Recreation	\$ 36,043.70
Playscapes Northwest Inc.	\$ 26,136.15

The lowest bid proposal received was from Playscapes Northwest, Inc., in the amount of \$26,136.15, including state sales tax and shipping, however their bid proposal did not comply with the City's contract specifications. Playscapes Northwest, Inc. submitted a bid for a different equipment structure, manufactured by Little Tikes Commercial Play Systems, that was not the specified manufacturer in the City's bid documents. Additionally, Playscapes Northwest, Inc. did not meet the City's specifications for 5-ft. on-center platforms, or for the "archasaurus ladder", and Playscapes Northwest, Inc. specified 16-gauge, instead of 11-gauge. These discrepancies of not meeting the specifications affected the bid amount by a difference of \$9,907.55. The primary issue is the lowest bidder did not bid the project as specified. The City's specifications were clearly written to include specific details and dimensions, as well as specifying the manufacturer as Playground Environments International.

POLICY ISSUES

The City reserves the right to reject any and all bids, and rejecting the bids is consistent with the bid specifications that were advertised.

MAYOR WILBERT AND CITY COUNCIL

October 16, 2001

Page 2

FISCAL IMPACT

The Council budgeted \$20,000 in the 2001 Budget for this purchase, however sufficient funds are available.

RECOMMENDATION

Staff recommends a Council motion to approve the proposed Resolution declaring the purchase of a Play Toy Structure to be limited to a sole source for the purchase of the Play Toy Structure and authorize the purchase from Cascade Recreation, for their bid proposal amount of thirty-six thousand forty-three dollars and seventy cents (\$36,043.70), including state sales tax.

**CITY OF GIG HARBOR
RESOLUTION NO.**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DECLARING THE PURCHASE OF A PLAY TOY EQUIPMENT STRUCTURE FOR A CITY PARK TO BE LIMITED TO A SOLE SOURCE, AND WAIVING COMPETITIVE BIDDING REQUIREMENTS FOR PURCHASE OF THE PLAY TOY EQUIPMENT STRUCTURE EQUIPMENT.

WHEREAS, on November 27, 2000, the City Council included in the 2001 Parks Department budget, an allocation for the purchase of a play toy equipment structure to be placed in City Park; and

WHEREAS, in order to determine whether there were manufacturers of a play toy equipment structure suitable for the City's purposes, the Assistant Public Works Director visited other jurisdictions' parks and playgrounds in the surrounding Puget Sound area, and determined that the play toy manufactured by Playground Environments International best met the City's needs in construction quality, play events and aesthetics; and

WHEREAS, on August 15, 2001, the Public Works Department competitively bid the proposed purchase of a play toy equipment structure; and bid specs specifically identified Playground Environments International; and

WHEREAS, on August 29, 2001, the Public Works Department received bids from two suppliers for the play toy equipment structure; one of which bid was received from Cascade Recreation, Inc. for a play toy equipment structure manufactured by Playground Environmental International and most nearly resembled the play toy equipment structure described in the City's call for bids and met the City's specifications. The other bid was received from Playscapes NW, Inc. for a play toy equipment structure manufactured by Little Tikes Commercial Play Systems, but the Playscapes play toy did not resemble the play toy equipment advertised in the City's bid and did not meet the City's specifications because it was not manufactured by Playground Environmental Inc., and it did not meet the City's specifications on the following items: 5-ft. on center platforms, "archasaurus ladder," and the roof structure; and

WHEREAS, the difference in the price of the play toy equipment structure was \$9,907.55 more for the Playscapes play toy; and

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

Section 1. The City Council declares that purchase of the play toy equipment structure for the City Park is clearly and legitimately limited to a single source or supply within the near vicinity, because only the play toy manufactured by Playground Environments International is the most aesthetically acceptable. Therefore, the City Council waives all competitive bidding requirements for this sole source purchase.

Section 2. The Public Works Director is hereby authorized to purchase the play toy equipment as described as forth in the bid documents, and whose bid proposal as submitted Cascade Recreation, Inc. in the amount of \$36,043.70, for placement in the City Park.

Resolved by the City Council this ___ day of _____, 2001.

APPROVED:

Gretchen Wilbert, Mayor

ATTEST/AUTHENTICATED:

Molly Towslee
City Clerk

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:
BY:

Filed with City Clerk:
Passed by City Council:



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

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MITCH BARKER, CHIEF OF POLICE *MB*
SUBJECT: SEPTEMBER INFORMATION FROM PD
DATE: OCTOBER 15, 2001

The September activity statistics are attached for your review.

The Reserves volunteered 146.5 hours in September. Their duties included patrol and court transports as well as security at Gig Harbor High. Two Reserve Officers also worked at Sea-Tac Airport as part of a mutual aid response to assist in reopening the airport following the September 11 terrorist attacks.

The Marine Services Unit provided 34.5 hours of patrol time, 5 hours of maintenance time, and 3.5 hours of administrative time. The unit responded to 1 dispatched call, conducted 4 safety inspections, 1 boater assist, and answered 2 boating complaints. They also went on 1 search and rescue callout.

The bike patrol worked 33 hours in September. In addition to general patrol, the bikes were used at Gig Harbor High, on a ribbon cutting/parade for the opening of Kimball Drive, and as part of the mutual aid response at Sea-Tac Airport.

Officer Garcia has been called to active duty with the US Army. This leaves us one officer short until he returns. His orders call for a two-year activation but we are hopeful it will be for less time than that.



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

GIG HARBOR POLICE DEPARTMENT

MONTHLY ACTIVITY REPORT

September 2001

	<u>Sept</u> <u>2001</u>	<u>YTD</u> <u>2001</u>	<u>YTD</u> <u>2000</u>	<u>%chg to</u>
CALLS FOR SERVICE	478	4202	3823	+ 09
CRIMINAL TRAFFIC	23	213	124	+ 71
TRAFFIC INFRACTIONS	118	576	597	- 03
DUI ARRESTS	8	80	54	+ 48
FELONY ARRESTS	7	45	55	- 18
MISDEMEANOR ARRESTS	15	155	219	- 29
WARRANT ARRESTS	4	45	46	- 02
CASE REPORTS	123	1007	1018	- 01
REPORTABLE VEHICLE ACCIDENTS	23	216	166	+ 30



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR DR
DATE: OCTOBER 15, 2001
SUBJECT: THIRD QUARTER FINANCIAL REPORT

The quarterly financial reports for the third quarter of 2001 are attached.

Total resources, including all revenues and beginning cash balances, are at 120% of the annual budget. Total revenues, excluding cash balances, are at 106% of the annual budget while total expenditures are at 46%.

General Fund revenues (excluding beginning balance) are ahead of pace at 87% of budget (as compared with 86% last year). Sales tax receipts at 86% of budget (This is for sale through July). At this time it appears that sales tax revenues should exceed our budget of \$2.6 million. Through September, license and permit revenues were \$338,000 (147% of budget). The bulk of this can be attributed to building permits.

General Fund expenditures are at 61% of budget. Non-departmental expenditures are at 89% of budget. This is ahead of pace because of several large budgeted transfers out that have been occurred. All other departments have spent less than 72% of budgeted expenditures.

Street Operating Fund revenues are 104% and expenditures 56% of budget.

Water and Sewer revenues are at 64% and 72% of budget. Water and Sewer expenditures are both at 61% of budget. Water Fund revenues are expected to fall short of budget for 2001 while Sewer is expected to approach budgeted revenues by year-end. It appears we should be well within our expenditure budget for both the Water and Sewer Funds. Storm Sewer revenues and expenditures are at 64% and 28% of budget.

Cash balances are adequate in all funds. Investments outside the State Treasurer's Pool are unchanged from last quarter.

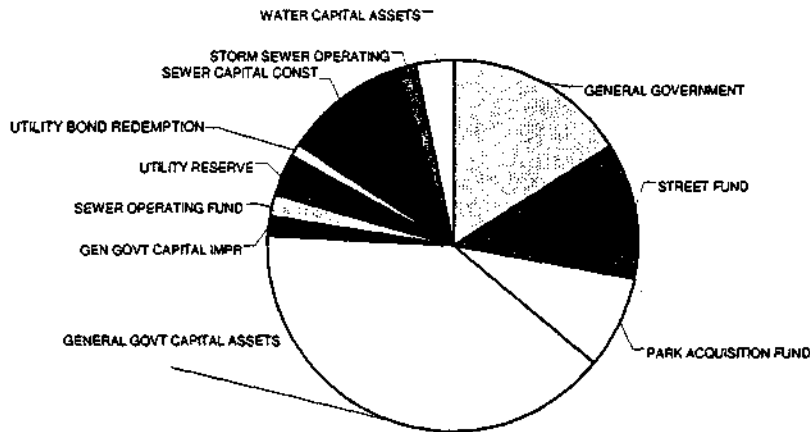
**CASH AND INVESTMENTS
YEAR TO DATE ACTIVITY
AS OF SEPTEMBER 30, 2001**

FUND NO.	DESCRIPTION	BEGINNING BALANCE	REVENUES	EXPENDITURES	OTHER CHANGES	ENDING BALANCE
001	GENERAL GOVERNMENT	\$ 2,029,756	\$ 4,029,473	\$ 3,054,625	\$ (61,191)	\$ 2,943,412
101	STREET FUND	1,191,863	2,963,818	1,575,989	(427,660)	2,152,033
105	DRUG INVESTIGATION FUND	12,701	816	2,915		10,601
107	HOTEL-MOTEL FUND	216,027	122,241	189,257		149,011
109	PARK ACQUISITION FUND	1,856,158	314,213	677,009	(820)	1,492,542
203	'87 GO BONDS - SEWER CONSTR	159,434	5,722	5,599	(70)	159,488
208	91 GO BONDS & 97 LTGO BONDS	37,061	315,346	40,625	(101)	311,680
301	GENERAL GOVT CAPITAL ASSETS	145,971	8,023,578	862,515	(46,505)	7,260,529
305	GENERAL GOVT CAPITAL IMPR	197,462	93,746			291,208
307	LID NO. 99-1 FUND		1,200,000	1,200,000		
401	WATER OPERATING FUND	142,507	489,784	563,283	(14,777)	54,231
402	SEWER OPERATING FUND	323,347	746,030	764,638	(87,684)	217,055
407	UTILITY RESERVE	593,674	21,115			614,789
408	UTILITY BOND REDEMPTION	308,730	306,069	428,602		186,197
410	SEWER CAPITAL CONST	356,620	1,951,701	324,632	(412)	1,983,278
411	STORM SEWER OPERATING FUND	145,477	281,820	192,462	75,175	310,009
420	WATER CAPITAL ASSETS	564,389	532,468	502,612	(2,463)	591,782
605	LIGHTHOUSE MAINTENANCE TRUST	1,721	55	60		1,716
631	MUNICIPAL COURT		49,463	44,282	(5,180)	
		\$ 8,282,896	\$ 21,447,456	\$ 10,429,104	\$ (571,688)	\$ 18,729,560

**COMPOSITION OF CASH AND INVESTMENTS
AS OF SEPTEMBER 30, 2001**

	MATURITY	RATE	BALANCE
CASH ON HAND			\$ 300
CASH IN BANK		1.290%	945,162
RESTRICTED CASH		1.290%	1,453,689
LOCAL GOVERNMENT INVESTMENT POOL		3.577%	15,830,409
FEDERAL HOME LOAN BANK	12/26/03	5.245%	300,000
FEDERAL HOME LOAN BANK	06/27/03	5.125%	200,000
			\$ 18,729,560

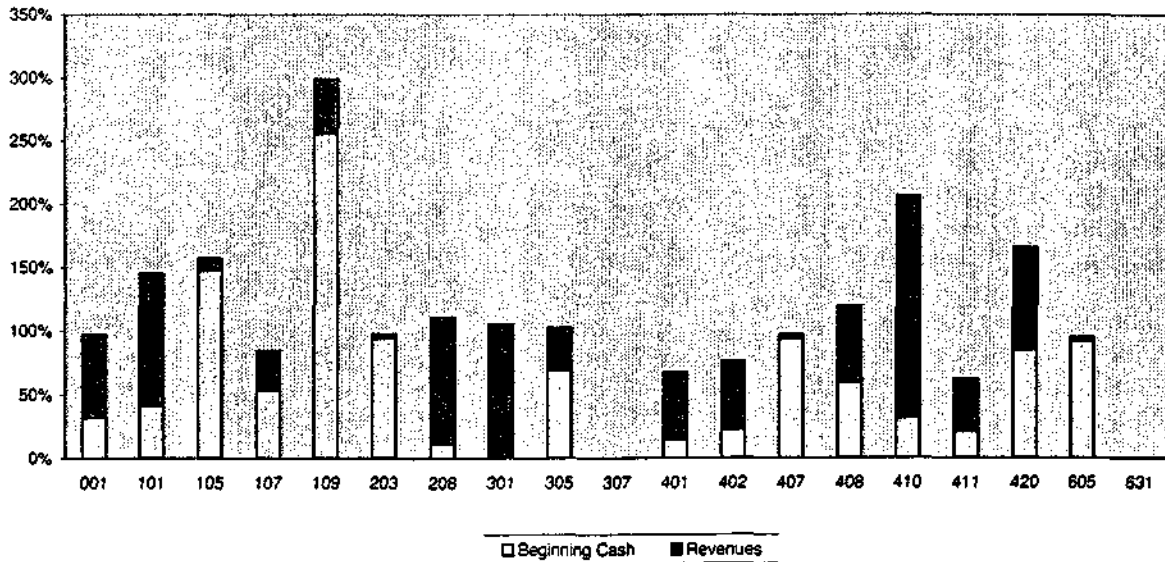
Ending Cash Balances By Fund



**CITY OF GIG HARBOR
YEAR-TO-DATE RESOURCE SUMMARY
AND COMPARISON TO BUDGET
AS OF JUNE 30, 2001**

FUND NO.	DESCRIPTION	ESTIMATED RESOURCES	ACTUAL Y-T-D RESOURCES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT	\$ 6,250,619	\$ 6,059,229	\$ 191,390	96.94%
101	STREET FUND	2,863,737	4,155,682	(1,291,945)	145.11%
105	DRUG INVESTIGATION FUND	8,603	13,516	(4,913)	157.11%
107	HOTEL-MOTEL FUND	399,629	338,267	61,362	84.65%
109	PARK ACQUISITION FUND	725,904	2,170,371	(1,444,467)	298.99%
203	'87 GO BONDS - SEWER CONSTR	169,529	165,156	4,373	97.42%
208	91 GO BONDS & 97 LTGO BONDS	318,364	352,407	(34,043)	110.69%
301	GENERAL GOVT CAPITAL ASSETS	7,733,914	8,169,549	(435,635)	105.63%
305	GENERAL GOVT CAPITAL IMPROVEMENT	284,120	291,208	(7,088)	102.49%
307	LID NO. 99-1 FUND		1,200,000	(1,200,000)	
401	WATER OPERATING	933,723	632,291	301,432	67.72%
402	SEWER OPERATING	1,410,179	1,069,377	340,802	75.83%
407	UTILITY RESERVE	634,635	614,789	19,846	96.87%
408	UTILITY BOND REDEMPTION FUND	516,341	614,798	(98,457)	119.07%
410	SEWER CAPITAL CONSTRUCTION	1,118,306	2,308,321	(1,190,015)	206.41%
411	STORM SEWER OPERATING	685,006	427,297	257,709	62.38%
420	WATER CAPITAL ASSETS	661,892	1,096,857	(434,965)	165.72%
605	LIGHTHOUSE MAINTENANCE TRUST	1,869	1,776	93	95.02%
631	MUNICIPAL COURT		49,463	(49,463)	
		\$ 24,716,370	\$ 29,730,352	\$ (5,013,982)	120.29%

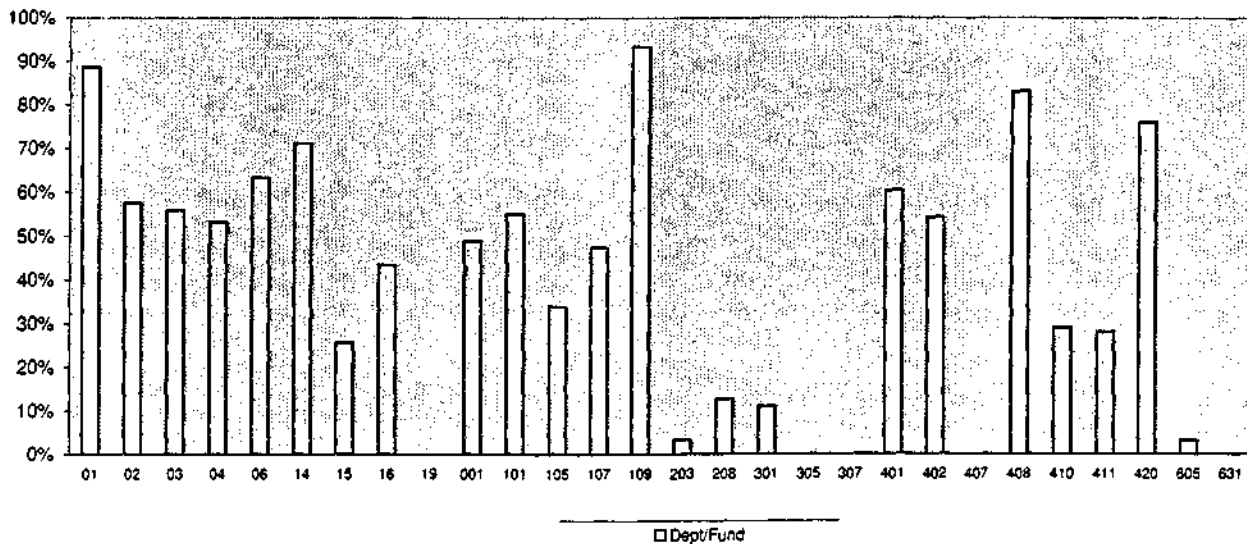
Resources as a Percentage of Annual Budget



**CITY OF GIG HARBOR
YEAR-TO-DATE EXPENDITURE SUMMARY
AND COMPARISON TO BUDGET
FOR PERIOD ENDING JUNE 30, 2001**

FUND NO.	DESCRIPTION	ESTIMATED EXPENDITURES	ACTUAL Y-T-D EXPENDITURES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT				
01	NON-DEPARTMENTAL	\$ 879,700.00	\$ 779,691.14	\$ 100,008.86	88.63%
02	LEGISLATIVE	30,100	17,330	12,770	57.58%
03	MUNICIPAL COURT	290,350	162,337	128,013	55.91%
04	ADMINISTRATIVE/FINANCIAL	738,400	392,864	345,536	53.20%
06	POLICE	1,551,400	982,139	569,261	63.31%
14	COMMUNITY DEVELOPMENT	696,900	495,520	201,380	71.10%
15	PARKS AND RECREATION	734,100	189,618	544,482	25.83%
16	BUILDING	80,800	35,125	45,675	43.47%
19	ENDING FUND BALANCE	1,248,869	-	1,248,869	
001	TOTAL GENERAL FUND	6,250,619	3,054,625	3,195,994	48.87%
101	STREET FUND	2,863,737	1,575,989	1,287,748	55.03%
105	DRUG INVESTIGATION FUND	8,603	2,915	5,688	33.88%
107	HOTEL-MOTEL FUND	399,629	199,257	210,372	47.36%
109	PARK ACQUISITION FUND	725,904	677,009	48,895	93.26%
203	'87 GO BONDS - SEWER CONSTR	169,529	5,599	163,930	3.30%
208	91 GO BONDS & 97 LTGO BONDS	318,364	40,625	277,739	12.76%
301	GENERAL GOVT CAPITAL ASSETS	7,733,914	862,515	6,871,399	11.15%
305	GENERAL GOVT CAPITAL IMPROVEMENT	284,120	-	284,120	
307	LID NO. 99-1 FUND	-	1,200,000	(1,200,000)	
401	WATER OPERATING	933,723	563,283	370,440	60.33%
402	SEWER OPERATING	1,410,179	764,638	645,541	54.22%
407	UTILITY RESERVE	634,635	-	634,635	
408	UTILITY BOND REDEMPTION FUND	516,341	428,602	87,739	83.01%
410	SEWER CAPITAL CONSTRUCTION	1,118,306	324,632	793,674	29.03%
411	STORM SEWER OPERATING	685,006	192,462	492,544	28.10%
420	WATER CAPITAL ASSETS	661,892	502,612	159,280	75.94%
605	LIGHTHOUSE MAINTENANCE TRUST	1,869	60	1,809	3.21%
631	MUNICIPAL COURT	-	44,282	(44,282)	
		\$ 24,716,370	\$ 10,429,104	\$ 14,287,266	42.20%

Expenditures as a Percentage of Annual Budget



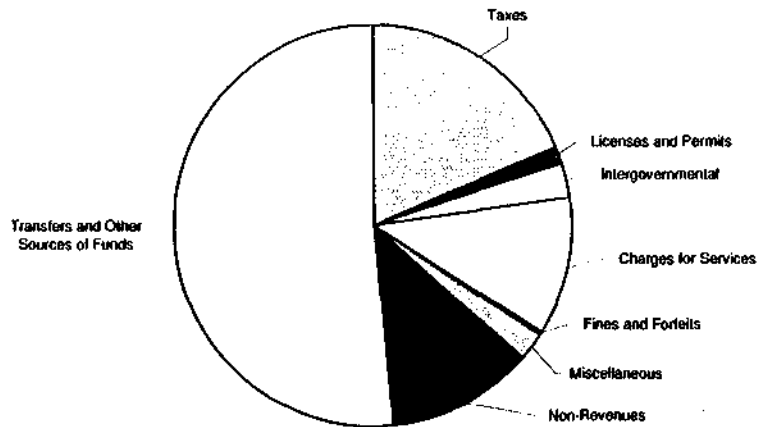
**CITY OF GIG HARBOR
YEAR-TO-DATE REVENUE SUMMARY
BY TYPE
FOR PERIOD ENDING SEPTEMBER 30, 2001**

TYPE OF REVENUE	AMOUNT
Taxes	\$ 3,965,915
Licenses and Permits	341,673
Intergovernmental	558,833
Charges for Services	2,403,456
Fines and Forfeits	59,264
Miscellaneous	461,551
Non-Revenues	2,563,118
Transfers and Other Sources of Funds	11,093,646
Total Revenues	21,447,456
Beginning Cash Balance	8,282,896
Total Resources	\$ 29,730,352

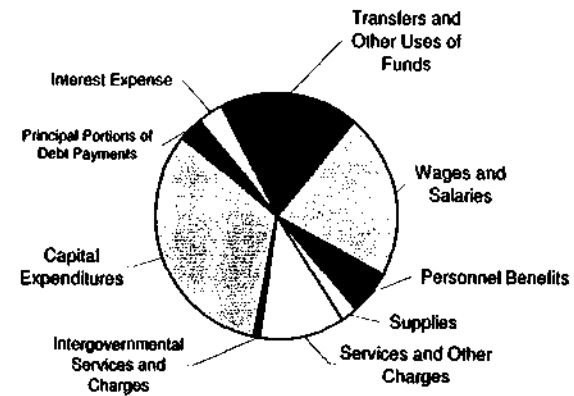
**CITY OF GIG HARBOR
YEAR-TO-DATE EXPENDITURE SUMMARY
BY TYPE
FOR PERIOD ENDING SEPTEMBER 30, 2001**

TYPE OF EXPENDITURE	AMOUNT
Wages and Salaries	\$ 2,272,906
Personnel Benefits	603,249
Supplies	237,715
Services and Other Charges	1,176,046
Intergovernmental Services and Charges	83,010
Capital Expenditures	3,417,099
Principal Portions of Debt Payments	336,596
Interest Expense	371,000
Transfers and Other Uses of Funds	1,931,482
Total Expenditures	10,429,104
Ending Cash Balance	18,729,560
Total Uses	\$ 29,158,664

Revenues by Type - All Funds



Expenditures by Type - All Funds



**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2001**

	SPECIAL REVENUE FUNDS									TOTAL SPECIAL REVENUE
	001 GENERAL GOVERNMENT	101 STREET	105 DRUG INVESTIGATION	107 HOTEL - MOTEL	109 PARK ACQUISITION	301 GENERAL GOVT CAPITAL ASSETS	305 GENERAL GOVT CAPITAL IMP	307 LID NO. 99-1	605 LIGHTHOUSE MAINTENANCE	
CASH	\$ 215,548	\$ 1,355,702	\$ 597	\$ 8,395	\$ 89,726	\$ 409,070	\$ 16,407	\$ -	\$ 97	\$ 1,879,994
INVESTMENTS	2,727,864	796,332	10,004	140,615	1,402,815	6,851,459	274,800	-	1,619	9,477,645
RECEIVABLES	47,057	31,533	-	-	-	-	-	-	-	31,533
FIXED ASSETS	-	-	-	-	-	-	-	-	-	-
OTHER	-	-	-	-	-	-	-	-	-	-
TOTAL ASSETS	2,990,470	2,183,566	10,601	149,011	1,492,542	7,260,529	291,208	-	1,716	11,389,172
LIABILITIES										
CURRENT	25,033	161,581	-	-	-	-	-	-	-	161,581
LONG TERM	27,164	27,164	-	-	-	-	-	-	-	27,164
TOTAL LIABILITIES	52,197	188,745	-	-	-	-	-	-	-	188,745
FUND BALANCE:										
BEGINNING OF YEAR	1,963,424	606,991	12,701	216,027	1,855,338	99,466	197,462	-	1,721	2,989,705
Y-T-D REVENUES	4,029,473	2,963,818	816	122,241	314,213	8,023,578	93,746	1,200,000	55	12,718,466
Y-T-D EXPENDITURES	(3,054,625)	(1,575,989)	(2,915)	(189,257)	(677,009)	(862,515)	-	(1,200,000)	(60)	(4,507,745)
ENDING FUND BALANCE	2,938,272	1,994,821	10,601	149,011	1,492,542	7,260,529	291,208	-	1,716	11,200,427
TOTAL LIAB. & FUND BAL.	\$ 2,990,470	\$ 2,183,566	\$ 10,601	\$ 149,011	\$ 1,492,542	\$ 7,260,529	\$ 291,208	\$ -	\$ 1,716	\$ 11,389,172

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2001**

	DEBT SERVICE		
	203 87 GO BONDS SEWER CONST	208 91 GO BONDS SOUNDVIEW DR	TOTAL DEBT SERVICE
CASH	\$ 8,986	\$ 17,561	\$ 26,546
INVESTMENTS	150,502	294,120	444,622
RECEIVABLES	1,287	-	1,287
FIXED ASSETS	-	-	-
OTHER	-	-	-
TOTAL ASSETS	160,775	311,680	472,455
LIABILITIES			
CURRENT	-	-	-
LONG TERM	1,109	-	1,109
TOTAL LIABILITIES	1,109	-	1,109
FUND BALANCE:			
BEGINNING OF YEAR	159,543	36,959	196,502
Y-T-D REVENUES	5,722	315,346	321,068
Y-T-D EXPENDITURES	(5,599)	(40,625)	(46,224)
ENDING FUND BALANCE	159,666	311,680	471,346
TOTAL LIAB. & FUND BAL.	\$ 160,775	\$ 311,680	\$ 472,455

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2001**

	PROPRIETARY							TOTAL PROPRIETARY
	401 WATER OPERATING	402 SEWER OPERATING	407 UTILITY RESERVE	408 89 UTILITY BOND REDEMPTION	410 SEWER CAP. CONST.	411 STORM SEWER OPERATING	420 WATER CAP. ASSETS	
CASH	\$ 3,150	\$ 12,324	\$ 6,467	\$ 5,604	\$ 111,741	\$ 17,466	\$ 33,584	\$ 190,336
INVESTMENTS	51,081	204,731	608,322	93,866	1,871,537	292,543	558,198	3,680,278
RECEIVABLES	95,510	197,578	9,195	1,126,222	(2,019)	33,955	-	1,460,441
FIXED ASSETS	2,008,347	8,711,402	-	-	330,538	679,266	318,599	12,048,152
OTHER	-	-	-	8,015	-	-	-	8,015
TOTAL ASSETS	2,158,087	9,126,036	623,984	1,233,707	2,311,797	1,023,231	910,380	17,387,223
LIABILITIES								
CURRENT	366	661,763	-	397,420	(2,642)	2	109	1,057,018
LONG TERM	46,064	23,958	-	1,652,631	-	17,279	-	1,739,932
TOTAL LIABILITIES	46,430	685,721	-	2,050,051	(2,642)	17,281	109	2,796,950
FUND BALANCE:								
BEGINNING OF YEAR	2,185,156	8,458,923	602,869	(693,811)	687,370	916,592	880,415	13,037,514
Y-T-D REVENUES	489,784	746,030	21,115	306,069	1,951,701	281,820	532,468	4,328,986
Y-T-D EXPENDITURES	(563,283)	(764,638)	-	(428,602)	(324,632)	(192,462)	(502,612)	(2,776,228)
ENDING FUND BALANCE	2,111,657	8,440,315	623,984	(816,344)	2,314,439	1,005,950	910,271	14,590,273
TOTAL LIAB. & FUND BAL.	\$ 2,158,087	\$ 9,126,036	\$ 623,984	\$ 1,233,707	\$ 2,311,797	\$ 1,023,231	\$ 910,380	\$ 17,387,223

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2001**

	ACCOUNT GROUPS				TOTAL
	FIDUCIARY 631 MUNICIPAL COURT	820 GENERAL FIXED ASSET GROUP	900 GENERAL L-T DEBT GROUP	TOTAL ACCOUNT GROUPS	
CASH	\$ -	\$ -	\$ -	\$ -	2,312,425
INVESTMENTS	-	-	-	-	16,330,409
RECEIVABLES	-	-	-	-	1,540,319
FIXED ASSETS	-	3,698,092	-	3,698,092	15,746,244
OTHER	-	-	-	-	8,015
TOTAL ASSETS	-	3,698,092	-	3,698,092	35,937,411
LIABILITIES					
CURRENT	-	-	-	-	1,243,632
LONG TERM	-	-	-	-	1,795,369
TOTAL LIABILITIES	-	-	-	-	3,039,001
FUND BALANCE:					
BEGINNING OF YEAR	(5,180)	3,698,092	-	3,698,092	21,880,058
Y-T-D REVENUES	49,463	-	-	-	21,447,456
Y-T-D EXPENDITURES	(44,282)	-	-	-	(10,429,104)
ENDING FUND BALANCE	-	3,698,092	-	3,698,092	32,898,410
TOTAL LIAB. & FUND BAL.	\$ -	\$ 3,698,092	\$ -	\$ 3,698,092	\$ 35,937,411

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
BY FUND TYPE
AS OF SEPTEMBER 30, 2001**

	GENERAL GOVERNMENT	SPECIAL REVENUE	DEBT SERVICE	TOTAL GOVERNMENTAL	PROPRIETARY	FIDUCIARY	ACCOUNT GROUPS	TOTAL ALL FUND TYPES
ASSETS								
CASH	\$ 215,548	\$ 1,879,994	\$ 26,546	\$ 2,122,088	\$ 190,336	\$ -	\$ -	\$ 2,312,425
INVESTMENTS	2,727,864	9,477,645	444,622	12,650,131	3,680,278	-	-	16,330,409
RECEIVABLES	47,057	31,533	1,287	79,877	1,460,441	-	-	1,540,319
FIXED ASSETS	-	-	-	-	12,048,152	-	3,698,092	15,746,244
OTHER	-	-	-	-	8,015	-	-	8,015
TOTAL ASSETS	2,990,470	11,389,172	472,455	14,852,097	17,387,223	-	3,698,092	35,937,411
LIABILITIES								
CURRENT	25,033	161,581	-	186,614	1,057,018	-	-	1,243,632
LONG TERM	27,164	27,164	1,109	55,437	1,739,932	-	-	1,795,369
TOTAL LIABILITIES	52,197	188,745	1,109	242,051	2,796,950	-	-	3,039,001
FUND BALANCE:								
BEGINNING OF YEAR	1,963,424	2,989,705	196,502	5,149,632	13,037,514	(5,180)	3,698,092	21,880,058
Y-T-D REVENUES	4,029,473	12,718,466	321,068	17,069,007	4,328,986	49,463	-	21,447,456
Y-T-D EXPENDITURES	(3,054,625)	(4,507,745)	(46,224)	(7,608,593)	(2,776,228)	(44,282)	-	(10,429,104)
ENDING FUND BALANCE	2,938,272	11,200,427	471,346	14,610,045	14,590,273	-	3,698,092	32,898,410
TOTAL LIAB. & FUND BAL.	\$ 2,990,470	\$ 11,389,172	\$ 472,455	\$ 14,852,097	\$ 17,387,223	\$ -	\$ 3,698,092	\$ 35,937,411

Critique - Maintenance agreement - Sunshine Scenic Viewing Overlook and Garden Area. Presented before the Gig Harbor City Council, Oct. 22, 2001

Jack Darragh - 3620 - 40th St. Court, Gig Harbor

The structure to house the Russell Family Foundation on the Gig Harbor waterfront, was authorized under provisions of RCW17.04.660. This allows planned unit developments that **"makes possible greater variety and diversification in the relationships between building and open space."** A provision of that law provides this is allowed **in order to encourage the conservation and retention of historical and natural topographic features."**

The Russell structure as it is configured blocks historical views that have been there for thousands of years, not only at street level, but to residences uphill from the building. The law further provides for **"retention of . . . natural topographic features."** The building of the structure and its appurtenances, has destroyed all natural topographic features where it is sited. For these two reason alone, it should never have been built how and where it is using PUD authority.

High intensity use remains an ambiguous term. Sunshine Property Management suggests a return to the hearing examiner can resolve it. Perhaps. The present language in the Agreement could be interpreted as disallowing the City seeking judicial relief if they are not satisfied with a hearing examiner's direction. That would be a mistake. The City should not surrender the right of an impartial review in Superior Court. I am not aware of this provision in any other such agreement.

Section 1. bars the public from any areas except the Garden Area and the Scenic Viewing Overlook Area. In Section 3. Sunshine would pursue property tax exemption for this private foundation and have the City execute necessary documents to achieve it. Let Sunshine prepare the documents - not the City. It's to their exclusive benefit.

RCW 84.36.805 Conditions for obtaining exemptions by nonprofit organizations, associations, or corporations, has some restrictive provisions. It provides at subsection (3): The property must be irrevocably dedicated to the purpose for which exemption has been granted, and the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association or corporation . . . Has Sunshine made this irrevocable dedication?

At (4) the statute provides: The facilities and services must be available to all regardless of race, color, national origin or ancestry. " Thus, restrictions in the agreement barring ordinary people from other than a portion of the roof are in violation of the law. A dictionary in one definition defines "facilities" as "Something created to serve a particular function", like a toilet inside the building, I guess.

The City should not pay any money to view what was free to view before this incursion. Sunshine lawyers say they are giving us ten times the open space required. We had 100% of it before this waterfront blight was built. It is very sad to lose any of it and everything possible should be done to ameliorate the effects of the building.