

Gig Harbor City Council Meeting

**August 28, 2006
7:00 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
August 28, 2006 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

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 the City Council Meeting of August 14, 2006.
2. Correspondence / Proclamations: Payroll Week.
3. Tacoma/Pierce County YMCA - Stormwater Facilities Maintenance Agreement.
4. Olympic Drive/56th Street Roadway Improvement Project – Permanent Right-of-way Easement Agreement.
5. MultiCare – Sanitary Sewer Facilities Easement and Maintenance Agreement.
6. Mallards Landing - Sanitary Sewer Facilities Easement and Maintenance Agreement & Stormwater Facilities Maintenance Agreement.
7. Liquor License Assumption: Olympic Drive Mart.
8. Liquor License Applications: Gourmet Essentials; Kelly's Café and Espresso.
9. Payment of Bills for August 28 2006.
Checks #51250 through #51368 in the amount of \$327,483.57.

OLD BUSINESS:

1. Harbor Hill (OPG Properties) Water Tank – Quit Claim Deed.

NEW BUSINESS:

1. Public Hearing and Resolution – Adoption of Six-Year TIP.
2. Public Hearing – Street Vacation / Bujacich Road and 54th Avenue – Harbor Reach Estates.
3. Resolution – Amending the 2006 Personnel Regulations.
4. Eddon Boat Aquatic Lease Survey – Consultant Services Contract.
5. Planning Director Starting Pay Rate.

STAFF REPORT:

1. John Vodopich, Community Development Director – Tacoma Narrows Bridge Traffic.
2. John Vodopich, Community Development Director – Gig Harbor Peninsula Historical Society.
3. Carol Morris, City Attorney – Administrative Appeal Procedures.

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

ANNOUNCEMENT OF OTHER MEETINGS:

Pierce County Council - September 12th - 5:30 p.m. - Council Chambers.

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i).

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF AUGUST 14, 2006

PRESENT: Councilmembers Ekberg, Franich, Conan, Dick, Payne, Kadzik and Mayor Hunter. Councilmember Young was absent.

CALL TO ORDER: 7:02 p.m.

PLEDGE OF ALLEGIANCE:

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 the City Council Meeting of July 24, 2006.
2. Liquor License Renewals: Hy Lu Hee Hee Restaurant.
3. Liquor License Withdrawal: Brix 25°.
4. Surplus Property – Resolution 683.
5. Olympic Drive/56th Street Roadway Improvement Project – Easement Agreements.
6. Water Comprehensive Plan Update Phase 1 and Developing a New Groundwater Supply Source (Well 7) – Contract Authorization.
7. Wastewater Comprehensive Plan Population Update – Contract Amendment 2.
8. Payment of Bills for August 14, 2006.
Checks # 51064 through #51249 in the amount of \$620,583.55.
9. Payment of Payroll for the month of July:
Checks #4325 through #4364 and direct deposit entries in the amount of \$302,411.05.

MOTION: Move to approve the Consent Agenda as presented.
Franich / Conan – unanimously approved.

OLD BUSINESS:

1. Harbor Hill (OPG Properties) Water Tank - Quit Claim Deed. John Vodopich, Community Development Director, explained that this had been continued from the last meeting to allow the developer additional time to address issues. These issues have not yet been resolved, and they are asking for another continuation to the meeting of August 24th.

MOTION: Move to continue this agenda item to the meeting of August 24th.
Franich / Conan – unanimously approved.

NEW BUSINESS:

1. Peninsula Gig Harbor Historical Society Presentation. Mayor Hunter explained that representatives from the Peninsula Gig Harbor Historical Society will be making a presentation to Council. He then introduced Walt Smith. He said that because so many people are signed up to speak on this issue, that those wishing to repeat testimony appoint a spokesman.

Walt Smith, 19216 99th St. KPN, Vaughn, WA. Mr. Smith touched briefly on a public/private partnership between the City, the County, and the Historical Society that would include the Harbor History Museum and surrounding area. He said that the target is to come back in four to six weeks with a resolution, stressing that timing is essential. He described the benefits to the community: 1. a Harbor History Museum; 2. a waterfront viewing opportunity with potential access; 3. environmental / ecological aspects of joint properties; and 4. the educational value. He said that basically, the information being presented tonight has not changed from joint meetings and the resolution passed by Council in 2005 expressing support of the museum project and the proposed cooperative arrangements. He said that there is community for the joint use of the properties, and there has been extensive work with County Commissioner Terry Lee to secure the Scofield Property. He said that they have written pledges for over \$1 million dollars, adding that the completed area will have a combined value of over \$12 million. Mr. Smith said that the Museum is asking the city for joint participation of approximately \$900,000 dollars which represents a great leverage of city funds and property use. Mr. Smith then added that the Museum is accepting the responsibility for the management and operation of the facilities. He stressed that we mutually share the same goal to bring maximum benefit to the community at a reasonable price. He then introduced Jennifer Kilmer, Director of the Gig Harbor Peninsula Historical Society, to present further information.

Ms. Kilmer used a PowerPoint Presentation to help illustrate the vision, the community plan, the benefits of the project and campaign plans for the new Harbor History Museum and surrounding properties. She gave an overview of the proposed public investment and described the need to have a commitment from the city in order to apply for a critical Kresge Foundation grant in October. She stressed that if the grant is awarded, it would open up the door for other funding opportunities.

County Councilmember Terry Lee spoke favorably about the proposed partnership. He explained his involvement with the GPHS and the efforts to work with the city to obtain the IAC Grant for the Scofield Property. He promised that any acquisition grant funds awarded to the County would be passed on to the city to be used for this project. He said that he looks forward to playing a role in this partnership and encouraged city involvement and support during the upcoming budget process.

Mark Hoppen responded to questions regarding the IAC Grant. He said that there are many worthy projects that have applied, but due to the estuary and creek, we have a chance at obtaining the grant.

Mayor Hunter announced that this was the end of the formal presentation, and asked that members of the audience that had signed up to speak limit comments to two minutes.

Eugene Pearson – 7305 Soundview Drive. Mr. Pearson said that he is fully behind this project and plans to “put his money where his mouth is!”

Gretchen Wilbert – 8825 No. Harborview Drive. Ms. Wilbert, former Mayor, spoke favorably for this project. She said it was smart to purchase the property in a plan to put 80 years of Gig Harbor history at this site.

Jack Bujacich – 3607 Ross Avenue. Mr. Bujacich also spoke in favor of this project as it would retain the history of the harbor. He urged the town to get behind and support this partnership.

Bob Thorpe – 8820 Goodman Drive. Mr. Thorpe stressed that the City of Gig Harbor is the heart of the peninsula and that Council is the custodian of this heart. He strongly supports this project.

Julie Tappero – 15215 14th Avenue. Ms. Tappero is a Board member of the Chamber of Commerce, and said that the Chamber has submitted a letter of support for this project. She said that they are very interested in economic development and tourism, both of which are supported by this project. She said that this project will also bring the residents back to the downtown area, helping to revitalize the down town. She said that the Chamber of Commerce is asking the city to support this project.

Trent Jonas – 6708 Rainier Avenue. Mr. Jonas said that what the historical society is offering the city in exchange for financial support is both reasonable and a win-win situation. He stressed that this project would be a major public asset utilized by a large segment of the residents as well as being a tourist draw. He said that the city support of the project can make this a reality and encouraged the City Council's to make the investment.

John Holmaas – Goodman Drive. Mr. Holmaas shared his viewpoint of museums and the three types that are special to him. He said Council has an opportunity to choose which way this museum is to go, and urged them to take the middle ground and participate with the Historical Society in supporting this project.

Sue Braeten, owner of the Best Western Wesley Inn; Wade Perrow, owner of the Inn of Gig Harbor and Laureen Lund, Marketing Director. These three came together as representative of the Lodging Tax Advisory Board to voice their support of this project. Mr. Perrow said that during the budget preparation, to please consider this project under the Lodging Tax Budget as well as under the General Fund Budget.

Jim Borgen – 2806 Harborview Drive. Mr. Borgen said that Gig Harbor has never had a cultural center and the museum would provide a place not only for the locals, but for the tourists. He said that growing up in the harbor he listened to all the great stories, and the next generation needs to hear those as well. He said that this is a great opportunity for a decision to be made that will be positive for years to come.

Councilmember Ekberg thanked the Historical Society for the presentation and for all the interested citizens who came to make their wishes known. He stressed that he is very supportive of this project and looks forward to a working partnership with the city

and the Historical Society on this important property and project. He said that this is a once in a lifetime opportunity and we have a chance to make it happen.

Councilmember Payne echoed these comments adding that this project has his unabashed support and that he will do everything he can during the budget process. He gave a brief explanation of his experience after buying a historical home four years ago. He said that he looks forward to a rich depository of stories in this “magical place.”

Mayor Hunter said that this will now be turned over to the Operations and Public Projects Committee (Councilmembers Ekberg, Franich and Payne) to see what can be worked out. He added that support would have to be done in a manner that would meet with approval of the State Auditor. Mayor Hunter mentioned that we are beginning the 2007 Preliminary Budget Process and it is a good time to take a look at this issue. He reminded everyone of the hospital project that will require the city to make major road improvements, stressing that the city is not a bottomless pit of funding. He thanked everyone for coming to speak.

2. Public Hearing – Resolution Accepting the McCormick Ridge LLC Annexation Petition (ANX 04-04). John Vodopich presented the background on this proposed annexation. The Mayor opened the public hearing at 7:54 and asked if anyone wished to speak.

Mike Baechler – 12520 59th Ave NW. Mr. Baechler said that they love this city and would like to be a formal part rather than just address.

Martha Karshner – McCormick Ridge. Ms. Karshner asked for clarification on the language in the resolution that states that the property owners would assume all the existing indebtedness of the area being annexed.

Mark Hoppen, City Administrator explained that when they get annexed, the property owner assumes the city’s debt obligation, which is lower than Pierce County taxes.

There were no further comments and the public hearing closed at 7:56 p.m.

Councilmember Franich asked about development on the property being proposed for annexation. John Vodopich explained that Somerset Subdivision is to the north and McCormick Ridge Condo project is south of that, and so approximately ½ of the property has been developed. He added that the undeveloped property is currently zoned Moderate Density Single Family.

MOTION: Move to approve Resolution No. 684 accepting the annexation petition for the McCormick Ridge LLC Annexation (ANX 04-04) and further refer it to the Pierce County Boundary Review Board for consideration.
Payne / Dick – unanimously approved.

3. Proposed Annexation – Shafer (ANX 06-1302). John Vodopich presented the background information on this proposed annexation for approximately 0.31 acres of property located at the corner of Soundview Drive and 61st Street. Council must determine whether to accept, reject, or geographically modify the boundaries.

Councilmember Payne asked about the option to take over the operation of the Shoreacres Water System that serves this parcel. Mr. Vodopich explained that the department has been meeting with the owners of Shoreacres Water, and they have done investigative work to determine what it would take to bring the system up to city standards.

Councilmember Ekberg asked why the property owner wishes to annex.

Charles Mark Schaeffer – 6119 Soundview Drive. Mr. Schaeffer responded that he would like to do a major remodel from 2,000 to 4,500 s.f. and it would be more practical to do so with city sewer. He also said that he wants to be in the city.

MOTION: Move to accept the Notice of Intention to Commence Annexation and further authorize the circulation of a petition to annex the property to the following conditions: 1) The City shall require that the property owner assume all of the existing indebtedness of the area being annexed; 2) The City will require the simultaneous adoption of Single-Family Residential (R-1) zoning for the proposed annexation area in substantial compliance with the Comprehensive Plan as adopted by City of Gig Harbor Ordinance No. 981; and 3) The property will be subject to the Height Restriction Area standards (GHMC 17.62).
Payne / Franich – unanimously approved.

4. Contract for Hospital Project Management. John Vodopich presented information on this contract to retain a project manager for the development of the St. Anthony Hospital. Hammes Company will reimburse the city for this expenditure. John addressed Council's questions regarding how this contract will be administered.

MOTION: Move to approve the Consultant Services Contract with Stalzer and Associates in an amount not to exceed Twenty-six Thousand, Five Hundred Dollars as presented.
Franich / Ekberg – unanimously approved.

STAFF REPORT:

1. Jennifer Sitts, Senior Planner – Planning Commission Work Program. John Vodopich presented the proposed work schedule for the Planning Commission and asked for Council for concurrence for the recommended work plan.

MOTION: Move to approve the proposed Planning Commission work schedule.
Dick / Payne – unanimously approved.

2. GHPD July Stats. Chief Davis presented the report and offered to answer questions. Councilmember Dick asked about the decline in DUI Arrests and citations during this period. Chief Davis explained that shortage of staffing due to vacation and training has led to the decline.

PUBLIC COMMENT:

Tom Sutich – 5913 123rd Street. Mr. Sutich explained that he is a member of the Election Committee for Gig Harbor Fire District #5. Mr. Sutich passed out informational mailers regarding the upcoming levy and explained that he is concerned that support for this levy may be lacking this time around. He urged all community leaders to support this levy.

Bob Frisbie – 9720 Woodworth Avenue. Mr. Frisbie thanked the Mayor and Council for supporting the Waterfront Millville community with development issues. He then suggested that the city go back to giving City Council the authority to hold Shoreline Hearings. He said that Council could decide whether or not to uphold the Hearing Examiner’s decision or to hold another independent hearing to make findings and conclusions. He stressed that it would be better for Council to make the decision rather than a judge.

Councilmember Franich asked Carol Morris, City Attorney, if this is legal. Ms. Morris responded that yes, it is. She said that she could prepare a report on the legal pros and cons by the next meeting.

Jack Bujacich – 3607 Ross Avenue. Mr. Bujacich suggested that this would be a great time to take in the entire Shoreacres area for annexation.

COUNCIL COMMENTS / MAYOR’S REPORT:

Councilmember Franich asked if anything could be done to help come up with a solution for the traffic congestion on the Narrows Bridge; something sort of screening. Councilmember Ekberg responded that in the pre-planning meetings, the group discussed screening, but were told that this wouldn’t work due to the wind.

Councilmember Dick asked staff to talk to the Department of Transportation to try and come up with a solution such as deflectors.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Operations and Public Projects Committee: August 17th, 3:00 p.m.,
Engineering/Operations Conference Room.

2. Gig Harbor North Traffic Options Committee: August 23rd, 9:00 a.m., Civic Center Community Rooms.

ADJOURN:

MOTION: Move to adjourn at 8:28 p.m.
Franich / Conan – unanimously approved.

CD recorder utilized:
Disk #1 Tracks 1- 29
Disk #2 Tracks 1- 4

Charles L. Hunter, Mayor

Molly M. Towslee, City Clerk

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, the American Payroll Association and its 22,000 members have launched a nationwide public awareness campaign that pays tribute to the more than 156 million people who work in the United States and the payroll professionals who support the American system by paying wages, reporting worker earnings and withholding federal employment taxes; and

WHEREAS, payroll professionals in Gig Harbor, Washington play a key role in maintaining Gig Harbor's economic health, carrying out such diverse tasks as paying into the unemployment insurance system, providing information for child support enforcement and carrying out tax withholding, reporting and depositing; and

WHEREAS, payroll departments collectively spend more than \$15 billion annually complying with a myriad of federal and state wage and tax laws; and

WHEREAS, payroll professionals play an increasingly important role ensuring the economic security of American families by helping to identify non-custodial parents and making sure they comply with their child support mandates; and

WHEREAS, payroll professionals have become increasingly proactive in educating both the business community and the public at large about the payroll tax withholding systems; and

WHEREAS, payroll professionals meeting regularly with federal and state tax officials to discuss both improving compliance with government procedures and how compliance can be achieved at less cost to both government and businesses; and

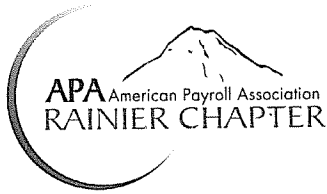
NOW, THEREFORE, I, Charles L. Hunter, Mayor of the City of Gig Harbor, hereby give additional support to the efforts of the people who work in Gig Harbor, Washington and of the payroll profession by proclaiming the first full week in September as

PAYROLL WEEK FOR GIG HARBOR

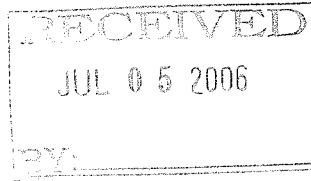
and encourage all citizens to join me in celebrating these professionals. In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 28TH day of August, 2006.

Charles L. Hunter, Mayor

Date



June 26, 2006



The Honorable Mayor Chuck Hunter
3510 Grandview St
Gig Harbor, WA 98335

Dear Mayor Chuck Hunter

First, I would like to sincerely Thank You for your past support and ask for your continued support in designating September 4-8, 2006 as National Payroll Week. This year is our Tenth Anniversary.

I am writing on behalf of the American Payroll Association to seek your support for a National Payroll Week in Gig Harbor, WA. We believe the designation of the week in which Labor Day occurs as National Payroll Week would go far to recognize the important contributions of the people of this city who work to support the American Dream and highlight the partnership between taxpayers and payroll professionals. As former President Bill Clinton said: "By honoring hardworking Americans across our nation and underscoring the vital importance of payroll taxes to our country's strength and security, National Payroll Week helps to foster growth and prosperity for our entire nation." The American Payroll Association has designated the week in which Labor Day falls as National Payroll Week.

The theme of National Payroll Week is "America works because we're working for America." The collection, reporting and payment of payroll taxes by employers is a positive example of what works in America. Your support of Payroll Week would be an important step in recognizing and celebrating the contributions of workers in the United States and the payroll professionals, who report these workers' earnings, collect their taxes and pay their wages. We believe the proclamation of National Payroll Week in Gig Harbor, WA will enhance the public's understanding of their role in helping support the system and the contributions of payroll professionals.

Enclosed is a proclamation proposal, which we believe captures the spirit of National Payroll Week. However, I would be happy to work with you or your staff to refine the language of the proclamation. I would also be interested in discussing additional projects for National Payroll Week with your staff and participating in any project that can help improve the public's understanding of issues related to our payroll and tax systems.

I look forward to hearing from you and your staff in the near future. Please feel free to contact me at 425-482-9144 or sistermarriann@hotmail.com.

Sincerely,

Marriann von Szalay
Certified Payroll Professional

Enclosures



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: STEPHEN MISIURAK, P.E.
CITY ENGINEER
SUBJECT: STORMWATER FACILITIES MAINTENANCE AGREEMENT AND
RESTRICTIVE COVENANT
TACOMA/PIERCE COUNTY YMCA
DATE: AUGUST 28, 2006

INTRODUCTION/BACKGROUND

The City has required private on-site storm water detention facilities to be constructed in conjunction with the Tacoma/Pierce County YMCA project located at 10550 Harbor Hill Dr. (Parcel No. 4002470020). As specified in Section 14.20.530, Gig Harbor Municipal Code (GHMC), a maintenance covenant is required for all privately maintained drainage facilities, as well as a requirement that the covenant be recorded with the property. This allows the city a nonexclusive right-of-entry onto those portions of the property immediately adjacent to the storm water facilities for the purpose of inspection of the facilities, and further requires that the property owner perform their own regular inspection and maintenance of the facilities at the property owner's expense.

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

Council approval of the agreement is requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend that the Council approve this agreement as presented.

AFTER RECORDING RETURN TO:

The City of Gig Harbor
Attn: City Clerk
3510 Grandview St.
Gig Harbor, WA 98335

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Document Title(s) (or transactions contained therein):

STORM WATER FACILITIES MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANT

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

Tacoma/Pierce County YMCA

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

City of Gig Harbor

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

Lot 2 of the Harbor Hill Plat

Assessor's Property Tax Parcel or Account Number:

4002470020

Reference Number(s) of Documents assigned or released: _____

STORM WATER FACILITIES MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANT

This Storm Water Facilities Maintenance Agreement and Restrictive Covenant is made this _____ day of _____, 200__, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Tacoma/Pierce County YMCA, a Non-Profit Corporation organized under the laws of the State of Washington, located and doing business at 1002 S. Pearl St., Tacoma, WA 98465 (hereinafter "Owner").

RECITALS

WHEREAS, Owner is the owner of fee title or a substantial beneficial interest in certain real property located in Gig Harbor, Washington, commonly described as Gig Harbor YMCA, located at 10550 Harbor Hill Dr. (hereinafter the "Property") and legally described in **Exhibit A**, which is attached hereto and incorporated herein by this reference; and

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

WHEREAS, such drainage system is described and shown on a construction drawing prepared by the engineering firm of Apex Engineering PLLC on June 30, 2006 (hereinafter the "Drainage System Drawing"), for the Owner's Property, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference; and

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

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

TERMS

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

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

Section 3. Access. The City shall have the right to ingress and egress over those portions of the Property described in **Exhibit A** in order to access the drainage system for inspection and to reasonably monitor the system for performance, operational flows or defects.

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

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

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

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

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

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

To the City:
City Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

To the Owner:
Tacoma/Pierce County YMCA
1002 S. Pearl St.
Tacoma, WA 98465

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

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

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

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

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement and Covenant to be executed this 7 day of July, 2006.

THE CITY OF GIG HARBOR

OWNER

By: _____
Its Mayor

By: Brett Freshwaters

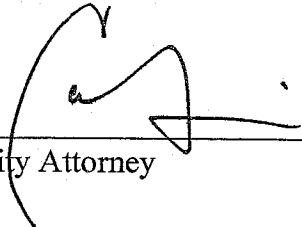
Print Name: Brett Freshwaters

Title: VP Finance

ATTEST:

City Clerk

APPROVED AS TO FORM:


City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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

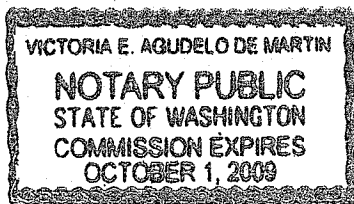
DATED: _____

Notary Public in and for the
State of Washington,
Title: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

I certify that I know or have satisfactory evidence that Brett Freshwaters 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 Vice President of YMCA of Tacoma-Pierce County, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 7/7/06



Victoria Agudelo de Martin
Notary Public in and for the
State of Washington,
Title: Notary
My appointment expires: October 1, 2009

**EXHIBIT A
PROPERTY LEGAL DESCRIPTION**

Lot 2 of Harbor Hill Plat.



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: STEPHEN MISIURAK, P.E., CITY ENGINEER
SUBJ: OLYMPIC DRIVE AND 56TH STREET ROADWAY IMPROVEMENT
PROJECT (CSP-0133) – PERMANENT RIGHT-OF-WAY EASEMENT
AGREEMENT – OLYMPIC DRIVE LAND LLC
DATE: AUGUST 28, 2006

INTRODUCTION/BACKGROUND

As part of the ongoing process for the City's Olympic Drive and 56th Street Roadway Improvement Project (CSP-0133), an agreement for a Permanent Right-of-Way Easement is required from Parcel No. 0221177046, owned by Olympic Drive Land LLC and commonly known as Olympic Drive Office Building located at 5201 Olympic Dr. NW., Gig Harbor.

In order for the City to have the ability to construct this project, the subject easement agreement has been granted by the owners for these purposes. The easement agreement shall commence on the date of execution of the agreements.

The City's standard easement agreement has been drafted and approved by City Attorney Carol Morris.

City Council approval of the easement agreement are requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend that City Council approve these easement agreements as presented.

AFTER RECORDING, RETURN TO:

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

Document Title: **PERMANENT RIGHT OF WAY EASEMENT**

Grantor: **OLYMPIC DRIVE LAND, LLC**

Grantee: City of Gig Harbor

Legal Description: Lot 4, Boundary Line Adjustment, recording number 200104180594

Property Tax Parcel No.: 022117-704-6

Reference No. of Documents Assigned or Released: _____

**AGREEMENT FOR DEDICATION OF PERMANENT RIGHT OF WAY EASEMENT
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT, is made this ____ day of _____, 2006, by and between the CITY OF GIG HARBOR, a Washington municipal corporation (hereinafter the "City"), and OLYMPIC DRIVE LAND, LLC, a Washington Limited Liability Company (hereinafter the "Owner") whose mailing address is 2727 Hollycroft St. #410, Gig Harbor WA 98335.

WITNESSETH:

WHEREAS, Owners own a fee simple and/or have a substantial beneficial interest in the following real property, commonly known as the Olympic Drive Office Building, located at 5201 Olympic Drive NW, Gig Harbor, Washington 98335, and legally described in Exhibit A (the "Property" herein):

WHEREAS, Olympic Drive Land, LLC has received the necessary approvals from the City for construction of the Olympic Drive Office Building, which ordinarily would have included conditions requiring Olympic Drive Land, LLC, to construct certain street improvements associated with the project, identified below:

- A. Providing the designed 3" asphalt overlay from the new curb line to the centerline of Olympic Drive along the entire property frontage length. (To be provided by the City at time of the Olympic Drive widening project).
- B. Providing and installing the four (4) illumination light standards along the property frontage as shown on the construction drawings. (To be provided by the City); and

WHEREAS, in lieu of the imposition of these conditions, Olympic Drive Land, LLC has agreed to grant a 7.5 foot permanent easement to the City for the construction of the City's "56th Street NW and Olympic Drive NW Street Improvements" project; and

WHEREAS, the City desires this easement for the purpose of monitoring, inspecting, maintaining, operating, improving, repairing, constructing, and reconstructing street improvements along Olympic Drive NW;

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 the "56th Street NW and Olympic Drive NW Street Improvements" project, which easement is legally described on Exhibit "B" (the "Easement" herein) and shown on Exhibit "C", which are attached hereto and by this reference incorporated herein.

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 24 day of July, 2006.

OLYMPIC DRIVE LAND, LLC

By: _____

Gordon Rush, Managing Member

ACCEPTANCE:

CITY OF GIG HARBOR

By: _____

Its Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Charles L. Hunter is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

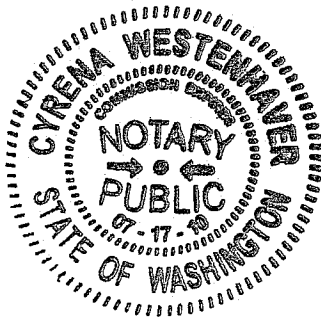
NOTARY PUBLIC, State of Washington,
residing at: _____

My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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 was authorized to execute the instrument and acknowledged it as the Managing Member of the Olympic Drive Land, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 24, 2006



Cyrena Westerman
NOTARY PUBLIC, State of Washington,
residing at: GIG HARBOR

My Commission expires: 7/17/10

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Lot 4 of Boundary Line Adjustment recorded under Recording No. 200104180594, in Pierce County, Washington, more particularly described as follows:

Lot 4, as shown on Pierce County Short Plat No. 9408090381, filed with the Pierce County Auditor, in Pierce County, Washington.

EXCEPT therefrom that portion lying North and West of the following described line:
Commencing at the Northeast corner of said Lot 4 of said Short Plat;

Thence North 88 degrees 45' 15" West along the North line of said Lot 4 a distance of 321.18 feet to the true point of beginning of the herein described line;

THENCE South 01 degrees 18' 58" West a distance of 30.00 feet;

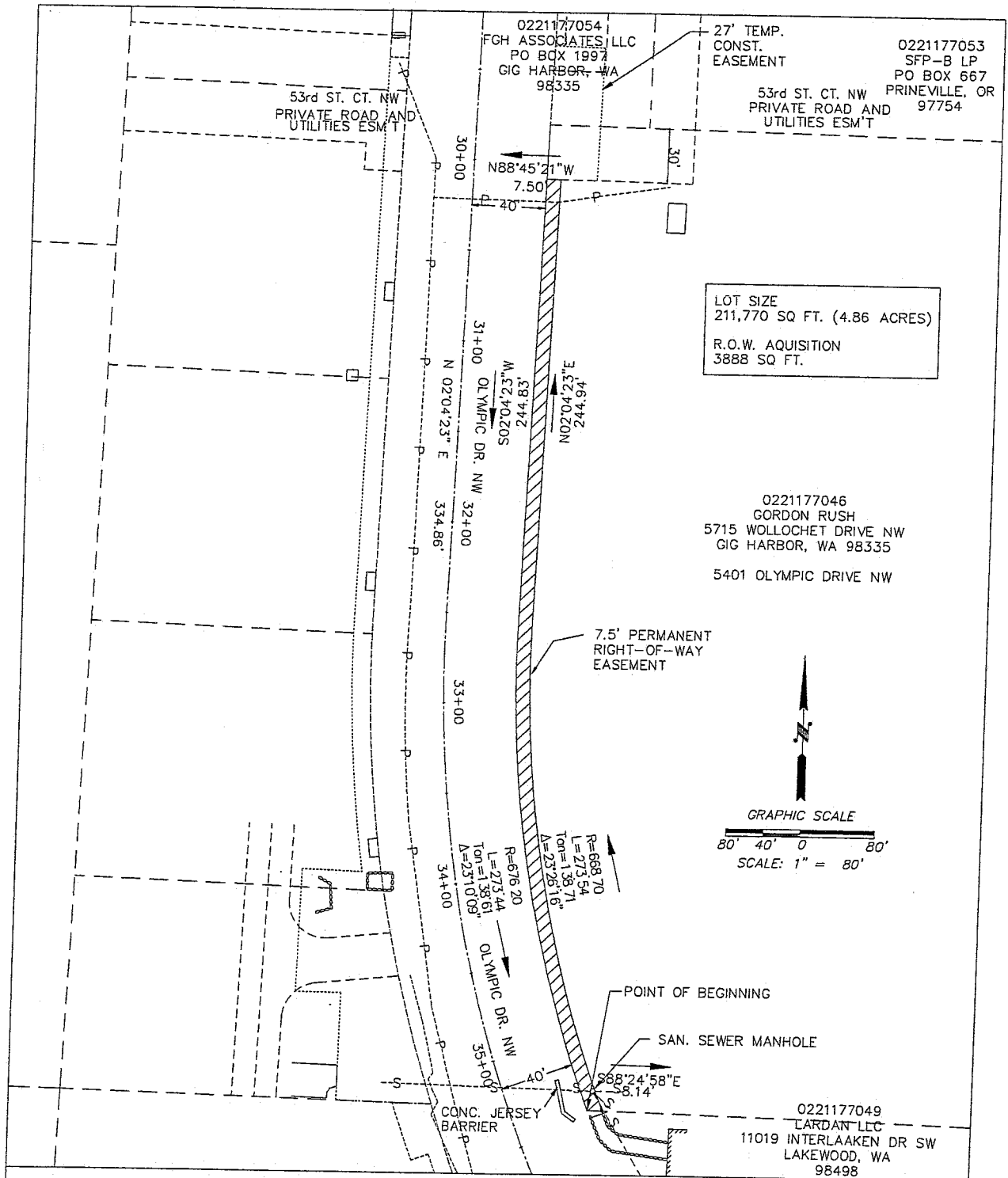
THENCE North 88 degrees 45' 15" West a distance of 78.56 feet to the Easterly right of way margin of Olympic Drive NW and the terminus of the herein described line

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

EXHIBIT B

PERMANENT RIGHT OF WAY EASEMENT DESCRIPTION

A 7.5 FOOT WIDE PORTION OF PARCEL NO. 0221177046 THAT ABUTTS THE RIGHT OF WAY OF OLYMIPIC DRIVE NW AND DESIGNATED AS "PERMANENT RIGHT OF WAY EASEMENT", WHOSE SOUTH WEST PROPERTY CORNER ALONG OLYMPIC DRIVE NW BEING THE POINT OF BEGINNING, THENCE S88°24'58"E, A DISTANCE OF 8.14', THENCE ALONG A CURVE WHOSE RADIUS IS 668.70' WITH A TANGENT OF 138.71' AND DELTA OF 23°26'16" AND WHOSE LENGTH IS 273.54', THENCE N02°04'23"E, A DISTANCE OF 244.94', THENCE N88°45'21"W, A DISTANCE OF 7.5', THENCE S02°04'23"W A DISTANCE OF 244.83', THENCE ALONG A CURVE WHOSE RADIUS IS 676.20' WITH A TANGENT OF 138.61' AND DELTA OF 23°10'09" AND WHOSE LENGTH IS 273.44' RETURNING TO THE POINT OF BEGINNING.



56TH ST. NW AND OLYMPIC DR. NW STREET IMPORVEMENT PROJECT

RIGHT OF WAY AQISITION

EXHIBIT C

0221177046



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: STEPHEN T. MISIURAK, P.E. *SM*
CITY ENGINEER
SUBJECT: SANITARY SEWER FACILITIES EASEMENT AND MAINTENANCE
AGREEMENT – MULTICARE HEALTH SYSTEM
DATE: AUGUST 28, 2006

INTRODUCTION/BACKGROUND

As a condition of project approval for the MultiCare Health System Gig Harbor Medical Park development located at 4545 Pt. Fosdick Dr. NW, MultiCare Health System is required to enter into a Sanitary Sewer Facilities Easement and Maintenance Agreement. This will ensure that the sanitary sewer system will be constructed, operated and maintained in accordance with all applicable rules and regulations. The sanitary sewer system is located on private property and will be privately owned. The City will not be responsible for the operation and maintenance of this system. This agreement allows the City a nonexclusive right-of-entry onto those portions of the property in order to access the sanitary sewer system for inspection and monitoring of the system.

The City's standard Sanitary Sewer Facilities Easement and Maintenance Agreement has been drafted and approved by Carol Morris, City Attorney. This agreement will be recorded with the property.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

Staff recommends that City Council approve this agreement as presented.

AFTER RECORDING RETURN TO:
The City of Gig Harbor
Attn: City Clerk
3510 Grandview St.
Gig Harbor, WA 98335

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Document Title(s) (or transactions contained therein):
Sanitary Sewer Facilities Easement and Maintenance Agreement

Grantor(s) (Last name first, then first name and initials)
MultiCare Health System (MultiCare Gig Harbor Medical Park)

Grantee(s) (Last name first, then first name and initials)
City of Gig Harbor

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)
Section 20 Township 21 Range 02 Quarter 12

Assessor's Property Tax Parcel or Account Number: 0221201036 – 4545 Pt Fosdick Dr NW

Reference Number(s) of Documents assigned or released: _____

**SANITARY SEWER FACILITIES EASEMENT
AND MAINTENANCE AGREEMENT**

This Sanitary Sewer Facilities Easement and Maintenance Agreement is made this 1st day of June, 2006, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and MultiCare Health System, a Washington corporation, located at 315 Martin Luther King Jr Way, MS: 315-LB-ENG, Tacoma, WA 98405 (hereinafter the "Owner").

RECITALS

WHEREAS, Owner is the owner of fee title or a substantial beneficial interest in certain real property located in Gig Harbor, Washington, commonly described as MultiCare Health System Gig Harbor Medical Park (street address) 4545 Point Fosdick Dr NW, (hereinafter the "Property") and legally described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

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

WHEREAS, such sanitary sewer system is described and shown on a construction drawing(s) prepared by the engineering firm of BCRA, dated 4/10/06 (hereinafter the "Plans"), for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; and

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

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

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

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

Page 2 of 11

TERMS

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

Section 2. Definitions. As used in this instrument:

A. The word "plat" refers to the Parcel 0221201036, and any other plat or plats, including short plats, covering all real property which may hereafter be made subject to the provisions of this instrument by a written instrument signed by the Owner, its successors and assigns, in accordance with this Agreement.

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

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

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

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

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

maintenance, including repair, rehabilitation, replacement, alterations, and/or other modifications.

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

Section 6. Assignment to an Owners' Association. In the event that an Owners' Association is formed under a Declaration of Covenants, Conditions and Restrictions which includes all of the Property in Exhibit A, the Owner may assign responsibility for installation and perpetual maintenance of the sanitary sewer system to such Owners' Association for so long as the Owners' Association remains in existence and upon the conditions that the Owners' Association assumes all of the obligations, liabilities, covenants and agreements of the Owner under this Agreement. Such assignment of the Owner's obligations shall be in a duly executed instrument in recordable form, and for so long as such assignment remains effective, the Owner shall have no further responsibility or liability under this Agreement.

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

Section 8. Rights of the City of Gig Harbor.

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

B. In order to assure the proper maintenance of the Owner's sanitary sewer system, and to ensure there will be no damage to the City's sanitary sewer system, the City of Gig

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

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

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

E. In addition to or in lieu of the remedies listed in this Section, if the Owners or Owner's Association, after the written notice described in Section 8A above, fails or refuses to perform the necessary maintenance, repair, replacement or modifications, the City may enjoin, abate or remedy such breach or continuation of such breach by appropriate proceedings, and may bring an action against the violator for penalties under the Gig Harbor Municipal Code.

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

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

Section 11. Terms Run with the Property. The promises, conditions, covenants and restrictions contained herein shall constitute a covenant or equitable servitude, the burden and benefit of which shall run with the land and bind successive owners with equitable or legal interests in the Property. Accordingly, by its acceptance of a deed or other instrument vesting a

substantial beneficial interest in all or any lot, or other portion of the Property or the Plat in such Owner, each Owner shall covenant to be bound by all the obligations incumbent upon an Owner as set forth herein, and shall be entitled to all rights and benefits accruing to an Owner hereunder. This Agreement shall be recorded in the Pierce County Assessor's Office, and shall serve as notice to holders of after-acquired interests in the Property.

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

To the City:

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

To the Declarant:

MultiCare Health System
Attn: Greg Kaperick
PO Box 5299
MS: 315-LB-ENG
Tacoma, WA 98415-0299

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

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

Section 15. Governing Law, Disputes. Jurisdiction of any dispute over this Easement and Maintenance Agreement shall be solely with Pierce county Superior Court, Pierce County, Washington. This Easement and Maintenance Agreement shall be interpreted under the laws of the State of Washington. The prevailing party in any litigation arising out of this Easement and Maintenance Agreement shall be entitled to its reasonable attorneys' fees, costs, expenses and expert witness fees.

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

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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 _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Notary Public in and for the
State of Washington,
Title: _____
My appointment expires: _____

EXHIBIT A
LEGAL DESCRIPTION

Parcel "B" As per the B.L.A. from AHBL, Inc. dated 05.26.05

Commencing at the northwest corner of the northwest quarter of the northeast quarter of section 20, Township 21 North, Range 2 East of the Willamette Meridian, in the City of Gig Harbor, Pierce County, Washington; thence South 02°01'36" west along the west line of said northeast quarter, a distance of 996.50 feet to the northwest corner of the south 332.40 of said northwest quarter of the northeast quarter; thence south 88°00'37" east a distance of 30.00 feet to the easterly margin of 30th Avenue NW (Point Fosdick Drive NW) and point of beginning; thence north 02°01'36" east along said easterly margin, a distance of 176.44 feet; thence south 87°58' 24" east a distance of 19.64 feet to the beginning of a curve concave northwest and having a radius of 181.50 feet; thence counterclockwise along said curve a distance of 286.92 feet through a central angle of 90°34'33" to the beginning of a reverse curve concave southeast and having a radius of 34.50 feet: thence clockwise along said curve a distance of 54.59 feet through a central angle of 90°39'20"; thence south 88°00'37" east a distance of 409.39 feet to the beginning of a curve concave southwest and having a radius of 10.00 feet; thence clockwise along said curve a distance of 15.69 feet through a central angle of 89°54'00"; thence south 02°00'23' west a distance of 383.62 feet to the north line of said south 332.40 feet; thence north 88°00'37" west along said north line, a distance of 655.19 feet to the point of the beginning.

EXHIBIT B

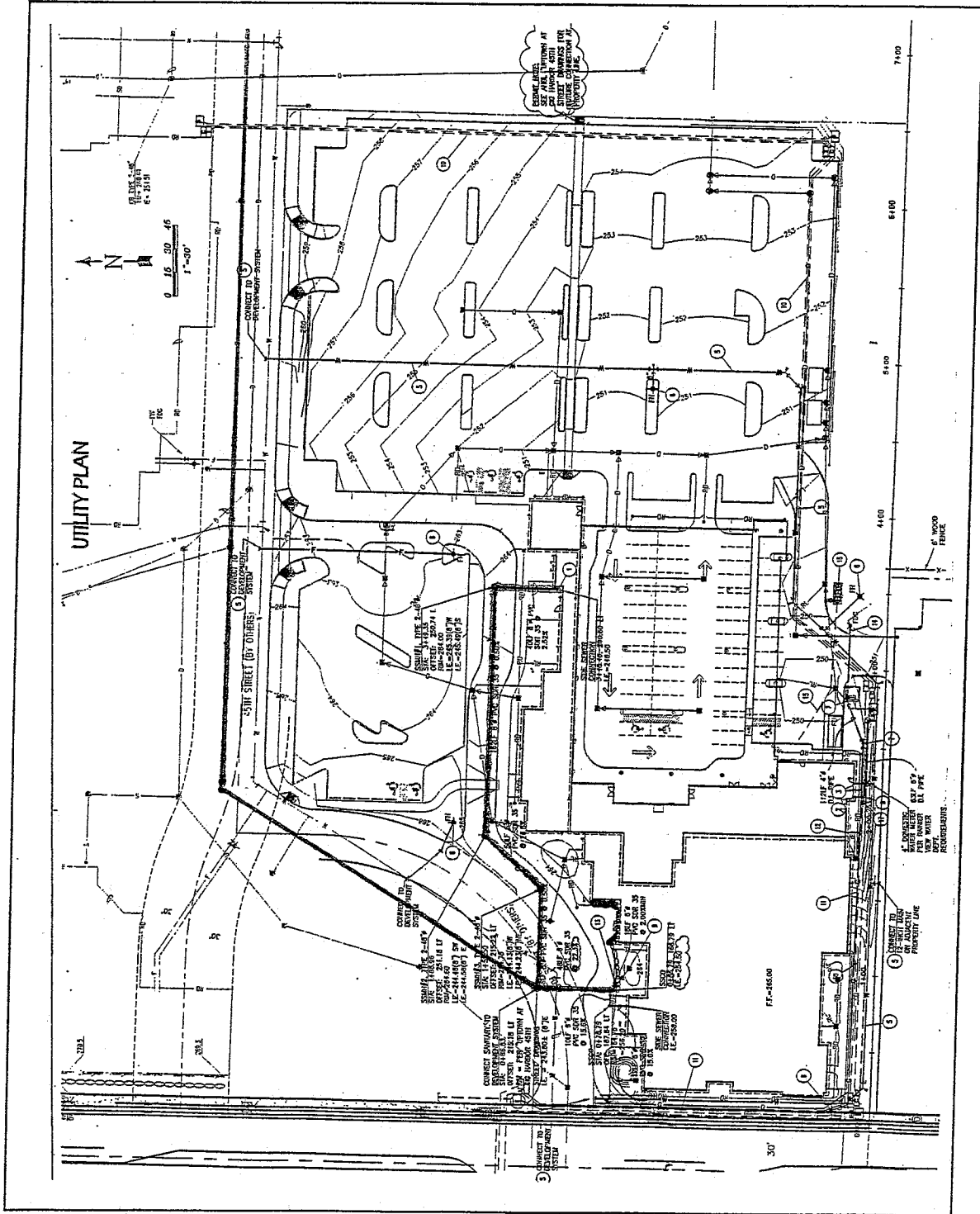


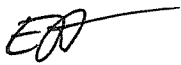
EXHIBIT C

Parcel "B" As per the B.L.A. from AHBL, Inc. dated 05.26.05

Commencing at the northwest corner of the northwest quarter of the northeast quarter of section 20, Township 21 North, Range 2 East of the Willamette Meridian, in the City of Gig Harbor, Pierce County, Washington; thence South $02^{\circ}01'36''$ west along the west line of said northeast quarter, a distance of 996.50 feet to the northwest corner of the south 332.40 of said northwest quarter of the northeast quarter; thence south $88^{\circ}00'37''$ east a distance of 30.00 feet to the easterly margin of 30th Avenue NW (Point Fosdick Drive NW) and point of beginning; thence north $02^{\circ}01'36''$ east along said easterly margin, a distance of 176.44 feet; thence south $87^{\circ}58'24''$ east a distance of 19.64 feet to the beginning of a curve concave northwest and having a radius of 181.50 feet; thence counterclockwise along said curve a distance of 286.92 feet through a central angle of $90^{\circ}34'33''$ to the beginning of a reverse curve concave southeast and having a radius of 34.50 feet; thence clockwise along said curve a distance of 54.59 feet through a central angle of $90^{\circ}39'20''$; thence south $88^{\circ}00'37''$ east a distance of 409.39 feet to the beginning of a curve concave southwest and having a radius of 10.00 feet; thence clockwise along said curve a distance of 15.69 feet through a central angle of $89^{\circ}54'00''$; thence south $02^{\circ}00'23''$ west a distance of 383.62 feet to the north line of said south 332.40 feet; thence north $88^{\circ}00'37''$ west along said north line, a distance of 655.19 feet to the point of the beginning.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: EMILY APPLETON, ASSOCIATE ENGINEER 
SUBJECT: STORMWATER FACILITIES MAINTENANCE AGREEMENT & RESTRICTIVE COVENANT, AND SANITARY SEWER EASEMENT AND MAINTENANCE AGREEMENT
JAMES D. PESCHEK AND AGNIESZKA PULAWSKI, ROBERT W. FREDERICK AND MARIA A. FREDERICK, AND TODD HARDIN AND BYRON NELSON – BASK BUSINESS CENTER
DATE: AUGUST 28, 2006

INTRODUCTION/BACKGROUND

In conjunction with the Bask Business Center Project, the City has required a private on-site storm water system on parcel numbers 4002440010 and 4002440020. As specified in Section 14.20.530, Gig Harbor Municipal Code (GHMC), a maintenance covenant is required for all privately maintained storm drainage facilities. This agreement allows the City a nonexclusive right-of-entry onto those portions of the property immediately adjacent to the sewer and storm water facilities for the purpose of inspection of the facilities, and further requires that the property owner perform their own regular inspection and maintenance of the facilities at the property owner's expense.

In addition, a Sanitary Sewer Facilities Easement and Maintenance Agreement for the maintenance of a sanitary sewer line is required and is located on parcel numbers 4002440010 and 4002440020. This agreement grants the City an easement for the purpose of maintaining a constructed sewer line.

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

Council approval of these agreements is requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend that the Council approve the agreements as presented.

AFTER RECORDING, RETURN TO:

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

Document Title: **STORM WATER FACILITIES MAINTENANCE
AGREEMENT AND RESTRICTIVE COVENANT**

Grantor: James D. Peschek and Agnieszka Pulawski,
Robert W. Frederick and Maria A. Frederick,
Todd Hardin, Byron Nelson

Grantee: City of Gig Harbor

Legal Description: LOT 9, PLAT OF MALLARD'S LANDING, AS
RECORDED UNDER PIERCE COUNTY AFN
200103265002, RECORDS OF PIERCE COUNTY,
WASHINGTON

Property Tax Parcel No.: 4002440010 and 4002440020

Reference No. of Documents Assigned or Released: _____

STORM WATER FACILITIES MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANT

This Storm Water Facilities Maintenance Agreement and Restrictive Covenant is made this ____ day of _____, 200__, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and James D. Peschek and Agnieszka Pulawski, husband and wife, whose address is P.O. Box 137, Fox Island, Washington 98333, and Robert W. Frederick and Maria A. Frederick, a husband and wife, whose address is also P.O. Box 137, Fox Island, Washington 98333, and Todd Hardin, individually, and Byron Nelson, individually, whose address is P. O. Box 2739, Gig Harbor, Washington, 98335 (hereinafter "Owners").

R E C I T A L S

WHEREAS, the Owners are the owners of fee title or a substantial beneficial interest in certain real property located in Gig Harbor, Washington, commonly described as Bask Business Center, located at 7195 and 7191 Wagner Way, Gig Harbor WA, 98335 (hereinafter the "Property") and legally described in **Exhibit A**, which is attached hereto and incorporated herein by this reference; and

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

WHEREAS, such drainage system is described and shown on a construction drawing prepared by the engineering firm of N.L. Olson & Associates, Inc. on March 30, 2006 (hereinafter the "Drainage System Drawing"), for the Owners' Property, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference; and

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

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

T E R M S

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

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

Section 3. Access. The City shall have the right to ingress and egress over those portions of the Property described in **Exhibit A** in order to access the drainage system for inspection and to reasonably monitor the system for performance, operational flows or defects.

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

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

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

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

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

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

To the City:

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

To the Owner:

James Peschek and Agnieszka Pulawski
P.O Box 137
Fox Island, WA 98333

Robert and Maria Frederick
P.O. Box 137
Fox Island, WA 98333

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

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

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

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

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement and Covenant to be executed this 21st day of August, 2006.

THE CITY OF GIG HARBOR

By: _____
Its Mayor

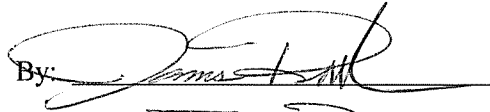
ATTEST:

City Clerk

APPROVED AS TO FORM:

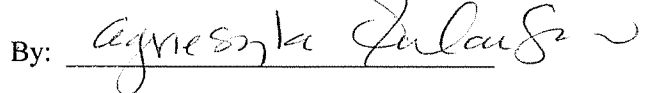
City Attorney

OWNER(S)

By: 

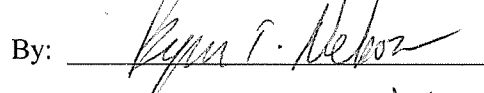
Print Name: JAMES PESCEK

Title: OWNER

By: 

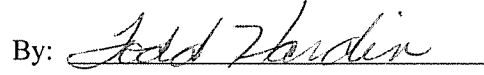
Print Name: AGNIESZKA DULAWSKI

Title: OWNER

By: 

Print Name: Byron T. Nelson

Title: owner

By: 

Print Name: TODD HARDIN

Title: owner

By: _____

Print Name: _____

Title: _____

By: _____

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement and Covenant to be executed this 21st day of August, 2006.

THE CITY OF GIG HARBOR

By: _____
Its Mayor

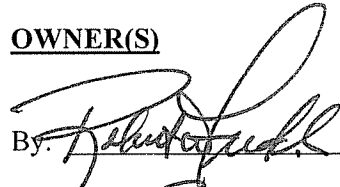
ATTEST:

City Clerk

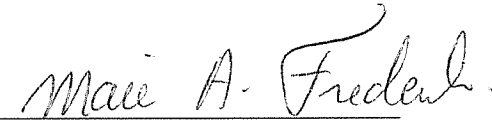
APPROVED AS TO FORM:

City Attorney

OWNER(S)

By: 
Print Name: ROBERT FREDERICK

Title: ~~OWNER~~ Owner

By: 
Print Name: MARIA FREDERICK
Title: Owner

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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

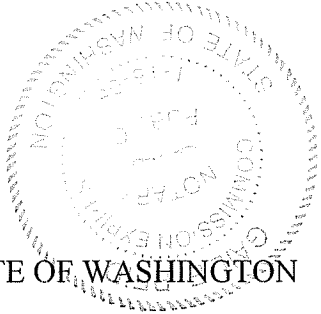
DATED: _____

Notary Public in and for the
State of Washington,
Title: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

I certify that I know or have satisfactory evidence that James Pezchek and Agnieszka Pulawski is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, and said person acknowledged it to be their free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 8/21/06

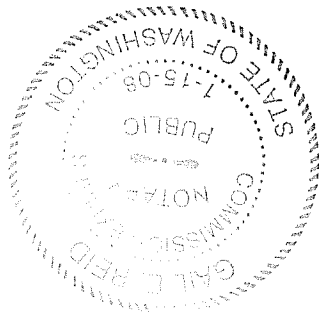


Paul E. Reid
Notary Public in and for the
State of Washington,
Title: Notary Public
My appointment expires: 1-15-08

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

I certify that I know or have satisfactory evidence that Byron T. Nelson is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, and said person acknowledged it to be his free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 8/6/06



Paul E. Reid
Notary Public in and for the
State of Washington,
Title: Notary Public
My appointment expires: 1-15-08

STATE OF WASHINGTON)
) ss.

STATE OF WASHINGTON)
COUNTY OF PIERCE)

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

DATED: 8/21/06



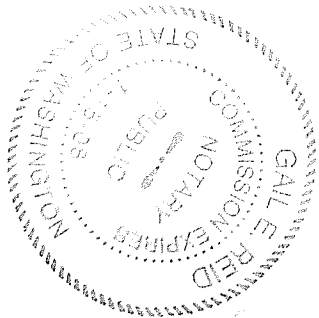
Gail E. Reid

Notary Public in and for the
State of Washington,
Title: Notary Public
My appointment expires: 1-15-08

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Robert and Maria Frederick
is the person who appeared before me, and said person acknowledged that (he/she) signed this
instrument and said person acknowledged it to be their free and voluntary act of such party for
the uses and purposes mentioned in the instrument.

DATED: 8/21/06



Gail E. Reid

Notary Public in and for the
State of Washington,
Title: Notary Public
My appointment expires: 1-15-08

EXHIBIT A

LEGAL DESCRIPTION OF PARCEL NO. 4002440010

Section 07 Township 21 Range 02 Quarter 41 Binding Site Plan BASK BUSINESS CENTER BSP
LOT 9C TOG/W UND INT IN TRS A, B & C EASE OF RECORD OUT OF 400201-009-0 SEG
2006-0798 JU 2/8/06JU

LEGAL DESCRIPTION OF PARCEL NO. 4002440020

Section 07 Township 21 Range 02 Quarter 41 Binding Site Plan BASK BUSINESS CENTER BSP
LOT 9D TOG/W UND INT IN TRS A, B & C EASE OF RECORD OUT OF 400201-009-0 SEG
2006-0798 JU 2/8/06JU

AFTER RECORDING, RETURN TO:

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

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

Grantor: James D. Peschek and Agnieszka Pulawski,
Robert W. Frederick and Maria A. Frederick, and Todd
Hardin and Byron Nelson

Grantee: City of Gig Harbor

Legal Description: **LOT 9, PLAT OF MALLARD'S LANDING, AS RECORDED
UNDER PIERCE COUNTY AFN 200103265002, RECORDS
OF PIERCE COUNTY, WASHINGTON**

Property Tax Parcel No.: 4002440010 and 4002440020

Reference No. of Documents Assigned or Released: _____

**SANITARY SEWER FACILITIES EASEMENT
AND MAINTENANCE AGREEMENT**

This Sanitary Sewer Facilities Easement and Maintenance Agreement is made this ____ day of August, 2006, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and James D. Peschek and Agnieszka Pulawski, husband and wife, whose address is P.O. Box 137, Fox Island, Washington 98333, and Robert W. Frederick and Maria A. Frederick, a husband and wife, whose address is also P.O. Box 137, Fox Island, Washington 98333 and Todd Hardin and Byron Nelson, whose address is P. O. Box 2739, Gig Harbor, Washington, 98335 (hereinafter "Owners")

RECITALS

WHEREAS, The owners are the owners of fee title or a substantial beneficial interest in certain real property located in Gig Harbor, Washington, commonly described as Bask Business Center, located at 7195 and 7191 Wagner Way, Gig Harbor WA, 98335 (hereinafter the "Property") and legally described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

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

WHEREAS, such sanitary sewer system is described and shown on a construction drawing(s) prepared by the engineering firm of N.L. Olson & Associates, Inc. on March 30, 2006 (hereinafter the "Plans"), for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; and

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

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

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

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

TERMS

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

Section 2. Definitions. As used in this instrument:

A. The word "plat" refers to the Mallard's Landing, plat number 200103265002 and any other plat or plats, including short plats, covering all real property which may hereafter be made subject to the provisions of this instrument by a written instrument signed by the Owner, its successors and assigns, in accordance with this Agreement.

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

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

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

Section 3. Maintenance Obligations. The Owners, their successors, assigns and/or owners of an after-acquired interest in the Property, hereby covenant and agree that they are jointly and severally responsible for the installation, operation, perpetual maintenance, of a sanitary sewer system on the Property, as shown on the Plans attached hereto as Exhibit B. The sanitary sewer system shall be operated, maintained and preserved by the Owners in accordance with the Plans and all applicable ordinances, codes, rules and regulations. The sanitary sewer system shall be preserved in conformance with the Plans until such time as all parties to this Agreement, including the City, agree in writing that the sanitary sewer system should be altered in some manner or eliminated. In the event the sanitary sewer system is eliminated as provided hereinabove, the Owner shall be relieved of operation and maintenance responsibilities.

No such elimination of the sanitary sewer system will be allowed prior to the Community Development Director's written approval.

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

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

Section 6. Assignment to an Owners' Association. In the event that an Owners' Association is formed under a Declaration of Covenants, Conditions and Restrictions which includes all of the Property in Exhibit A, the Owner may assign responsibility for installation and perpetual maintenance of the sanitary sewer system to such Owners' Association for so long as the Owners' Association remains in existence and upon the conditions that the Owners' Association assumes all of the obligations, liabilities, covenants and agreements of the Owner under this Agreement. Such assignment of the Owner's obligations shall be in a duly executed instrument in recordable form, and for so long as such assignment remains effective, the Owner shall have no further responsibility or liability under this Agreement.

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

Section 8. Rights of the City of Gig Harbor.

A. Execution of this Agreement shall not affect the City of Gig Harbor's present or future interest or use of any public or private sanitary sewer system. If the City determines that maintenance is required for the sanitary sewer system, and/or there is/are illegal connection(s) to or discharges into the sanitary sewer system, the Community Development Director or his/her designee shall give notice to the Owner(s) of the specific maintenance and/or changes required, and the basis for said required

maintenance and/or changes. The Director shall also set a reasonable time in which the Owner(s) shall perform such work. If the maintenance required by the Director is not completed within the time set by the Director, the City may perform the required maintenance. Written notice will be sent to the Owner(s), stating the City's intention to perform such maintenance, and such work will not commence until at least five (5) days after such notice is mailed, except in situations of emergency. If, at the sole discretion of the Director, there exists an imminent or present danger to the sanitary sewer system, the City's facilities or the public health and safety, such five (5) day period will be waived, and the necessary maintenance will begin immediately.

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

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

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

E. In addition to or in lieu of the remedies listed in this Section, if the Owners or Owner's Association, after the written notice described in Section 8A above, fails or refuses to perform the necessary maintenance, repair, replacement or modifications, the City may enjoin, abate or remedy such breach or continuation of such breach by appropriate proceedings, and may bring an action against the violator for penalties under the Gig Harbor Municipal Code.

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

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

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

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

To the City:

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

To the Owners:

James Peschek and Agnieszka Pulawski
P.O Box 137
Fox Island, WA 98333

Robert and Maria Frederick
P.O. Box 137
Fox Island, WA 98333

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

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

Section 15. Governing Law, Disputes. Jurisdiction of any dispute over this Easement and Maintenance Agreement shall be solely with Pierce county Superior Court, Pierce County, Washington. This Easement and Maintenance Agreement shall be interpreted under the laws of the State of Washington. The prevailing party in any litigation arising out of this Easement and Maintenance Agreement shall be entitled to its reasonable attorneys' fees, costs, expenses and expert witness fees.

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

IN WITNESS WHEREOF, the parties have caused this Easement and Maintenance Agreement be executed this 21st day of August, 2006.

THE CITY OF GIG HARBOR

By: _____
Its Mayor

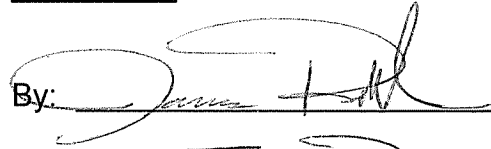
ATTEST:

City Clerk

APPROVED AS TO FORM:

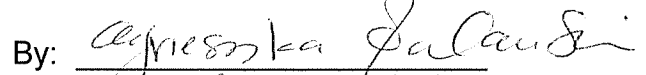
City Attorney

OWNER(S)

By: 

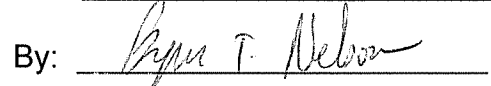
Print Name: JAMES P. ESCHKE

Title: owner

By: 


Print Name: AGNIESZKA PULAWSKI

Title: owner

By: 

Print Name: Byron T. Nelson

Title: owner

By: 

Print Name: TODD HARDIN

Title: OWNER

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

IN WITNESS WHEREOF, the parties have caused this Easement and Maintenance Agreement be executed this _____ day of _____, 200__.

THE CITY OF GIG HARBOR

By: _____
Its Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

City Clerk

OWNER(S)

By: Maria A. Frederick
Print Name: MARIA FREDERICK.

Title: owner

By: Robert Frederick
Print Name: ROBERT FREDERICK

Title: ~~FREDERICK~~ owner

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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

DATED: _____

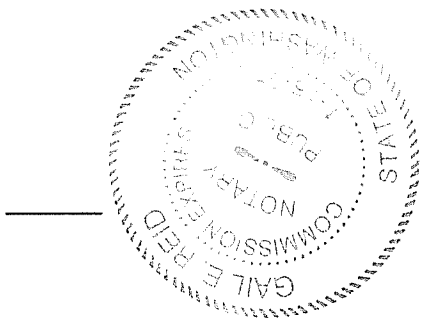
Notary Public in and for the
State of Washington,
Title: _____

My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

I certify that I know or have satisfactory evidence that James Peschek and Agnieszka * Pulawski is the person who appeared before me, and said person acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act of such party for the uses and purposes mentioned in the instrument. * Pulawski

DATED: 8/21/06



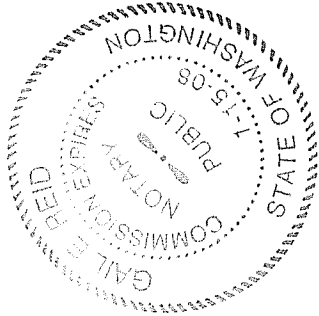
Gail E. Reid
Notary Public in and for the
State of Washington,
Title: Notary Public

My appointment expires: 1-15-08

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

I certify that I know or have satisfactory evidence that Bryan T. Nelson is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be his free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 8/21/06



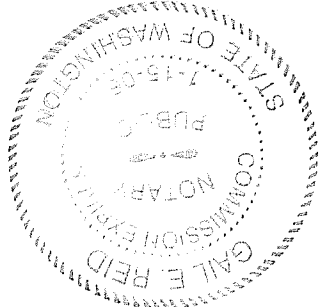
Gail E. Reid
Notary Public in and for the
State of Washington,
Title: Notary Public

My appointment expires: 1-15-08

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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

DATED: 8/21/06



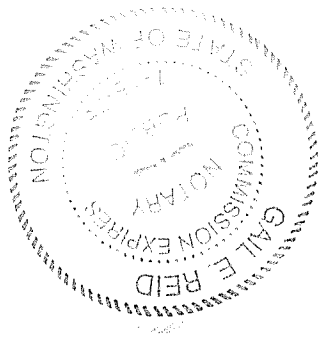
Gail E. Reid
Notary Public in and for the
State of Washington,
Title: Notary Public

My appointment expires: 1-15-08

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

I certify that I know or have satisfactory evidence that Robert and Maria Frederick is the person who appeared before me, and said person acknowledged that (he/she) ^{they} signed this instrument and acknowledged it to be their free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 8/21/06



Gail E. Reid

Notary Public in and for the
State of Washington,

Title: Notary Public

My appointment expires: 1-15-08

EXHIBIT A
LEGAL DESCRIPTION

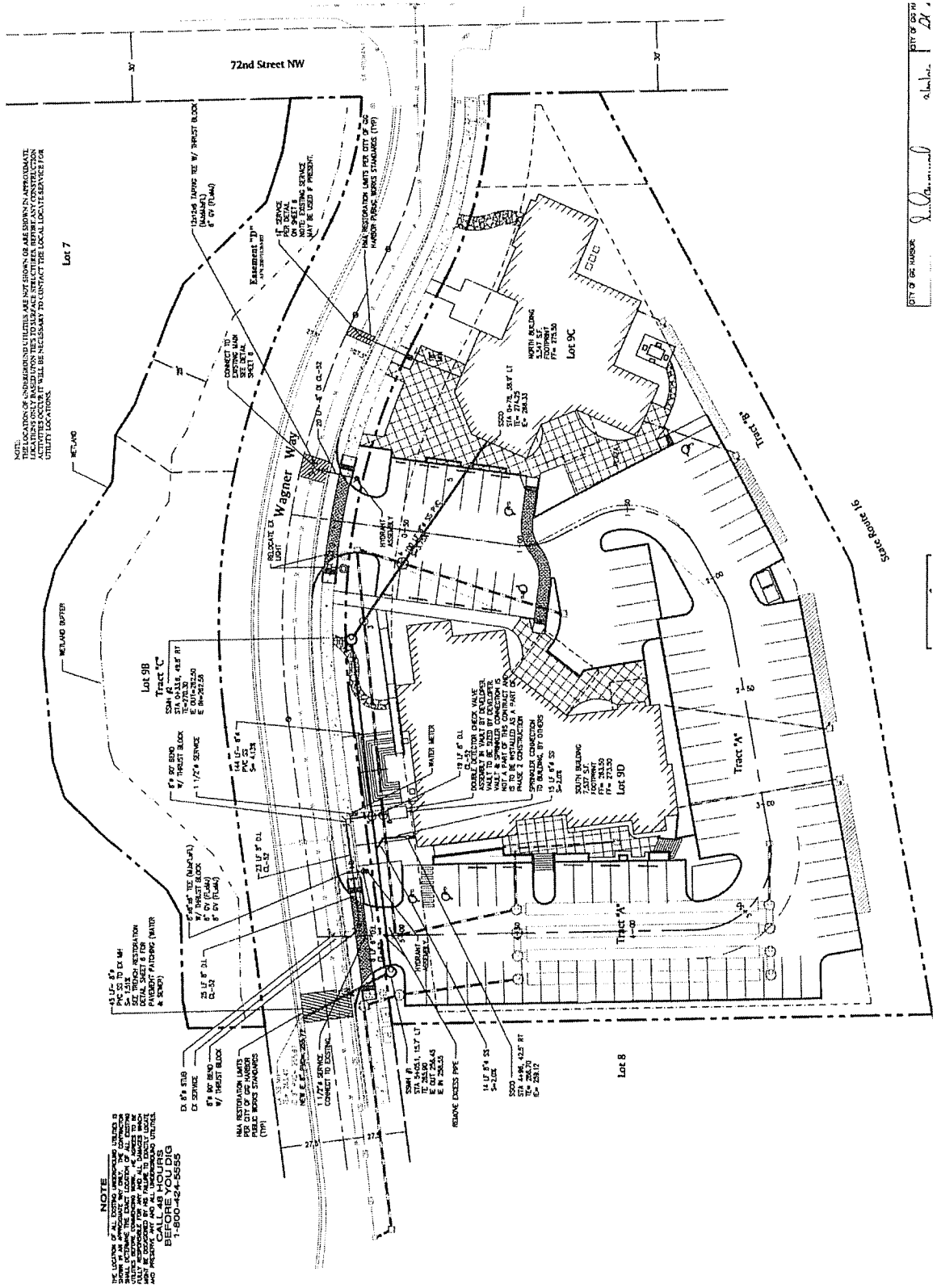
LEGAL DESCRIPTION OF PARCEL NO. 4002440010

Section 07 Township 21 Range 02 Quarter 41 Binding Site Plan BASK BUSINESS CENTER BSP LOT 9C TOG/W UND INT IN TRS A, B & C EASE OF RECORD OUT OF 400201-009-0 SEG 2006-0798 JU 2/8/06JU

LEGAL DESCRIPTION OF PARCEL NO. 4002440020

Section 07 Township 21 Range 02 Quarter 41 Binding Site Plan BASK BUSINESS CENTER BSP LOT 9D TOG/W UND INT IN TRS A, B & C EASE OF RECORD OUT OF 400201-009-0 SEG 2006-0798 JU 2/8/06JU

EXHIBIT B



CITY OF SEASIDE
 S. O. GILBERT
 CITY OF SEASIDE

EXHIBIT C

**SEWER EASEMENT FOR ACCESS
(ENTIRE PROPERTY)**

LEGAL DESCRIPTION OF PARCEL NO. 4002440010

Section 07 Township 21 Range 02 Quarter 41 Binding Site Plan BASK BUSINESS CENTER BSP LOT 9C TOG/W UND INT IN TRS A, B & C EASE OF RECORD OUT OF 400201-009-0 SEG 2006-0798 JU 2/8/06JU

LEGAL DESCRIPTION OF PARCEL NO. 4002440020

Section 07 Township 21 Range 02 Quarter 41 Binding Site Plan BASK BUSINESS CENTER BSP LOT 9D TOG/W UND INT IN TRS A, B & C EASE OF RECORD OUT OF 400201-009-0 SEG 2006-0798 JU 2/8/06JU



RECEIVED
AUG 21 2006
BY:

STATE OF WASHINGTON
WASHINGTON STATE LIQUOR CONTROL BOARD
3000 Pacific Ave SE • PO Box 43075 • Olympia WA 98504-3075 • (360) 664-1600

August 17, 2006

OLYMPIC DRIVE MART INC
C/O HATEM SHALABI
1202 N PEARL ST APT AA201
TACOMA WA 98406-8358

RE: OLYMPIC DRIVE MART INC.
5119 OLYMPIC DR W
GIG HARBOR WA 98335
License No. 080805- 1U
UBI# 602 604 161 001 0001

Type of Liquor Application: ASSUMPTION

Privilege applied for: GROCERY STORE - BEER/WINE

Reason for Refund: WITHDRAWN

Fee submitted to Liquor Control Board.....	\$	150.00
Fee Required for Liquor License.....	\$	
Liquor License Application Processing Fee.....	\$	75.00
Amount of Refund Due.....	\$	75.00

cc: File
Mayor of Gig Harbor
Bremerton Enforcement



AKK



NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO:

Corrected

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

TO: MOLLY TOWSLEE, CITY CLERK
RE: NEW APPLICATION

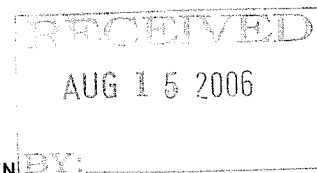
DATE: 8/14/06

UBI: 602-618-829-001-0001

License: 078110 - 1U County: 27
Tradename: GOURMET ESSENTIALS
Address: 5500 OLYMPIC DR #I 102
GIG HARBOR WA 98335-1491

APPLICANTS:

EARNHEART, CHERIE LYNE
1969-12-15
STEVENSON, BRANDON SCOTT
1968-08-28



Phone No.: 253-858-7711 CHERIE EARNHEART

Privileges Applied For:
BEER/WINE SPECIALTY SHOP

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

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

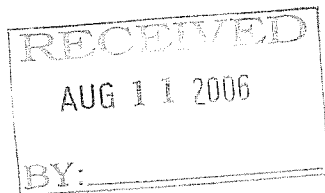
DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



NOTICE OF LIQUOR LICENSE APPLICATION

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



DATE: 8/10/06

TO: MOLLY TOWSLEE, CITY CLERK
 RE: NEW APPLICATION

UBI: 602-633-257-001-0001

License: 400599 - 1U County: 27
 Tradename: KELLY'S CAFE AND ESPRESSO
 Loc Addr: 7806 PIONEER WAY
 GIG HARBOR WA 98335-1133

APPLICANTS:
 G.T. ENTERPRISES LLC

Mail Addr: 11416 143RD ST CT NW
 GIG HARBOR WA 98329

BAKER, EUGENE 1966-01-17
 BAKER, TERESA 1968-10-31

Phone No.: 253-858-5344 GENE BAKER

Privileges Applied For:
 BEER/WINE REST - BEER/WINE
 OFF PREMISES

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.


- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Do you approve of applicant ? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you approve of location ? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken? | <input type="checkbox"/> | <input type="checkbox"/> |
| (See WAC 314-09-010 for information about this process) | | |
| 4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based. | | |

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR 
SUBJECT: HARBOR HILLS WATER TANK SITE QUIT CLAIM DEED
DATE: AUGUST 28, 2006

BACKGROUND

OPG has conveyed the Harbor Hills Water Tank to the City in a Bill of Sale. OPG now desires to convey the property beneath the Harbor Hills Water Tank to the City in a Quit Claim Deed which requires that the City either prohibit the installation of telecommunications facilities on the Tank (except for publicly-owned facilities) or turn over any revenue received from such installation to OPG. This condition is contrary to law because it impermissibly binds the actions of future City Councils (to forego revenue from telecommunications leases on the tank in perpetuity). It is also an unconstitutional gift of public funds.

ANALYSIS

The City Council is prohibited from granting any irrevocable privilege or franchise. Washington Constitution, art. 1, sec. 8. The Washington courts have defined "franchise" as:

The right granted by the state or a municipality to an existing corporation or to an individual to do certain things which a corporation or an individual otherwise cannot do.

MAC Amusement Co. v. State of Washington, 95 Wn.2d 963, 969, 633 P.2d 68 (1981). Here, nothing requires the City Council to turn over all of the revenues received from telecommunications leases of the Tank to OPG in perpetuity, so it would be an irrevocable privilege.

The Council may enter into contracts affecting the City's proprietary functions that extend beyond the Council's terms. See, 10A McQuillin, Mun. Corp. Sec. 29.101; *Metropolitan Park District v. Griffith*, 106 Wn.2d 425, 723 P.2d 1093 (1986). However, there is no authority that would allow the Council to agree to a condition affecting its proprietary functions without any term at all.

In addition, article 8, section 7 of the Washington Constitution prohibits a city from giving any money or property in aid of any company or corporation except for the poor and infirm. In determining whether a public expenditure is a gift under article 8, section 7, the court focuses on two factors: consideration and donative intent. *City of Tacoma*

v. Taxpayers of City of Tacoma, 108 Wn.2d 679, 702, 743 P.2d 793 (1987). If the Quit Claim Deed amounts to a transfer of property without consideration and with donative intent, a court could find that it violates article 8, section 7 of the Constitution.

As you are aware, OPG was required to turn over the Water Tank to the City as a condition of a Preannexation Agreement. In order to ensure that OPG doesn't pay taxes on the property beneath the tank, staff asked that OPG provide the City with a Quit Claim Deed, conveying the underlying property to the City. Nothing in the Preannexation Agreement allows OPG to collect future revenues for telecommunications leases on the tank and there is no consideration for OPG's request. If the City were to turn over this money to OPG, this would likely constitute a gift of public funds.

RECOMMENDATION

The City Attorney recommends that the Council ask OPG to delete the condition from the Quit Claim Deed, and to provide the City with a Quit Claim Deed that merely transfers whatever interest OPG has in the property to the City.

AFTER RECORDING RETURN TO:

The City of Gig Harbor
Attn: City Clerk
3510 Grandview St.
Gig Harbor, WA 98335

QUIT CLAIM DEED

Grantor(s) (Last name first, then first name and initials)
OPG PROPERTIES LLC, a Washington limited liability company

Grantee(s) (Last name first, then first name and initials)
City of Gig Harbor

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

Assessor's Property Tax Parcel or Account Number: 0222304000

Reference Number(s) of Documents assigned or released: _____

QUIT CLAIM DEED

THIS AGREEMENT is made this ____ day of _____, 2006, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation, and OPG PROPERTIES LLC, a Washington limited liability company (hereinafter the "Owner"), and whose address is 19245 Tenth Avenue N.E., Poulsbo, Washington 98370, Attn: President.

RECITALS

WHEREAS, the Owner is holder of a fee or substantial beneficial interest in the real property commonly known as the Harbor Hills Water Tank Site (Tax Parcel No. 0222304000) which is legally described in **Exhibit "A"** (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owner has agreed to convey a portion of the Property to the City (hereinafter the "Deeded Property"), which portion is legally described in **Exhibit "B"**, which is attached hereto and by this reference incorporated herein; and

WHEREAS, a map showing the location of the Deeded Property is attached hereto as **Exhibit "C"** and by this reference incorporated herein; and

WHEREAS, in exchange for the Owner's dedication of the Deeded Property, the Owner will obtain the benefits of the operation of the water tank located within the Deeded Property; and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as \$10.00, which is in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner agree as follows:

TERMS

1. Conveyance of Deeded Property to the City. The Owner conveys and quitclaims to the City of Gig Harbor all interest it has acquired in the Deeded Property legally described in **Exhibit "B"**, which is shown on the map in **Exhibit "C"**, both of which are attached hereto and incorporated herein by this reference, subject to matters of record and the covenants and reservations described hereinbelow.
2. Covenants and Reservations. The City of Gig Harbor, its successors and assigns, shall not permit the installation or operation of communication facilities within the Deeded Property, including without limitation antennas; transmitters; two-way, land-mobile, personal wireless services, and cellular communications facilities; cable TV facilities; point-to-point microwave antennas; FM translators; FM boosters; and radio and television transmission towers (collectively, "Communication Facilities"), or grant or make agreements and other instruments relating to access to and use of the Deeded Property (collectively, "Communication Facility Agreements") for the purpose of establishing and using

Communication Facilities within the Deeded Property, except publicly-owned or emergency service Communication Facilities and Communication Facility Agreements with government agencies for governmental purposes, without the prior written consent of OPG Properties LLC, and in any event the City of Gig Harbor shall deliver to OPG Properties LLC any monetary or other consideration given in exchange for such agreement or permission within thirty (30) days after receipt by the City. If any person shall bring any action to enforce or interpret the foregoing covenants and reservations, then the losing party shall pay the prevailing party a reasonable sum for attorneys' fees in such suit, at trial and on appeal, and such attorneys' fees shall be deemed to have accrued on the commencement of such action.

OPG PROPERTIES LLC, a Washington limited liability company

By [Signature]
Print Name: JON ROSE
Its: PRESIDENT

CITY OF GIG HARBOR

By: _____
Its Mayor

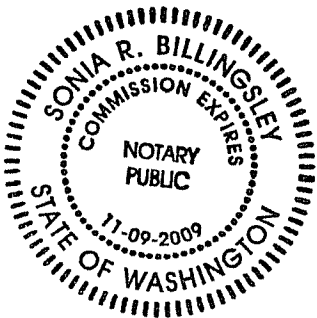
Attest:
By: _____
City Clerk

Approved as to form:
By: [Signature]
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

On this 14TH day of JULY, 2006, before me, a Notary Public in and for the State of Washington, personally appeared JON ROSE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the President of OPG PROPERTIES LLC to be the free and voluntary act and deed of said limited liability company for the uses and purposes mentioned in the instrument.

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



Sonia R Billingsley
NOTARY PUBLIC in and for the State of
Washington, residing at GIG HARBOR
My appointment expires 11/9/09
Print Name SONIA R BILLINGSLEY

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Chuck Hunter is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

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

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

The west half of the southeast quarter of Section 30, Township 22, Range 2, WM except that portion reserved for Borgen Boulevard under AFN #200007130672.

EXHIBIT B

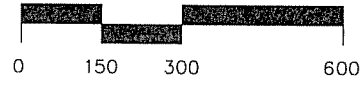
WATER TANK SITE LEGAL DESCRIPTION

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M.; THENCE N01°46'53"E 2648.83 FEET ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 30; THENCE S88°35'02"E 644.33 FEET ALONG THE NORTH QUARTER LINE OF THE SE QUARTER OF SECTION 30; THENCE S20°25'31"E 183.96 FEET TO THE TRUE POINT OF BEGINNING (TPOB); THENCE S01°46'53"W 110.00 FEET; THENCE N88°13'07"W 100.00 FEET; THENCE N01°46'53"E 110.00 FEET; THENCE S88°13'07"E 100.00 FEET TO THE TRUE POINT OF BEGINNING.

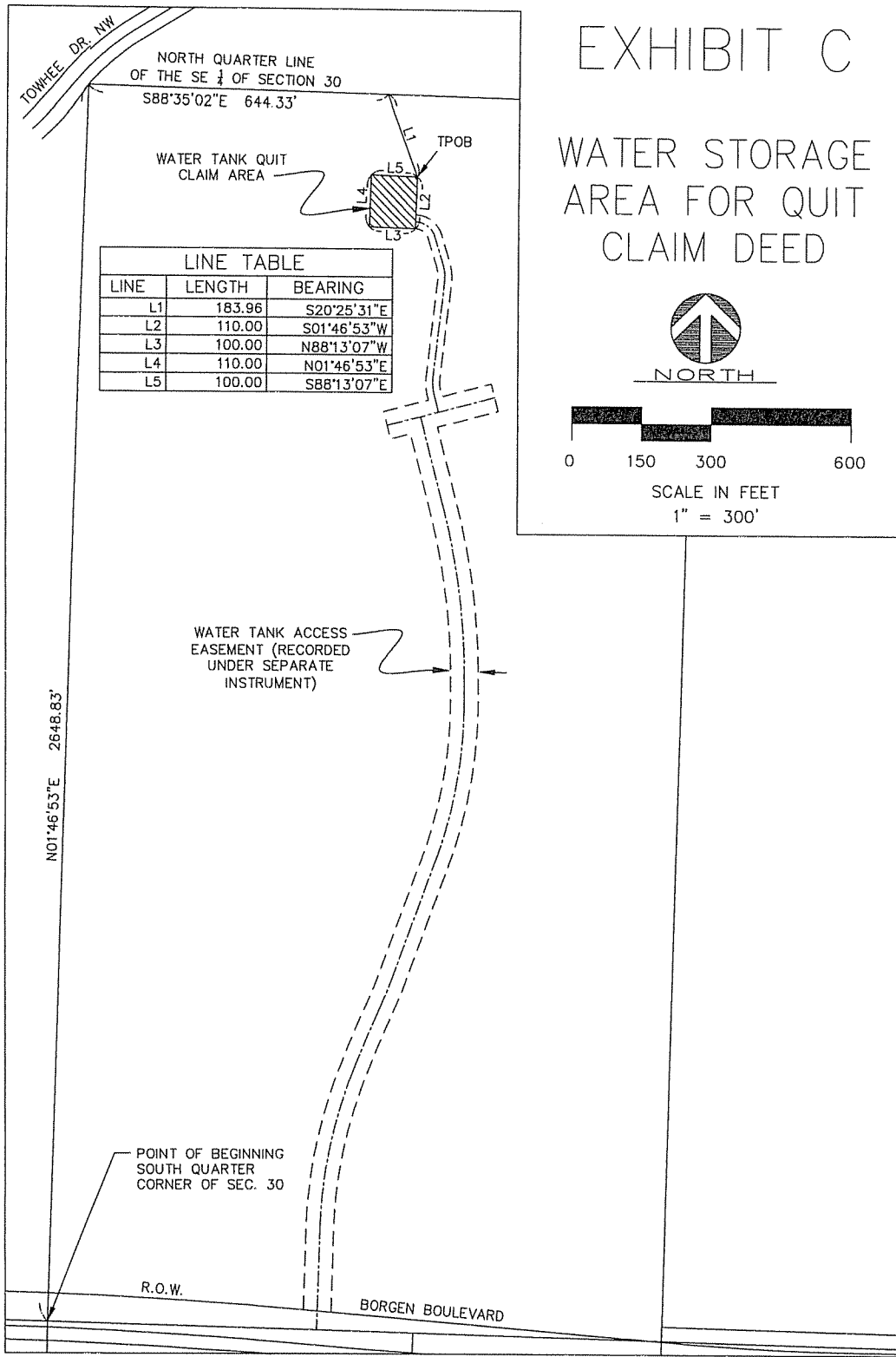
SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.
THE PARCEL CONTAINS 0.25 ACRES, MORE OR LESS.

EXHIBIT C

WATER STORAGE AREA FOR QUIT CLAIM DEED



SCALE IN FEET
1" = 300'



LINE TABLE		
LINE	LENGTH	BEARING
L1	183.96	S20°25'31"E
L2	110.00	S01°46'53"W
L3	100.00	N88°13'07"W
L4	110.00	N01°46'53"E
L5	100.00	S88°13'07"E



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.
MARCO DE SA E SILVA
Direct (206) 628-7766
marcodesaesilva@dwt.com
2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE, WA 98101-1688
TEL (206) 622-3150
FAX (206) 628-7699
www.dwt.com

August 22, 2006

Via Electronic Mail

Carol Morris
Gig Harbor City Attorney
P.O. Box 948
7223 Seawich Land NW
Seabeck, WA 98380

Re: OPG Properties LLC; Proposed Conveyance of Harbor Hill Water Tank Site Subject to Reservation of Rights Regarding Telecommunications Facility Easements and Leases

Dear Carol:

It is my understanding that you have expressed the opinion that the proposed conveyance by OPG of its Harbor Hill water tank site in Gig Harbor (the "Property") to the City subject to a reservation of all rights to enter into easements, leases, and other agreements, and to collect all valuable consideration, in connection with the future establishment of telecommunication facilities within the Property, might violate the following provision of the Washington Constitution:

No county, city, town, or other municipal corporation shall hereinafter give any money, or property, or loan its money or credit to or in aid of any individual, association, company or corporation except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association company or corporation.

WASH. CONST. Art. 8 § 7. The purpose of this provision is to prevent state funds from being used to benefit private interests where the public interest is not primarily being served. See *CLEAN v. State*, 130 Wash.2d 782, 928 P.2d 1054 (1996).

It is my opinion that the proposed conveyance and reservation of rights would not violate this provision of the Washington Constitution for the two reasons discussed below.

I. There Is No Property or Right Given by the City to OPG Because These Will Have Been Severed from Title to the Land by the Deed Reservation.

When a deed conveys real property and reserves rights to the grantor, there is a severance of title between the property conveyed and the rights reserved. *See Harrison v. County of Stevens*, 115 Wash. App. 126, 61 P.3d 1202 (2003); *McCoy v. Lowrie*, 47 Wash.2d 24, 253 P.2d 415 (Wash. 1953). In *Harrison*, the grantors deeded real property and reserved the subsurface mineral rights. *See* 61 P.3d at 1203. Because there is a severance, there is no conveyance of any property or right from the grantee back to the grantor. If there is no conveyance by the City to OPG of any property or right, then there is no gift.

Severance of title has been recognized in many Washington decisions, including those relating to irrigation rights (*Ray v. King County*, 120 Wash.App. 564, 86 P.3d 183 (Wash.App. Div. 1, 2004) review denied 152 Wash.2d 1027, 101 P.3d 421 (2004)); crop rights (*Kirby v. First Nat. Bank*, 136 Wash. 214, 239 P. 556 (1925)); air rights (WASH. REV. CODE §§ 14.12.220 & 36.89.030, *see State v. Superior Court of King County*, 30 Wash. 219, 70 P. 484 (1902)); and rights to subterranean water pipes (*Duus v. Town of Ephrata*, 14 Wash.2d 426, 128 P.2d 510 (1942)).

In *Duus v. Town of Ephrata*, one party owned the water system that supplied the town and its inhabitants with water, deriving its supply from springs located on its property. *See* 128 P.2d at 510-11. Concurrent with the sale of the water system, the grantors reserved ownership of the pipes and the water that would flow therein for domestic purposes. *Id.* Not only did the Washington Supreme Court recognize the severance of title, but it also prohibited the municipality from collecting rent on the pipes, despite their claim that it would constitute an illegal “preference.” *Id.* at 512, referencing Rem. Rev. Stat. §§ 10366 and 10367.

Whatever is excluded from a grant by an exception or reservation remains in the grantor. Therefore, whatever property or rights are reserved by OPG in its conveyance to the City never pass to the City and therefore cannot be “gifted” back to OPG.

Carol Morris
August 22, 2006
Page 3

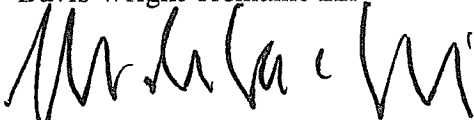
II. There Is No Gift Because Conveyance of the Land to the City Is Valuable Consideration for Any Property or Rights Given to OPG.

In addition, for purposes of Wash. Const. Art. 8 § 7, a gift is a transfer of property without consideration and with donative intent. *Louthan v. King County*, 94 Wash.2d 422, 617 P.2d 977 (1980). In this case, any property or rights given by the City of Gig Harbor to OPG and relating to telecommunication facilities would be given in exchange for valuable consideration: the conveyance of the Harbor Hill water tank parcel by OPG to the City. As you know, OPG is not required by the Pre-Annexation Agreement to give the City title to the land, and the conveyance of the land would be in consideration of any property or other rights given by the City to OPG and relating to telecommunication facilities. Receipt of valuable consideration assures that a transaction is not a gift. *See Louthan*, 94 Wash.2d 422 at 428-29, citing *Lassila v. Wenatchee*, 89 Wash.2d 804, 576 P.2d 54 (1978). Moreover, when there is no proof of donative intent, the adequacy of the consideration is not closely scrutinized but merely assessed for legal sufficiency. *See, e.g., Northlake Marine Works, Inc. v. City of Seattle*, 70 Wash. App 491, 857 P.2d 283 (1993); *Adams v. University of Wash.*, 106 Wash.2d 312, 327, 722 P.2d 74 (1986). The consideration in this case (that is, ownership of the land) would likely meet any test for legal sufficiency.

I hope this letter is helpful. If you have any questions or would like to discuss the matter further, please feel free to call me directly at (206) 628-7766.

Sincerely yours,

Davis Wright Tremaine LLP



Marco de Sa e Silva

MD:vh

cc: Jon Rose
John Chadwell
Stephen M. James



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: STEPHEN MISIURAK, P.E., CITY ENGINEER *Sm*
**SUBJECT: PUBLIC HEARING AND RESOLUTION ADOPTING THE SIX-YEAR
TRANSPORTATION IMPROVEMENT PROGRAM (TIP), 2007 - 2012**
DATE: AUGUST 28, 2006

INTRODUCTION/BACKGROUND

Local agencies are required to prepare a Six-Year Transportation Improvement Program (TIP) under RCW 35.77.010. State and federal funding for transportation projects are tied to approved Six-Year Transportation Improvement Programs. While a TIP represents the anticipated projects over a six-year period, the projects undertaken in any given year are subject to the annual budget deliberation process.

The attached Six-Year TIP for 2007 through 2012 updates last year's TIP to reflect projects anticipated to be completed this year, newly funded projects, and the most current cost information.

The TIP anticipates the planning and construction of a variety of short term and long term traffic mitigation improvements within the vicinity of SR 16/ Borgen/Canterwood Boulevard. These necessary improvements are identified recommendations contained within the 2005 Comprehensive Plan Amendments Final Supplemental EIS Study. It is anticipated the majority of the funding for these improvements will come from state, federal, and local development funding strategies.

Miscellaneous projects in the 2007 program will respond to pavement, sidewalk, and storm drainage needs on a prioritized basis depending on location, severity, traffic volumes, safety, and funding.

The Operations and Public Projects Committee, comprised of Councilmembers Ekberg, Franich and Payne met on August 24, 2006 with City staff and reviewed the proposed Six-Year TIP. There were no outstanding issues raised by the group at that meeting.

A completed environmental SEPA checklist was submitted to the Planning and Building Divisions for their review and the SEPA responsible official issued a Notice of Categorical Exemption (attached).

FISCAL CONSIDERATIONS

Adoption of the Six-Year Transportation Improvement Program does not directly affect the City's finances. The fiscal impacts will be reviewed during the anticipated Traffic Impact Fee schedule update and the annual budgeting process. Depending upon the availability of funds and other considerations, the Council may elect to fund more or fewer projects, and/or change project priorities.

RECOMMENDATION

I recommend that the Council approve the attached resolution adopting the Six-Year Transportation Improvement Program (2007-2012).

**CITY OF GIG HARBOR
RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF GIG HARBOR, WASHINGTON, ADOPTING A SIX-
YEAR TRANSPORTATION IMPROVEMENT PROGRAM
AND DIRECTING THE SAME TO BE FILED WITH THE
STATE SECRETARY OF TRANSPORTATION AND THE
TRANSPORTATION IMPROVEMENT BOARD.**

WHEREAS, pursuant to the requirements of Chapters 35.77 and 47.26 RCW, the City Council of the City of Gig Harbor has previously adopted a Comprehensive Transportation Plan and Transportation Improvement Program, including an arterial street construction program, and thereafter periodically modified said comprehensive transportation program by resolution, and

WHEREAS, the City Council has reviewed the work accomplished under the said Program, determined current and future City street and arterial needs, and based upon these findings has prepared a Six-Year Transportation Improvement Program for the ensuing six (6) calendar years, and

WHEREAS, a public hearing was held on the said Six-Year Transportation Improvement Program on August 28, 2006, and

WHEREAS, the City SEPA responsible official finds that there will be no significant adverse environmental impacts as a result of adoption or implementation of the Six-Year Transportation Improvement Program,

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

Section 1. Program Adopted. The Six-Year Transportation Improvement Program for the City of Gig Harbor, as revised and extended for the ensuing six (6) calendar years (2007-2012, inclusive), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference as if fully set forth herein, which Program sets forth the project location, type of improvement and the estimated cost thereof, is hereby adopted and approved.

Section 2. Filing of Program. Pursuant to Chapter 35.77 RCW, the City Clerk is hereby authorized and directed to file a copy of this resolution forthwith, together with the Exhibit A attached hereto, with the Secretary of Transportation and a copy with the Transportation Improvement Board for the State of Washington.

RESOLVED this _____ day of August, 2006.

APPROVED:

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

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

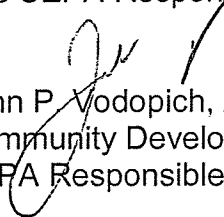


COMMUNITY DEVELOPMENT DEPARTMENT

**SEPA ADDENDUM TO
2007-2012 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM
SEPA #06-1370**

The 2007-2012 Six-Year Transportation Improvement Program (Six-Year TIP) was submitted to the Community Development Department's Planning section on August 16, 2006. An environmental checklist was submitted with the Six-Year TIP. Review of the checklist showed two changes from 2006-2011 Six-Year TIP. Per WAC 197-11-625-Addenda Procedures, an addendum to the DNS for the 2005-2011 is hereby being submitted to this file.

The SEPA Responsible Official finds that the project is categorically exempt.


John P. Vodopich, AICP
Community Development Director
SEPA Responsible Official



Agency: Gig Harbor

DRAFT

From **2007** to **2012**

Co. No.: 27 Co. Name: Pierce Co.

Hearing Date: 8/28/2006 Adoption Date: 8/28/2006

City No.: 0490 MPO/RTPO: PSRC

Amend Date: Resolution No.:

Functional Class	Priority Number	Project Identification A. Federal Aid No. B. Bridge No. C. Project Title D. Street/Road Name or Number E. Beginning MP or Road - Ending MP or Road F. Describe Work to be Done	Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars								Expenditure Schedule (Local Agency)				Federally Funded Projects Only					
							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (MM/YY)				
									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds										
									Federal Fund Code	Federal Cost by Phase														
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21				
14	1	SR16/Borgen/Canterwood Interim Improvements SR16/BorgenBlvd/Canterwood from: to: In accordance with the findings of the 2005 FSEIS, construct various short term roadway improvements to alleviate corridor traffic congestion.	04 06 11 12	P		C G P S T W O	PE CN	1/1/2007 4/1/2009	STP(U)		OTHER	500 4000	500 3000	1000 7000	500 500	500 500	5000 2000							
							Totals								4500	3500	8000	500	500	5000	2000			
12	2	SR16/Borgen/Canterwood Long Term Improvements from: to: In accordance with the findings from the 2005 FSEIS, plan, design, and permit for a new SR16/Borgen Interchange.	03 01 04 08 09 13	P	.10	C G P S T W O	PE	1/1/2007	STP(U)	3500		1000	100	4600	50	100	1000	3000	EIS	Yes				
							Totals								3500	1000	100	4600	50	100	1000	3000		
14	3	OLYMPIC DRIVE/56th STREET IMPROVEMENTS Olympic Drive & 56th Ave. from: 38th Ave to: Point Fosdick Drive Reconstruction to provide a 5-lane section, w/ bicycle lanes, curbs, gutters, sidewalks, and land-scaped planter strip on both sides, left-turn pockets / landscaped median where feasible, storm sewer improvements, lighting, and provisions for future signal at Olympic Dr. 56th St. intersection.	03 04 06	P	0.49	C P S T G W	CN	5/1/2008			AIP	3400	1835	5235	3400	1835								
							Totals								3400	1835	5235	3400	1835					
16	4	56th ST. / PT. FOSDICK DR. IMPROVEMENTS 56th Street / Point Fosdick Drive from: Olympic Drive to: Olympic Drive Reconstruction to provide a 3-lane section, w/ bicycle lanes, curbs, gutters, and sidewalks, left-turn pockets / landscaped median where feasible	03 04 05	P	0.55	C G P T W S	CN	5/1/2008			AIP	1200	1000	2200		1200	1000							
							Totals								1200	1000	2200		1200	1000				



Agency: Gig Harbor

DRAFT

Co. No.: 27 Co. Name: Pierce Co.

Hearing Date: 8/28/2006 Adoption Date: 8/28/2006

City No.: 0490 MPO/RTPO: PSRC

Amend Date: Resolution No.:

Functional Class	Priority Number	Project Identification A. Federal Aid No. B. Bridge No. C. Project Title D. Street/Road Name or Number E. Beginning MP or Road - Ending MP or Road F. Describe Work to be Done	Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars								Expenditure Schedule (Local Agency)				Federally Funded Projects Only		
							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (MM/YY)	
									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds							
									Federal Fund Code	Federal Cost by Phase											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
17	5	38TH AVENUE IMPROVEMENTS -PHASE 1 38th Avenue from: City Limits to: 56th Street Complete design, & construct 2- / 3-lane section, w/ left turn pockets, & w/ bicycle lanes, curbs, and gutters on both sides, a landscaped planter strip and sidewalk on the east side only, storm sewer improvements, and provisions for future lighting. Connect in east w/ subsequent to see map.	03 06 04	P	1.0	C P O G T W	PE CN	1/1/2009 4/1/2011			AIP	5790	706 2850	706 8640		353	353		8640		
Totals												5790	3556	9346		353	353	8640			
08	6	BRIARWOOD LANE IMPROVEMENTS Briarwood Lane from: 33rd Ave to: Point Fosdick Drive Construct curbs, gutters and sidewalk/pedestrian pathway on the south side, planter strip(s), traffic islands, and lighting.	01	P	.15	C S P G T	CN	2/1/2007			OTHER		180	180	180						
Totals													180	180	180						
19	7	PRENTICE STREET IMPROVEMENTS Prentice Street from: Fennimore Street to: Burnham Drive Curbs and gutters on both sides, sidewalk(s), storm sewer improvements, and landscaped planter strip where feasible.	03 05	P	0.30	C P T W S G	CN	5/1/2009			OTHER		750	750			750				
Totals													750	750			750				
19	8	FRANKLIN AVE. IMP (Phase 2) Franklin Avenue / Fuller Street from: Peacock Hill Avenue to: Burnham Drive Provide curbs, gutters, and sidewalks on both sides, storm sewer improvements, water main replacement, and traffic calming features.	03 05	P	0.23	C P T W S G	CN	5/1/2009			OTHER		750	750			750				
Totals													750	750			750				



DRAFT

From **2007** to **2012**

Agency: Gig Harbor

Co. No.: 27 Co. Name: Pierce Co.

City No.: 0490 MPO/RTPO: PSRC

Hearing Date: 8/28/2006

Adoption Date: 8/28/2006

Amend Date:

Resolution No.:

Functional Class	Priority Number	Project Identification A. Federal Aid No. B. Bridge No. C. Project Title D. Street/Road Name or Number E. Beginning MP or Road - Ending MP or Road F. Describe Work to be Done	Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars								Expenditure Schedule (Local Agency)				Federally Funded Projects Only		
							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information				1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (MM/YY)			
									Federal Funding		State Fund Code	State Funds							Local Funds	Total Funds	
									Federal Fund Code	Federal Cost by Phase											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
00	9	DOWNTOWN PARKING LOT Downtown Parking Lot from: Central Busn. Dist. to: Central Busn. Dist. Design additional off street parking in conformance with City Public Works Standards	01	P	0.03	P W	PE	1/1/2011					60	60				60			
							Totals						60	60				60			
17	10	GRANDVIEW STREET IMP. (PHASE 2) Grandview Street from: Pioneer Ave. to: Stinson Ave. Reconstruct Grandview Street to provide two 11 foot lanes w/ bike lanes, curb and gutters, and sidewalk.	03	P	.2	P S T W	PE CN	6/1/2008 8/1/2009					72 360	72 360		72		360			
							Totals						432	432		72		360			
17	11	GRANDVIEW STREET IMP. (PHASE 3) Grandview Street from: McDonald Ave. to: Soundview Drive Reconstruct to include sidewalks w/ bike lanes and curb and gutter with landscape strips.	03 05	P	0.5	C G P S T W	PE CN	6/1/2009 3/1/2010					158 576	158 576			158		576		
							Totals						734	734			158		576		
17	12	38th AVENUE IMPROVEMENTS-PHASE 2 38th Avenue from: 56th Street to: Hunt Street Complete design, & construct 2- / 3-lane section, w/ left turn pockets, & w/ bicycle lanes, curbs, and gutters on both sides, a landscaped planter strip and sidewalk on the east side only, storm sewer improvements, and provisions for future lighting. Complete in 2011 w/ re-subsequent to 2007 year	03 06 04	P	.5	C P O G T W	PE CN	1/1/2009 4/1/2010			AIP	5040	480 720	480 5760			240		240 5760		
							Totals					5040	1200	6240			240		6000		



Agency: Gig Harbor

Co. No.: 27 Co. Name: Pierce Co.

City No.: 0490 MPO/RTPO: PSRC

DRAFT

Hearing Date: 8/28/2006 Adoption Date: 8/28/2006

Amend Date: Resolution No.:

Functional Class	Priority Number	Project Identification A. Federal Aid No. B. Bridge No. C. Project Title D. Street/Road Name or Number E. Beginning MP or Road - Ending MP or Road F. Describe Work to be Done	Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars								Expenditure Schedule (Local Agency)				Federally Funded Projects Only		
							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (MM/YY)	
									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds							
									Federal Fund Code	Federal Cost by Phase											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
17	13	50th COURT 50th Court from: Olympic Drive to: 38th Street Construct new two lane roadway with curb, gutter, and sidewalk.	01	P	.5	S P T W	PE CN	1/1/2007 5/1/2008			AIP			50 750	50 750	50 150		500			
							Totals						800	800	200	500					
14	14	OLYMPIC/HOLLYCROFT INTERSECTION IMPROVEMENTS from: to: Reconfigure the intersection by constructing a single lane roundabout	03	P	0	P C	PE CN	1/1/2008 6/1/2009			PSMP PSMP		50 400	50 400		50	400				
							Totals						450	450	50	400					
16	15	VERNARDSON STREET IMPROVEMENTS Vernhardson Street from: City Limits to: Peacock Hill Avenue Pavement restoration and/or overlay, storm sewer, curbs, gutters, and sidewalk(s), bicycle lanes (east of N Harborview Drive), and other improvements. Project will be performed in	05 07	P	0.34	W T C	PE CN	1/1/2008 5/1/2010			PSMP	180	108 144	108 324		108			324		
							Totals					180	252	432	108	324					
19	16	45th Street Court NW from: Point Fosdick to: End Construct curb, gutter, and sidewalk improvements from Point Fosdick to the end of the street.	12	P	.20	G P S T W C	PE CN	1/1/2008 6/1/2009			PSMP PSMP		50 400	50 400		50	400			No	
							Totals						450	450	50	400					



DRAFT

From 2007 to 2012

Agency: Gig Harbor

Co. No.: 27 Co. Name: Pierce Co.

City No.: 0490 MPO/RTPO: PSRC

Hearing Date: 8/28/2006 Adoption Date: 8/28/2006

Amend Date: Resolution No.:

Functional Class	Priority Number	Project Identification A. Federal Aid No. B. Bridge No. C. Project Title D. Street/Road Name or Number E. Beginning MP or Road - Ending MP or Road F. Describe Work to be Done	Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars								Expenditure Schedule (Local Agency)				Federally Funded Projects Only		
							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (MM/YY)	
									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds							
									Federal Fund Code	Federal Cost by Phase											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
14	17	PT. FOSDICK DR PED IMPROVEMENT PROJECT Point Fosdick Drive from: Harbor County Lane to: 36th Ave. This project will construct approximately 2600 LF of curb, gutter, and sidewalk along the east side of Pt. Fosdick from Harbor County Drive	06	P	0.5	C G P T W	PE	1/1/2011						58	58				48		
							CN	8/1/2011						480	480				480		
Totals														538	538				528		
16	18	HARBORVIEW DRIVE IMPROVEMENT PROJECT from: North Harborview to: Burnham Drive Reconstruct roadway to provide for curb, gutters, sidewalk with bike lanes and landscape strips.	03 05 06	P	.30	P S T W	PE	1/1/2010						103	103				103		
							CN	5/1/2011						720	720				720		
Totals														823	823				823		
16	19	ROSEDALE STREET IMPROVEMENTS PHASE 2 Rosedale Street from: City Limits to: State Route 16 Minor widening to provide 2-thru lanes, channelization, left-turn pockets, bicycle lanes, curbs, gutters, & S/W on both sides, storm, provisions for landscaping & lighting, & provisions	03 05	P	0.53	C P T	PE	1/1/2009	STP(U)	100				28	128		128				
							CN	5/1/2009	STP(U)	626				98	724			724			
Totals										726				126	852		128	724			
16	20	ROSEDALE STREET IMPROVEMENTS PHASE 3 Rosedale Street from: State Route 16 to: Shirley Avenue Minor widening to provide 2-thru lanes curbs, gutters, storm sewer improvements, bicycle lane and sidewalk on one side, and provisions for landscaping and lighting.	03 05	P	0.34	C P T	PE	1/1/2009	STP(U)	86				78	164			164			
							CN	5/1/2010	STP(U)	425				79	504				504		
Totals										511				157	668			164	504		



Agency: Gig Harbor

DRAFT

From 2007 to 2012

Co. No.: 27 Co. Name: Pierce Co.

Hearing Date: 8/28/2006 Adoption Date: 8/28/2006

City No.: 0490 MPO/RTPO: PSRC

Amend Date: Resolution No.:

Functional Class	Priority Number	Project Identification A. Federal Aid No. B. Bridge No. C. Project Title D. Street/Road Name or Number E. Beginning MP or Road - Ending MP or Road F. Describe Work to be Done	Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars								Expenditure Schedule (Local Agency)				Federally Funded Projects Only		
							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information				1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (MM/YY)			
									Federal Funding		State Fund Code	State Funds							Local Funds	Total Funds	
									Federal Fund Code	Federal Cost by Phase											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
16	21	38th / HUNT STREET (Phase 1) 38th Ave. & Hunt Street from: Skansie Avenue to: Hunt Preliminary design of a 2-/3-lane section, w/ median &/or left turn pockets, bicycle lanes, curbs, gutters, sidewalks, and landscaped planter strip on both sides, storm sewer improvements, and	04 07	P	1.0	C S G P T W	PE CN	1/1/2010 5/1/2011			AIP	4032	720 1008	720 5040				720 5040			
							Totals														
14	22	WOLLOCHET DRIVE IMPROVEMENT PROJECT Wollochet Drive from: Hunt Street to: SR-16 Widen roadway to provide for 11-foot lanes with additional lanes to accommodate future WSDOT SR-16 ramp modifications with curb, gutter and sidewalk with planter strip and street lighting. Includes a new traffic signal at Wagon Way along with intersection improvements at Hunt	03 04	P	.5	C G P S W T	PE CN	1/1/2012			WSDOT	7200	25	7200 25	25			7200			
							Totals														
14	23	Harbor Hill Drive Harbor Hill Drive from: Terminus to: Burnham Drive Complete the extension of Harbor Hill Drive to Burnham Drive. Developer Funded.	03 04	P	.25	C G P S W T	PE CN	1/1/2012			WSDOT	7200	25	7200 25	25			7200			
							Totals														
17	24	HUNT ST PEDESTRIAN XING OF SR-16 from: Hunt St to: Kimball Drive As part of the proposed Pierce Transit Park and Ride Project, construct an overhead Pedestrian Bridge across SR-16 linking the existing Kimball Drive Park and Ride to the new Park and Ride. Funded by Pierce Transit.	21 22 08	P	.20	O P T	PE CN	5/1/2007 8/1/2008	5309(Bus) 5309(Bus)	240 2160	OTHER			240 2160	240		2160				
							Totals														



From 2007 to 2012

Agency: Gig Harbor

DRAFT

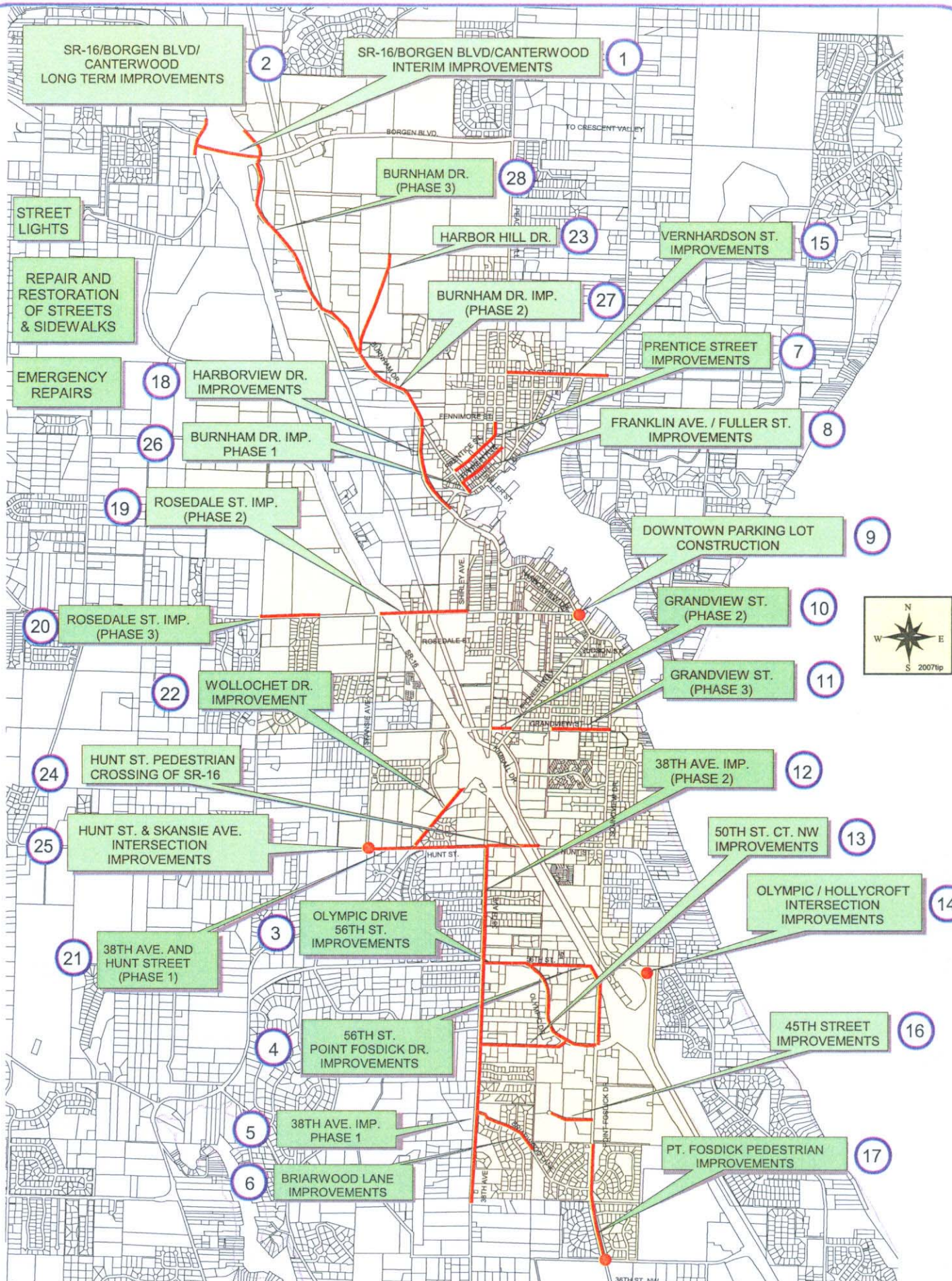
Co. No.: 27 Co. Name: Pierce Co.

Hearing Date: 8/28/2006 Adoption Date: 8/28/2006

City No.: 0490 MPO/RTPO: PSRC

Amend Date: Resolution No.:

Functional Class	Priority Number	Project Identification						Project Costs in Thousands of Dollars								Expenditure Schedule (Local Agency)				Federally Funded Projects Only					
		A. Federal Aid No.	B. Bridge No.		Improvement Type(s)	Status	Total Length	Utility Codes	Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (MM/YY)			
		C. Project Title	D. Street/Road Name or Number								E. Beginning MP or Road - Ending MP or Road		F. Describe Work to be Done		Federal Funding								State Fund Code	State Funds	Local Funds
		1	2	3		4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20			
16	25	HUNT/SKANSIE INTERSECTION IMPROVEMENTS Hunt Street and Skansie Ave. from: Hunt Street to: Skansie Ave. Installation of a roundabout at the intersection of Hunt Street and Skansie Ave. Funded by Pierce Transit						12	P	.1	C G P S W T	PE CN	1/1/2007 5/1/2009	5309(Bus)	144 1296				144 1296	144			1296		
Totals										1440					1440	144		1296							
17	26	BURNHAM DRIVE IMPROVEMENTS PHASE 1 Burnham Drive from: Harborview Drive to: Franklin Avenue Reconstruction, including major widening, curbs, gutters, sidewalks, storm sewer improvements, landscaped planter strips, and lighting. <i>Project will be performed in conjunction with</i>						03 05	P	0.28	O C G P S T	CN CN	1/1/2008 4/1/2009			AIP	403	94 100	94 503		94	420			
Totals														403	194	597		94	420						
17	27	BURNHAM DRIVE IMPROVEMENTS PHASE 2 from: Franklin Avenue to: Harbor Hill Dr. Reconstruction, including major widening, curbs, gutters, sidewalks, storm sewer improvements, landscaped planter strips, and lighting. <i>Project will be performed in conjunction with</i>						03 05 12	P	.45	C G O P T	PE CN	1/1/2011 4/1/2011			AIP	600	396 2400	396 3000				396 3000		
Totals														600	2796	3396				3396					
17	28	BURNHAM DRIVE IMPROVEMENTS PHASE 3 from: North/South Connector to: Borgen BLVD Reconstruction, including minor widening, curbs, gutters, sidewalks, storm sewer improvements.						03 04 12	P	1.0	C G O P T	PE CN	1/1/2011 4/1/2011			AIP	1200	576 3600	576 4800				576 4800		
Totals															1200	4176	5376				5376				
Grand Totals for Gig Harbor																									
										8577				34545	26162	69284	4739	7100	12615	44187					



City of Gig Harbor
Six Year Transportation Improvement Program
2007 - 2012

DRAFT



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PUBLIC HEARING - STREET VACATION REQUEST - BUJACICH
ROAD NW AND 54TH AVENUE NW – HARBOR REACH ESTATES, LLC
DATE: AUGUST 28, 2006

INTRODUCTION/BACKGROUND

On July 10, 2006, City Council approved a resolution setting August 28, 2006 as the date to hear public testimony regarding the requested street vacation initiated from Mr. Sterling Griffin, managing member of Harbor Reach Estates, LLC, owners of the abutting property. The City received a petition on June 13, 2006 to vacate portions of Bujacich Road NW and 54th Avenue NW abutting their properties as shown on the attached exhibits in accordance with GHMC 12.14.002C.

The right-of-way proposed for vacation along Bujacich Road NW and 54th Avenue NW has a 16-inch water main located approximately 12 feet east of the right-of-way line. The water main will require a 20-foot easement. Future sewer main construction may require utilizing the remaining portion of the right-of-way that has been requested to be vacated. If Council chooses to vacate this right-of-way, the Director of Operations recommends retaining an easement on the entire portion requested to be vacated for future utility construction, repair and maintenance.

POLICY CONSIDERATIONS

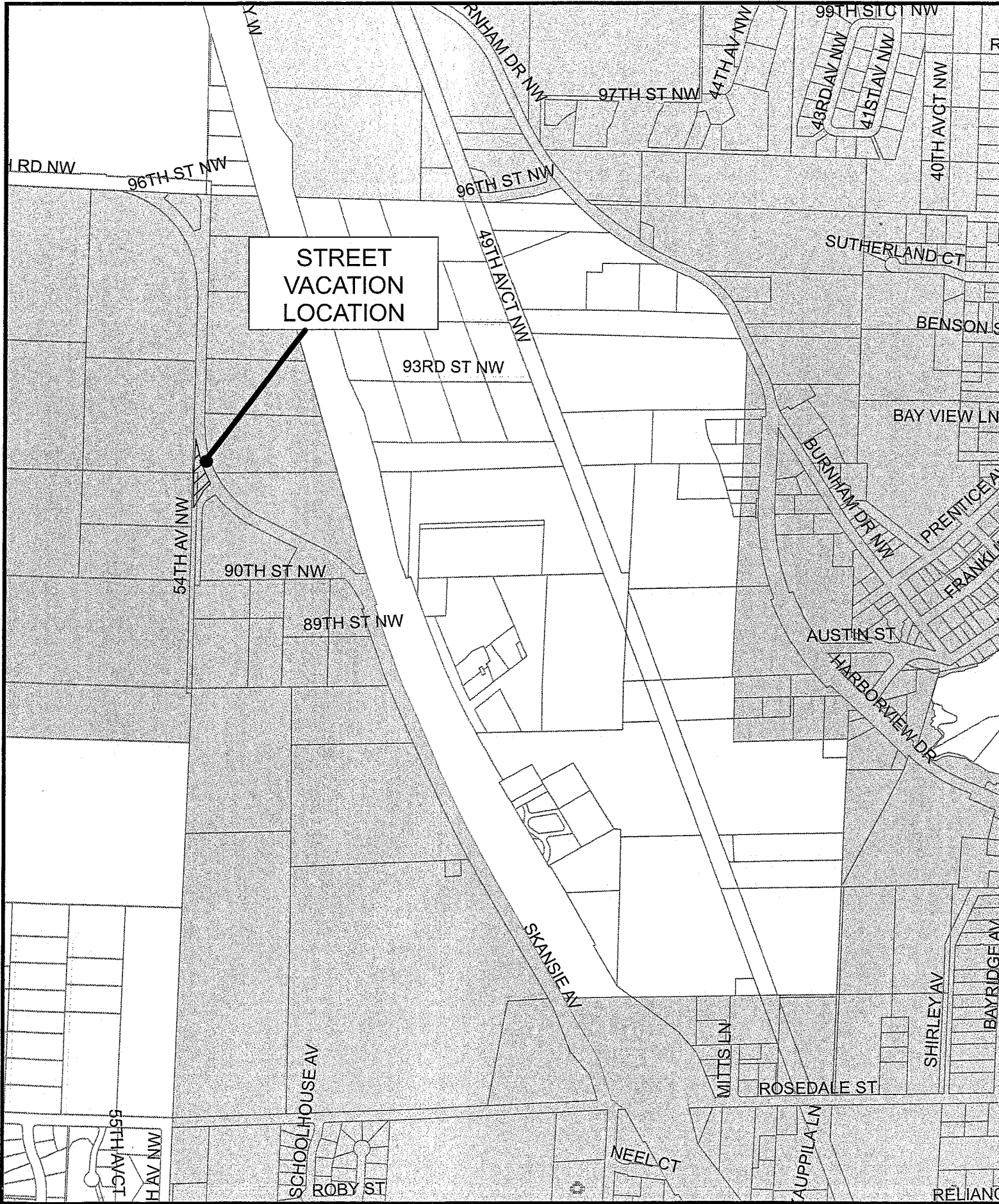
The April 5, 2006 Comprehensive Plan Amendments Final Supplemental Environmental Impact Statement identifies this area west of SR-16 as being appropriate for an improved north/south arterial connection between Bujacich Road NW and Wollochet Drive. As such, staff will be recommending denial of the requested street vacation as the right-of-way may be needed for future improvements.

FISCAL CONSIDERATIONS

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

RECOMMENDATIONS

I recommend that Council deny the requested street vacation as the right-of-way may be needed for future improvements and is not surplus to the City's needs.



STREET
VACATION
LOCATION

HARBOR REACH ESTATES STREET VACATION
VICINITY MAP

HARBOR REACH ESTATES, L.L.C.
A REAL ESTATED DEVELOPMENT COMPANY

June 13, 2006

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

**RE: VACATION OF ROAD RIGHT-OF-WAY
(BUJACICH ROAD/54TH AVENUE)**

Dear City of Gig Harbor:

We the undersigned, property owners in full fee of the abutting real estate, petition and request the City Council to declare the above captioned right-of-way surplus and vacate the City's interest in our favor. The additional right-of-way is more fully described in the attached legal description and shown on the attached exhibit drawing. Both the legal description and drawing were prepared and surveyor, licensed by the State of Washington.

If necessary, easements may need to be granted to the City or other private purveyors for utility construction, repair and maintenance. If easements are necessary, our surveyor can prepared those for your consideration. Please contact us if you need any additional information to continue processing this request.

Sincerely,



Sterling Griffin
Managing Member

CITY-CASHDRWR1Jaci
Harbor Reach Estates LLC CR Batch 020.06
.2006

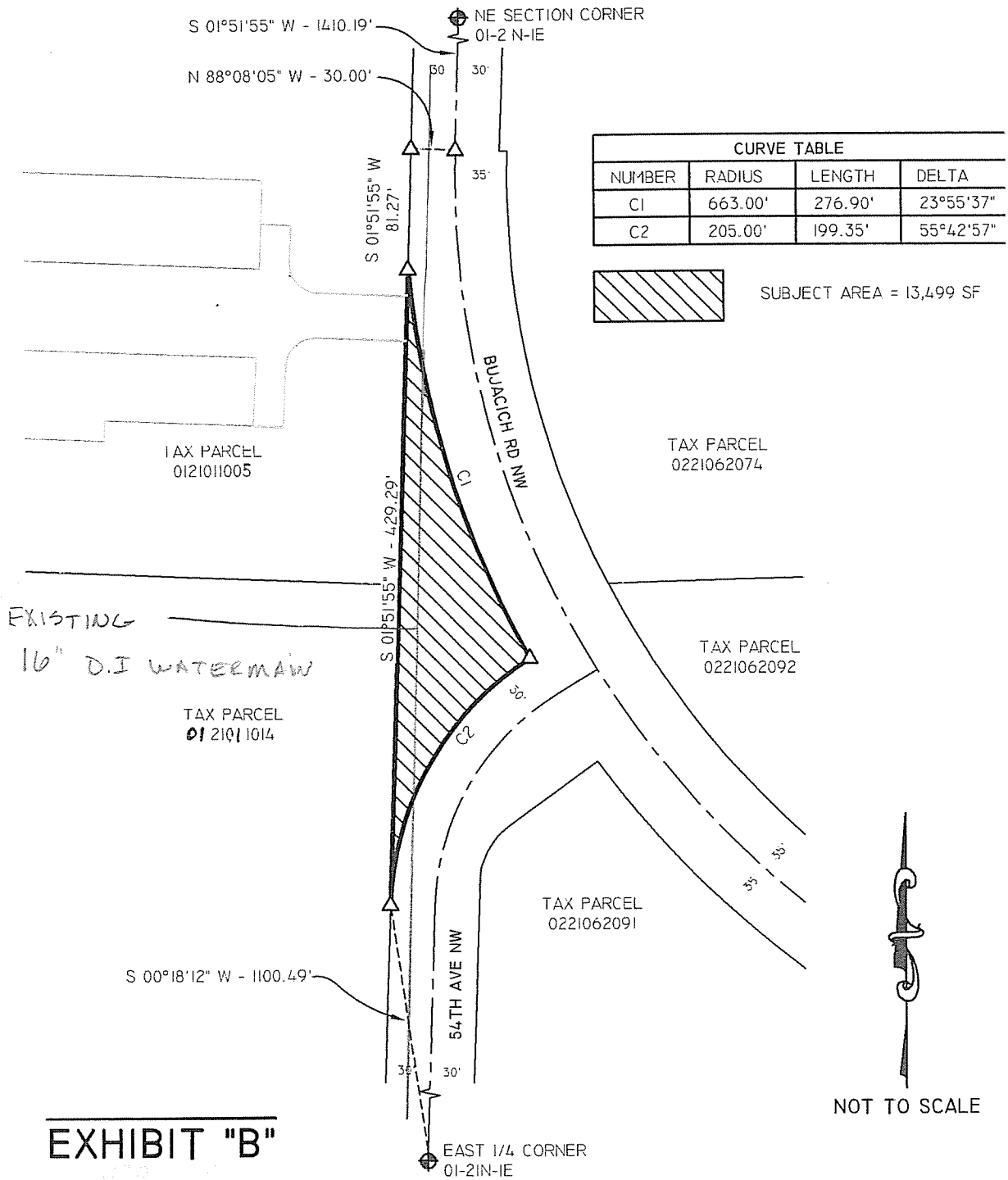
**PMB 139, 5114 #E, PT. FOSDICK DRIVE
GIG HARBOR, WA *98335
OFFICE: (253) 858-3205**

Date 06/20/2006
0002422 150.00
Cash 0.00
Check 150.00
Credit 0.00

EXHIBIT "A"
PROPERTY DESCRIPTION

Commencing from a brass disk marking the Northeast Corner of Section 1, Township 21 North, Range 1 East, Willamette Meridian, Pierce County, Washington; Thence South $01^{\circ}51'55''$ West on the east section line of said section 1, 1410.19 feet; Thence North $88^{\circ}08'05''$ West 30.00 feet; Thence South $01^{\circ}51'55''$ West parallel with the east section line of said section 1, 81.27 feet, to **The True Point of Beginning** of this description; thence continuing South $01^{\circ}51'55''$ West 429.29 feet to a point, from which the East 1/4 corner of said section 1 bears, South $00^{\circ}18'12''$ West 1100.49 feet; Thence northeasterly 199.35 feet on the arc of a non-tangent curve to the right whose radius equals 205.00 feet, with a central angle of $55^{\circ}42'57''$, and whose chord bears North $29^{\circ}43'23''$ East 191.59 feet; Thence northwesterly 276.90 feet on the arc of a non-tangent curve to the right whose radius equals 663.00 feet, with a central angle of $23^{\circ}55'37''$, and whose chord bears North $17^{\circ}08'26''$ West 274.89 feet to the true point of beginning, all containing 13,499 square feet, more or less. Area described is also shown on the attached Exhibit "B".

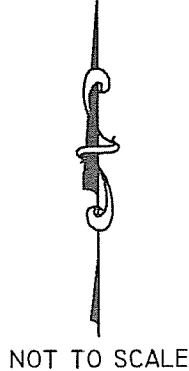
LOCATED IN THE NE1/4 SECTION 1, TOWNSHIP 21
 NORTH, RANGE 1 EAST, AND NW1/4 SECTION 6,
 TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M.,
 PIERCE COUNTY, WASHINGTON



CURVE TABLE			
NUMBER	RADIUS	LENGTH	DELTA
C1	663.00'	276.90'	23°55'37"
C2	205.00'	199.35'	55°42'57"

 SUBJECT AREA = 13,499 SF

EXHIBIT "B"





COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND THE CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: RESOLUTION AMENDING THE 2006 PERSONNEL REGULATIONS
MANUAL
DATE: AUGUST 28, 2006

INFORMATION/BACKGROUND

The 2006 City of Gig Harbor Personnel Regulations manual dictate the annual vacation leave accrual rate based on the number of years of service with the City. There is currently no provision which would allow for the negotiation of leave accruals consistent with the job history of a particular applicant. Allowance for the negotiation of leave accruals on a case-by-case basis would aid in the recruitment and hiring of the best qualified individual.

Recent attempts to recruit experienced employees have proven that the rate of leave accrual is an important part of one's choice of where to work.

POLICY CONSIDERATIONS

The negotiation of leave accruals during recruitment would be on a case by case basis, be based on the applicant's prior employment history; and would require approval of the of the employees' guild, if applicable.

As provided for in the Employees' Guild Agreements, this proposed amendment has been submitted to the appropriate Guild representatives for input.

The proposed amendment and memorandum of agreement with the employees' guild were drafted by Scott Snyder, the City's Personnel Attorney.

FISCAL CONSIDERATIONS

Fiscal impacts will be on a case by case basis and dependent upon the perspective employees' rate of pay.

RECOMMENDATION

I recommend that the City Council move approval of the Resolution as presented.

MEMORANDUM OF UNDERSTANDING

WHEREAS, _____ is an applicant for the position of _____ with the City of Gig Harbor; and

WHEREAS, the applicant has _____ years of experience with other public agencies and has negotiated an increased accrual rate for _____ leave; and

WHEREAS, in order to attract this applicant, the Mayor believes such a deviation is warranted; and

WHEREAS, this agreement has been approved by the Collective Bargaining Unit governing the position; NOW THEREFORE,

In consideration of the mutual benefits to be derived, _____ ("Applicant") shall upon hire accrue leave beginning on the date of hire as though the individual had _____ years of service with the City. This agreement extends only to accruals of _____ leave and shall not have any other impact on the individual's seniority or other terms or conditions of employment. The terms and conditions of employment shall, with this sole exception, be governed by the City's personnel manual and Collective Bargaining Agreement, as applicable.

DONE this _____ day of _____, 2006.

APPROVED;
COLLECTIVE BARGAINING REPRESENTATIVE

By: _____

[Name of Appropriate Guild or Union]

CITY OF GIG HARBOR

By: _____
Mayor Charles L.Hunter

APPLICANT

Print Name: _____

**CITY OF GIG HARBOR
RESOLUTION NO.**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING AN AMENDMENT, RELATED TO NEGOTIATED LEAVE ACCRUALS, TO THE 2006 PERSONNEL REGULATIONS MANUAL FOR CITY EMPLOYEES.

WHEREAS, the City of Gig Harbor Personnel Regulations Manual is updated on an as-needed basis; and

WHEREAS, an amendment to the manual is needed to provide for the negotiation of leave accruals to aid in the recruitment of qualified employees; and

WHEREAS, the inclusion of this minor policy adjustment in the manual is chiefly necessary for the efficient operation of the City; now, therefore,

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

Section 1. The City Council hereby adopts an amendment to the 2006 City of Gig Harbor Personnel Regulations, attached hereto as Exhibit A and incorporated herein by this reference.

RESOLVED by the City Council this 28th day of August, 2006.

APPROVED:

Charles L. Hunter, Mayor

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____

Filed with the City Clerk:
Passed by the City Council:

Exhibit A

PERSONNEL REGULATIONS AMENDMENT

X.0 Negotiated Leave Accruals

In order to recruit and hire the best qualified individuals, it may be necessary for the Mayor and City Administrator to negotiate leave accruals consistent with the job history of a particular applicant. Therefore, the Mayor and City Administrator are authorized to negotiate placement of individual new employees on the City's leave accrual list. In the event that the applicant will be a member of a bargaining unit, any deviation from the leave accrual rates set forth in the Collective Bargaining Agreement shall be subject to the approval of the bargaining representative for that Unit.



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: DAVID BRERETON, DIRECTOR OF OPERATIONS
SUBJECT: EDDON BOAT PARK AQUATIC LEASE SURVEY
- CONSULTANT SERVICES CONTRACT
DATE: AUGUST 28, 2006

INTRODUCTION/BACKGROUND

The City of Gig Harbor has submitted application to lease state-owned aquatic lands for the public use from Washington State Department of Natural Resources adjacent to the Eddon Boat Park. A requirement of the application is to provide a record survey of the new lease area by a licensed surveyor.

After reviewing the Consultant Services Roster, the City contacted the survey firm of PriZm Surveying, Inc. and requested quotations to provide the above services. Upon review of the provided price quotations and proposals, the survey firm of PriZm Surveying, Inc. was selected to perform the work. Selection was based on their understanding of the project, extensive municipal survey experience, and outstanding recommendations from outside jurisdictions that have used the selected consultant for similar tasks.

The scope of work includes identifying the government's meander line, tide lines and the harbor lines. They will also prepare lease area legal descriptions and check for closure and record final drawing with the Pierce County Auditor.

POLICY CONSIDERATIONS

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

FISCAL CONSIDERATIONS

This project was not anticipated in the adopted 2006 Budget. However sufficient funds are available under professional services in the 2006 Park operating budget.

RECOMMENDATION

I recommend that the Council authorize the execution of the Consultant Services Contract with PriZm Surveying, Inc. for survey work in the amount not to exceed Eleven Thousand Three Hundred Fifty Dollars (\$11,350.00).

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

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and PriZm Surveying, Inc., a corporation organized under the laws of the State of Washington, located and doing business at PO Box 110700, Tacoma, Washington 98411 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the survey and mapping work for the Aquatic Lease Survey (Eddon Boat Park) for D.N.R. Application No. 22-078899 and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated July 12, 2006 including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

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

TERMS

I. Description of Work

The Consultant shall perform all work as described in **Exhibit A**.

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Eleven Thousand Three Hundred Fifty Dollars and No Cents (\$11,350.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by November 28, 2006; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as

described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work and Cost referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000.

All policies and coverage's shall be on an occurrence made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by

the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer and the City shall determine the term or provision's true intent or meaning. The City Engineer shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

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

CONSULTANT
Gary D. Letzring, P.L.S
PriZm Surveying Inc.
PO Box 110700
Tacoma, Washington 98411
(253) 404-0983

David Brereton
Director of Operations
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

XVII. Assignment

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

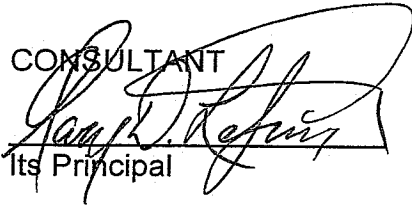
XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 200__.

By: 
CONSULTANT
Its Principal

By: _____
CITY OF GIG HARBOR
Mayor

Notices to be sent to:
CONSULTANT
Gary D. Letzring, P.L.S.
PriZm Surveying Inc.
PO Box 110700
Tacoma, Washington 98411
(253) 404-0984

David Brereton
Director of Operations
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Gary LETERING 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 Vice President of PriZm Surveying Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 8/14/2006

Aaron B Blaisdell

Aaron B Blaisdell
(print or type name)

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

Tacoma

My Commission expires: 12-14-09



STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

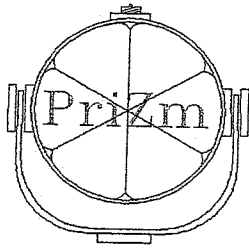
I certify that I know or have satisfactory evidence that Charles L. Hunter is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and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

Dated: _____

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

My Commission expires: _____

EXHIBIT A
SCOPE OF SERVICES



PRIZM
SURVEYING INC.

P.O. Box 110700
Tacoma, WA 98411
Office: 253-404-0983
Fax: 253-404-0984
ablaisdell@prizmsurveying.com
gletzring@prizmsurveying.com
dpierce@prizmsurveying.com

Mr. David Brereton, Director of Operations
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

July 12, 2006

Re: Aquatic Lease Survey (Eddon Boat Park) for D.N.R. Application No. 20-078899.

Dear Mr. Brereton,

PriZm Surveying is pleased to provide you with this proposal for Surveying Services. The following is our proposed scope of work.

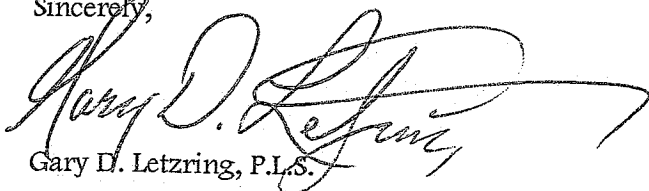
Task 1 – Aquatic Lease Survey:

1. Perform office research of the City of Gig Harbor's, Pierce County's and the Department of Natural Resources Records for relevant monumentation, Right of way, Tideland, Lease and Control surveys in the vicinity of the proposed lease area.
2. Perform a random field traverse survey locating relevant monumentation as recoverable through a diligent search.
3. Perform mathematical computations, and analyze the record boundaries, easements and restrictions as disclosed, which may benefit or burden those portions of the proposed lease area.
4. Field traverse and survey the property lines and proposed lease lines, locating all evidence of possession within 10 feet of said line locations. All Driveways, walks, buildings, bulkheads, docks and visible utility crossings across the subject area will also be located. Encroachments, if any, will be located; and noted on the final survey. The resolution of any possible encroachments is the responsibility of the owner.
5. Identify the Gov't meander line, tide lines and the harbor lines.
6. Prepare lease area legal descriptions and check for closure.
7. Reduce field notes, plot data obtained from the fieldwork, and prepare an AutoCAD drawing of the above at a convenient scale showing the data collected. Verify items required by DNR are show or identified on the drawing. The RECORD OF SURVEY drawing will be reviewed and certified by a Professional Land Surveyor. Provide paper copies to the City of Gig Harbor for your review.
8. Make any corrections as desired by the City. Finalize the drawing for submittal with the Department of Natural Resources.
9. Make corrections, if any, as required by the DNR.
10. Record the final drawing with the Pierce County Auditor.

The estimated cost for Task 1 services is \$11,350.00.

We look forward to working with you, and if you have any questions or comments regarding this proposal, please call me at (253) 404-0983.

Sincerely,



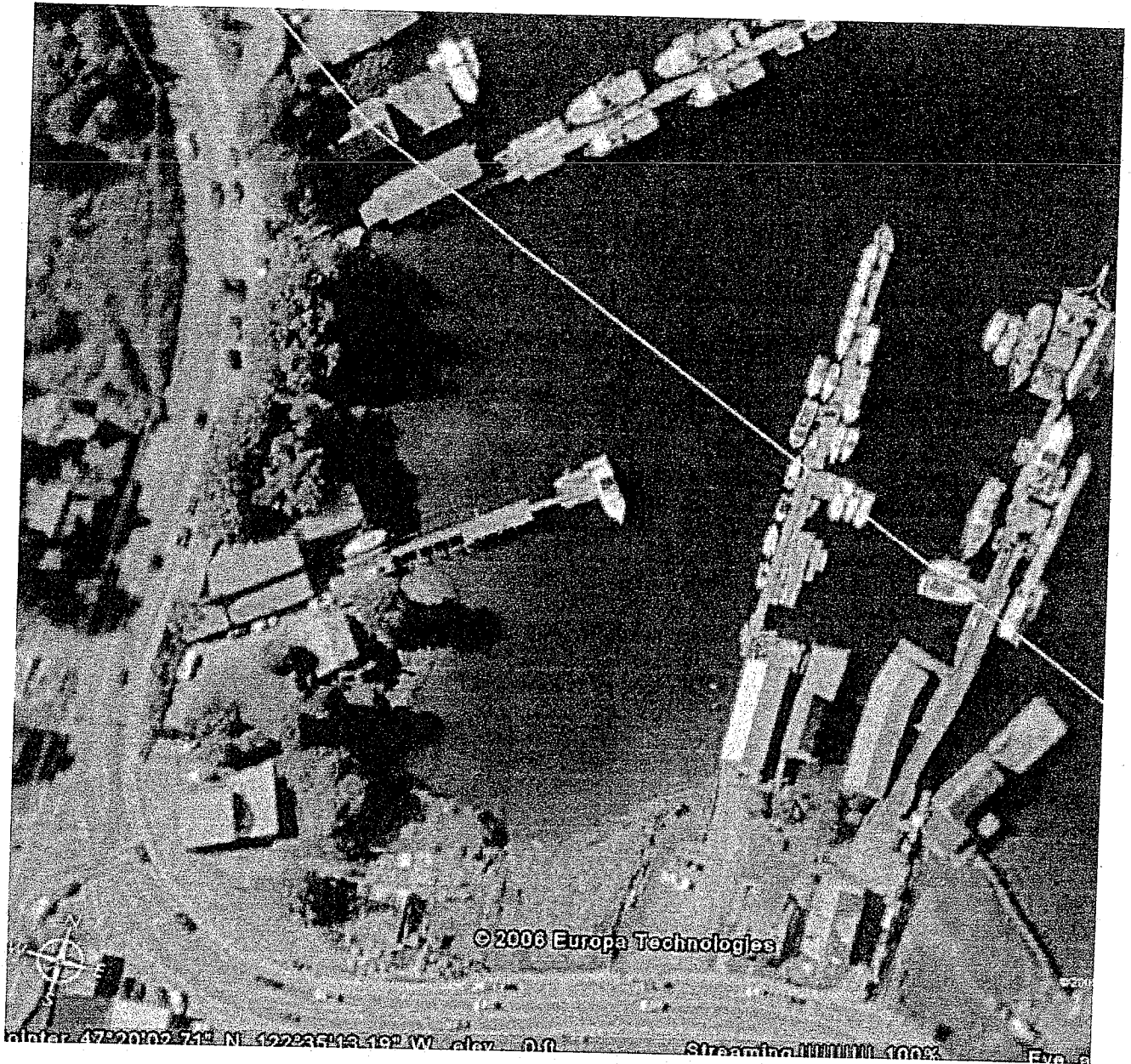
Gary D. Letzring, P.L.S.

RECEIVED

JUL 21 2006

CITY OF GIG HARBOR
OPERATIONS & ENGINEERING

Member:
Land Surveyor's Association of Washington,
National Society of Professional Land Surveyors,
American Congress on Surveying and Mapping



**CONSULTANT'S SALARY AND BILLING RATES
PRIZM SURVEYING INC.**

Contract No. _____

Contract Title: **BURNHAM DRIVE SEWER REPLACEMENT PROJECT**

The following are the Billing Rates the Consultant will charge for work performed under this Contract. Any adjustments to these rates must be requested in writing and, if agreed to, be documented in a "Revised" Consultants' Salary and Billing Rates Exhibit, which will be incorporated in and attached to this Contract by the fact of the Exhibit's acceptance by the SPU Project Manager.

Billing Rates are an all-inclusive "Direct Labor" (DL) flat rate equal to _____ times the Base Salary Rates.

OR

The Hourly rates used on this Contract are based on all-inclusive, fair and competitive "standard industry rates."

Staff Name	Title	Base Hourly Salary Rates	Hourly Billing Rates (Base Salary times DL Rate)
DENNIS J. PIERCE PLS	PROFFESIONAL SURVEYOR	\$98.00	
GARY D. LETZRING PLS	PROFFESIONAL SURVEYOR	\$98.00	
AARON BLAISDELL PLS	PROFFESIONAL SURVEYOR	\$98.00	
GREG A. ZURN	SURVEY COORDINATOR	\$80.00	
2 MAN SURVEY CREW	CONVENTONAL	\$125.00	
2 MAN SURVEY CREW	GPS	\$150.00	
TONY WIBORG	PARTY CHIEF		
SCOTT TWISS	PARTY CHIEF		
RICH WILLYERD	CHAINMAN		
JOHN KUNST	CHAINMAN		
CORY MENDENHALL	CHAINMAN		
PRESTON DENNIS	OFFICE MANAGER	\$50.00	



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND THE CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
SUBJECT: PLANNING DIRECTOR STARTING PAY RATE
DATE: AUGUST 28, 2006

INFORMATION/BACKGROUND

After a long search, we have selected an experienced, highly capable candidate for the Planning Director position. Mr. Tom Dolan is presently employed by the City of Tacoma as the Land Use Section Supervisor with supervisory responsibility of 14 professional planners. Mr. Dolan has a degree in Urban and Regional Planning from Western Washington University and has over 32 years of experience.

POLICY CONSIDERATIONS

The City Personnel Regulations provide for the hiring of new staff members at above the mid-range for the position upon Council approval. By approving this request, the Council will be indicating that it is willing to approve the hiring of this highly qualified candidate at the starting salary point which is above the midpoint. Such approval creates no future precedent and is related only to the qualifications of this particular applicant.

FISCAL CONSIDERATIONS

The current 2006 salary range for this position is \$5,486 - \$6,857. It is appropriate that Mr. Dolan start at the top of the range given his years of experience and current salary. Given the length of time that this position has been vacant, this increased salary will not create a budgetary deficit for 2006.

RECOMMENDATION

I recommend that the City Council move to approve the starting monthly salary point of \$6,857.00 for Mr. Dolan.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: STAFF REPORT – TACOMA NARROWS BRIDGE TRAFFIC
DATE: AUGUST 28, 2006

INFORMATION/BACKGROUND

As was requested at the August 14, 2006 meeting, I contacted Claudia Cornish, Tacoma Narrows Bridge Communications Manager who informed me that they do not believe that screening the bridge is a viable alternative due to the added wind load as screens would have to extend the entire length of the bridge. They are hopeful that drivers will adapt as they have throughout the project. They will continue to monitor the traffic situation and have noticed that traffic movements have improved.



ADMINISTRATION

TO: MAYOR HUNTER AND CITY COUNCILMEMBERS
FROM: CAROL MORRIS, CITY ATTORNEY
SUBJECT: ADMINISTRATIVE APPEAL PROCEDURE
DATE: AUGUST 28, 2006

BACKGROUND

Councilmember Franich asked whether the City Council could hold an administrative appeal of decisions on project permit applications.

ANALYSIS

The City is prohibited from holding more than one consolidated open record hearing and one closed record hearing. RCW 36.70B.060(3). If an appeal is provided after the open record hearing, it must be a closed record appeal. RCW 36.70B.060(6). The City may decide not to allow any administrative appeals, or it may provide an appeal for some but not all project permit decisions. RCW 36.70B.060(6).

At present, the City Council does not hear any administrative appeals of project permit decisions. There is a chapter in the City's code which describes the procedures to be used in such appeals, and it can be used if the Council changes the current procedures to allow for Council appeals.

In the last year, the City Council has appealed two hearing examiner decisions to court. This procedure requires the City to file an appeal fee with the court and incur attorney's fees. It also requires that the City meet its burden to show that the hearing examiner's decision needs to be reversed or modified, based on the criteria in RCW 36.70C.130. Even though this type of an appeal is expedited on the court's schedule, it still can cause project delays of up to six months or more.

If the City Council adopted a new limited appeal procedure, most of the fees and delays would be eliminated. While the Council would review the decision under the same criteria in RCW 36.70C.130 to determine whether it should be reversed or modified, the Council will make the final decision of the City.

Here is the practical effect of a limited appeal procedure. If the Council receives a copy of a hearing examiner decision and votes to appeal it, the appeal will then be scheduled before the Council. If the Council reverses the hearing examiner's decision, then the Council's decision would either stand as the City's final decision or it could be appealed to court. In an appeal, the appellant would have to meet the burden of showing that the criteria in RCW 36.70C.130 have been

satisfied. The City would not need to meet this burden – it would only defend the Council's decision. Defending the Council's decision is easier than arguing that the Hearing Examiner's decision is contrary to law or that there isn't substantial evidence in the administrative record to support the decision.

RECOMMENDATION

The City Council does not need to provide for appeals of all decisions, nor does it need to allow everyone to file an appeal to the Council. The City Council should amend chapter 19.06 GHMC to allow the City Council to appeal any decision (or certain types of decisions) to itself in a closed record appeal hearing.