

SPECIAL MEETING OF THE GIG HARBOR CITY COUNCIL
October 30, 2006 - 3:00 p.m.
Gig Harbor City Council Chambers

CALL TO ORDER:

NEW BUSINESS:

1. Proposed Agreement with Gig Harbor Peninsula Historical Society.

ADJOURN:



COMMUNITY DEVELOPMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: GIG HARBOR PENINSULA HISTORICAL SOCIETY
AGREEMENT
DATE: OCTOBER 30, 2006

INFORMATION/BACKGROUND

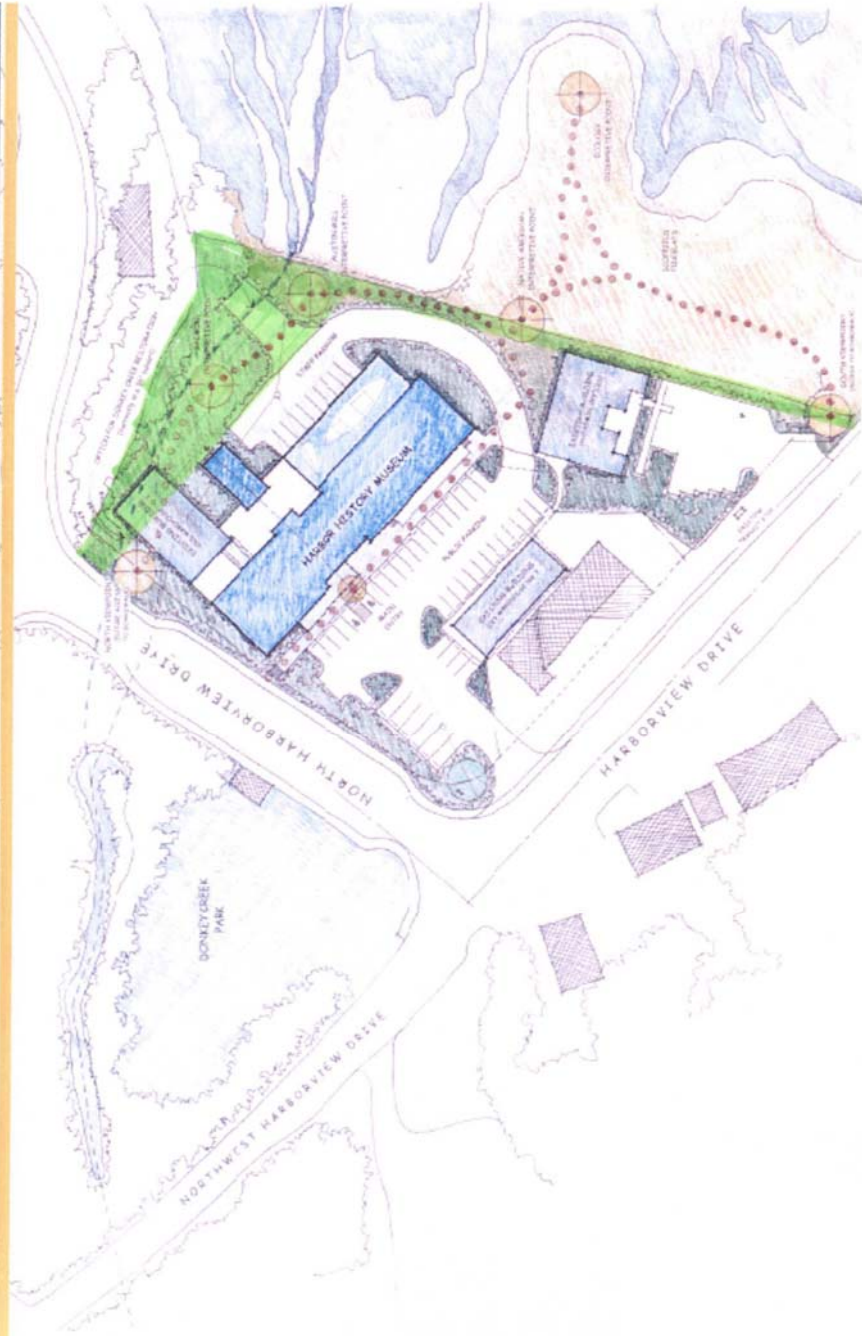
At the September 25, 2006 City Council meeting a draft agreement with the Gig Harbor Peninsula Historical Society was forwarded to the Council for review

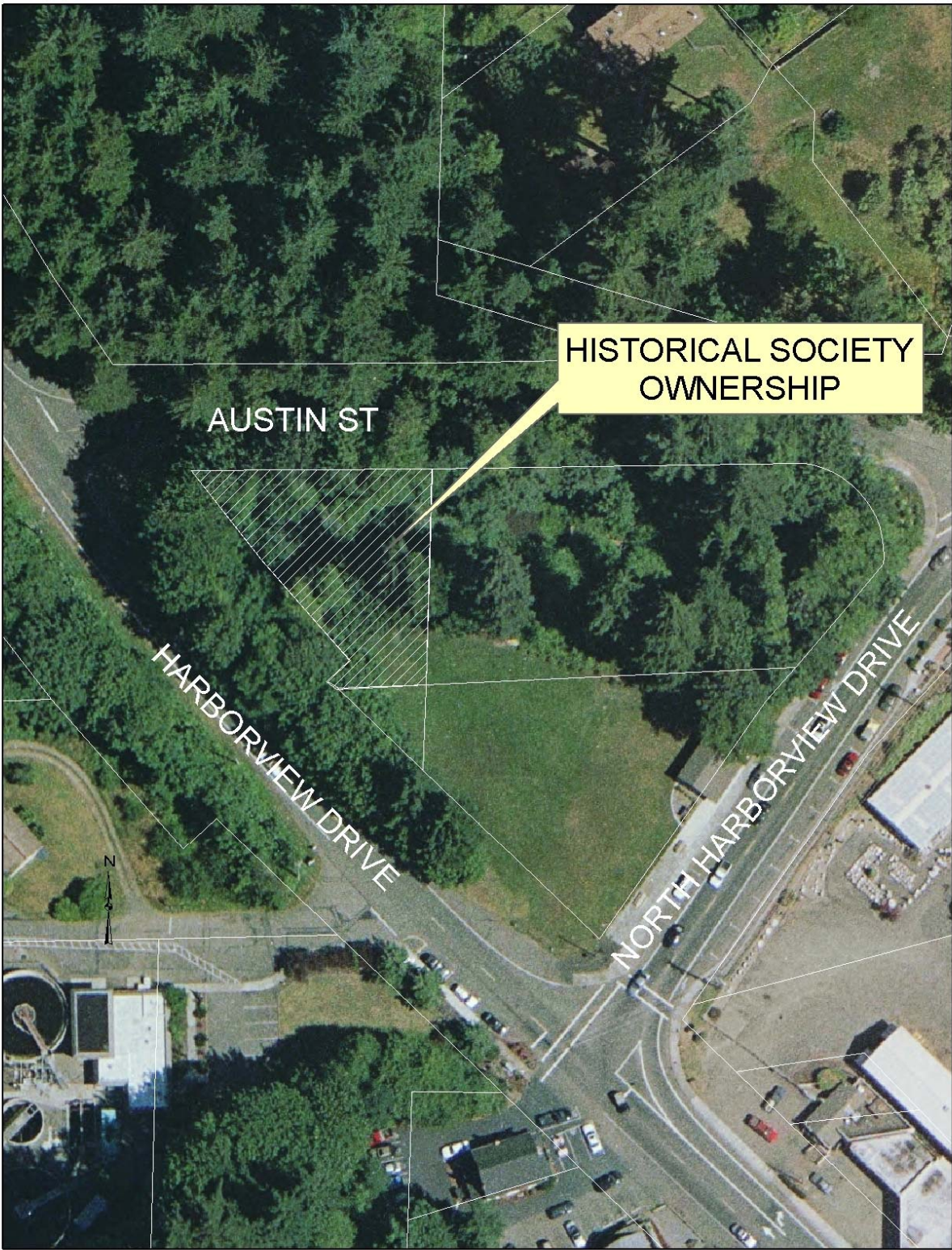
The matter was referred to the Operations and Public Projects Committee (Ekberg, Franich, & Payne) for consideration. The Council Committee met with the Community Development Director and Finance Director on September 29th together with representatives of the Historical Society to discuss the terms of the agreement. The Council Committee met again on October 24th with the Community Development Director, City Attorney, and representatives of the Historical Society to further discuss the terms an the agreement

The City Attorney has drafted a revised agreement which incorporates the agreements that were reached at the meetings between the Council Committee and the Society.

The draft agreement has been forwarded to the Gig Harbor Peninsula Historical Society and their comments have been included in the packet.

Fulfilling a Community Plan





HISTORICAL SOCIETY
OWNERSHIP

AUSTIN ST

HARBORVIEW DRIVE

NORTH HARBORVIEW DRIVE

N

October 27, 2006

**AGREEMENT BETWEEN THE CITY OF GIG HARBOR
AND THE GIG HARBOR PENINSULA HISTORICAL SOCIETY**

THIS AGREEMENT is made and entered into as of the ____ day of 2006, by and between **THE CITY OF GIG HARBOR**, a Washington municipal corporation, hereinafter referred to as the "City," and the **GIG HARBOR PENINSULA HISTORICAL SOCIETY**, a nonprofit corporation organized under the laws of the State of Washington and located at _____, hereinafter referred to as the "Society."

RECITALS

WHEREAS, the City has the authority to exercise its powers relating to the acquisition, development, improvement and operation of museums and the preservation of historical materials under RCW 35A.27.010 and RCW 35.21.020, and to expend municipal funds thereon; and

WHEREAS, the Society is the owner of certain property (referred to as the Gig Harbor Historical Museum Site, or the Museum Site), upon which the Society plans to construct a Historical Museum, which is located at the corner of North Harborview Drive and Harborview Drive in Gig Harbor, Washington; and

WHEREAS, the property has historical significance because it is commonly known as the "birthplace" of the area now known as Gig Harbor; and

WHEREAS, the Society has been organized as a nonprofit corporation for the purpose of creating and operating a Historical Museum; and

WHEREAS, both parties desire that the Gig Harbor Historical Museum be constructed, managed and operated as a place for public education and entertainment in accordance with the terms and conditions of this Agreement, to the end that the Historical Museum will serve as an educational, cultural and economic stimulant to the community and the people of the City of Gig Harbor and its environs, and will partially relieve the City of the financial burden and expense of managing and operating the Historical Museum; and

WHEREAS, the Society is uniquely and favorably constituted and situated to supply the necessary expertise and management skills for the purpose of constructing, operating and managing the proposed Historical Museum; and

WHEREAS, the City has limited expertise, experience, and staff with which to operate and manage the Historical Museum; and

WHEREAS, the Society, through volunteer citizen involvement, has the capacity to provide a rich and varied citizen involvement to promote the use of the Historical Museum in a manner consistent with the citizen demands for a Historical Museum; and

WHEREAS, it is the purpose of the City and the Society to assure the most efficient and economical operation of the Historical Museum consistent with the needs of the community; and

WHEREAS, in consideration of the mutual undertakings and promises contained herein and the benefits to be realized by each party, and in further consideration of the benefit to the general public by the enhancement of the historical, economic and cultural climate of the City and its environs to be realized by the performance of this Agreement, and as a direct benefit to the City, the parties hereto agree as follows:

TERMS

Section 1. **Overall Plan.**

1.1 Construction of Museum. The Society plans to construct the Gig Harbor Historical Museum on the portion of the property identified as _____, (the "Museum Property") as shown on Exhibit __, attached hereto and by this reference incorporated herein. It is expected that this will consist of one or more buildings having a total of 14,500 square feet (the "Museum").

1.2 Donkey Creek Restoration. The City intends to restore the area near Donkey Creek, as shown on Exhibit __, (the "Restoration Area"), attached hereto and by this reference incorporated herein. The restoration shall include, but not be limited to "daylighting" of Donkey Creek. As part of the **purchase of the** Conservation Easement described below, the Society will allow the City to enter the Museum Property to perform such restoration work in the area shown as the Restoration Area. The Society will not charge the City for the City's right to perform such work. The City shall design, obtain all necessary permits, construct and maintain the restoration work at its sole cost **for as long as the City holds the Conservation Easement.** The Society acknowledges that the City does not yet have the necessary funding to perform such restoration work, and the City Council shall have the discretion to determine when and if such funds are available. If the City determines that funding for this project is not available, the City shall have no obligation to perform **the restoration described** under this Subsection 1.2. The Society shall use its best efforts to support the City's fundraising efforts for this project.

1.3 Conservation Easement. The parties will develop a Conservation Easement over the property identified as the Conservation Easement Area on Exhibit __ hereto. The Conservation Easement Area will include the Restoration Area and the Open Space as depicted on Exhibit __. The Conservation Easement will, among other things, describe the restrictions and permissible uses within the Conservation Easement Area. The Conservation Easement will be developed pursuant to Section 6 hereof , **and conveyed by the Society to the City as described in Section 3 herein.**

1.4 Purchase of Donkey Creek Park Property. The Society owns fee title to the real property located at _____, Gig Harbor, Washington, which is legally described in Exhibit __, attached hereto and by this reference incorporated herein (herein, the "Donkey Creek Park Property"). The City desires to purchase this property from the Society and to operate and maintain it as part of the existing Donkey Creek Park. The terms of sale are set forth in Section 3 hereof.

Section 2. **Funding of Construction of the Museum.**

2.1 In order to construct the Museum, the Society will need a construction loan sufficient to pay for the costs of such construction. The Society agrees to diligently seek a construction loan to finance the construction work.

2.2 To obtain construction financing, the Society believes it will need donations or pledges of donations (including the amounts to be paid by the City as set forth herein) of Nine Million Five Hundred and Eighty Thousand Dollars (\$9,580,000.00)(the "Pledge Goal").

Section 3. **City's Funding Contribution to Museum.**

3.1 The City agrees to commit funding to the Society in a total amount of Four Hundred Thousand Dollars (\$400,000.00), over a five (5) year period, beginning on January 1, 2008 to be used by the Society for construction of the Historical Museum, as well as consideration for the Society's conveyance of the Conservation Easement and sale of the Donkey Creek Property.

3.2 The Society will use its best efforts to collect the necessary additional funds to meet its Pledge Goal (described in Section 2 above) on or before December 31, 2007. If the Society reaches its goal and collects the necessary funds, then the City shall provide the first installment of the funding contribution to the Society, on or before January 1, 2008. If the Society does not reach its goal to collect the necessary additional funds before December 31, 2007, then the City must first notify the Society that it is declaring a breach; the Society will then have sixty (60) days to establish to the reasonable satisfaction of the City that it will be able to raise the balance of the Pledge Goal within six months from the notice of breach. If the Society still has not cured the breach after this sixty (60) day period, then the City shall not be obligated to provide any contribution to the Society and this Agreement shall terminate. The City shall have no obligation under this Agreement in the event of such termination to the Society, its successors or assigns.

3.3 The City's contributions to the Society, and the schedule for conveyance of the Conservation Easement and sale of the Donkey Creek Property, shall occur under the following timetable, subject to the conditions set forth in this Section 3:

<u>DATE</u>	<u>AMOUNT</u>	<u>CONVEYANCE/SALE</u>
1-1-08	\$80,000.00	Donkey Creek Property
1-1-09	\$80,000.00	Conservation Easement
1-1-10	\$80,000.00	
1-1-11	\$80,000.00	
1-1-12	\$80,000.00	

3.4 If the Historical Society ceases operation of the Historical Museum for any reason, including but not limited to, bankruptcy, assignment of interest to creditors, or any other third party, between the following dates, then the parties agree to the following:

3.4.1 January 1, 2008 and December 31, 2008: The City shall be entitled to keep the Donkey Creek Property, and the contribution made by the City by that date shall be considered just compensation for the Donkey Creek property.

3.4.2 January 1, 2009 and December 31, 2009: The City shall be entitled to keep the Conservation Easement and the contribution made by the City by that date shall be considered just compensation for the Donkey Creek property.

3.4.3 January 2, 2010 and December 31, 2010: The Society shall return the contribution made by the City on January 1, 2010.

3.4.4 January 2, 2011 and December 31, 2011: The Society shall return the contribution made by the City on January 1, 2011.

3.4.5 January 2, 2012 and December 31, 2012: The Society shall return the contribution made by the City on January 1, 2012.

3.5 If the Society does not reach its goal to collect the necessary additional funds before December 31, 2007, or the Society begins construction or completes construction of the Museum, and then voluntarily or involuntarily ceases or abandons the operation of the Museum, (except for temporary closures consistent with the operation of such a museum) and if the Society does not cure that default within sixty (60) days notice from the City, then the Society, its successors and/or assigns shall immediately notify the City. The City will then have the exclusive option to purchase the Museum property, and all improvements and appurtenances thereon, at fair market value, to be established by a MIA appraiser.

Section 4. Purchase of Donkey Creek Park Property and Conservation Easement.

4.1 Subject to satisfying the Conditions set forth in this Agreement and to the other conditions set forth in the Purchase and Sale Agreement to be developed pursuant to the subsections below, the City agrees to purchase and the Society agrees to sell the Donkey Creek Park Property to the City for Eighty Thousand Dollars and no cents (\$80,000.00); and to grant the Conservation Easement to the City for Eighty Thousand Dollars and no cents (\$80,000.00). The Purchase price will be paid, without interest, as set forth in Section 3 above.

4.2 Attached to this Agreement as Exhibit _ is a standard form purchase and sale agreement and standard easement that the City currently uses for property purchases. This form, or a substantially similar form will be used as the purchase and sale agreement and easement agreement. The parties will promptly negotiate the terms of the Purchase Agreement for the Property and an Easement Agreement for the easement, all consistent with the terms of this Agreement. If the parties fail to reach agreement within 30 days after mutual execution of this Agreement, then this Agreement can be terminated by either party with notice to the other and, upon such termination, neither party will have any obligations to the other hereunder. If the City has made any contributions to the Society at the time the parties are unable to reach an agreement on the terms of the Purchase and Sale Agreement or the Easement Agreement, the City may also demand that the contributions be returned to the City in full.

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4.3 The following “Conditions” must be satisfied or waived by both of the parties within the times set forth below as a condition to the completion of this Agreement, including the sale of the Donkey Creek Park Property and execution of the Conservation Easement.

4.3.1 Execution of a Purchase and Sale Agreement **on or before December 31, 2007.**

4.3.2 Agreement on the terms of a Conservation Easement **on or before December 31, 2007.**

4.3.3 Approval of the City’s inspection of the Donkey Creek Park Property and of any title exceptions with respect to the Donkey Creek Park Property, **on or before December 31, 2007**

4.3.4 Commitment from a lender that it will lend the Society an amount sufficient to pay for the cost of construction, on terms and conditions reasonably acceptable to the Society and the City on or before January 1, 2008.

4.4 At closing of the sale of the Donkey Creek Park Property, the Society will convey the Donkey Creek Park Property to the City by Warranty Deed, subject only to exceptions to title approved by City pursuant to the terms of the Purchase Agreement.

4.5 The Conservation Easement will create a perpetual, nonexclusive conservation easement for the construction, enhancement, installation, maintenance, repair, replacement and use of the restorations generally described in Exhibit ___, attached hereto and incorporated herein by this reference. The restorations shall not extend beyond the Restoration Area shown in Exhibit ___. The Conservation Easement will include a temporary easement over the Museum Property for the purpose of design, construction, inspection and maintenance of the restoration improvements, including egress and ingress, delivery of construction materials, and operation of construction equipment. The temporary easement shall terminate six (6) months after completion of the Donkey Creek restoration work **or upon the City Council’s acceptance of the restoration work, whichever first occurs.**

4.6 The Conservation Easement will also create an easement over the “Open Space” area depicted on Exhibit __ hereto. The easement on this Open Space is to be a conservation easement in accordance with the requirements of RCW 64.04.130. The agreement shall provide that the Open Space will remain in the condition existing after installation of all improvements and landscaping shown on a landscape plan approved by the City for the Museum development. The Conservation Easement will permit construction of improvements to provide public access, such as walkways and driveways.

4.7 The Society will be allowed to construct a roadway and/or walkway over the Open Space and Conservation Easement Area, as well as the property adjoining these areas owned by the City to provide ingress and egress from Harborview Drive. This will be allowed only to the extent permitted by the Planning Department.

6.4 Environmental Liability. **Both the Purchase and Sale Agreement for the Donkey Creek Property and the Conservation Easement will contain provisions whereby the Society will**

hold the City harmless for any existing contamination of the Conservation Easement area by hazardous substances. **More detailed provisions relating to indemnification appear in the City's standard form agreement, attached hereto as Exhibit _.**

Section 5. City's Option to Purchase Museum Property.

5.1 If (a) the Society does not reach its goal of obtaining donations and pledges equal to the Pledge Goal by December 31, 2008 and does not cure this default within the times permitted as set forth above, or (b) the Society voluntarily or involuntarily ceases or abandons construction of the Museum or operation of the Museum (except for temporary closures consistent with the operation of such a museum), and does not cure that default within sixty (60) days notice from the City, then the Society, or its successors and/or assigns shall immediately notify the City (a "Notifying Event"). Upon such a Notifying Event, the City will have an option to purchase the Museum Property for its then fair market value pursuant to the provisions of this section. If the City does not exercise its option within the time set forth herein, then the option will automatically terminate.

5.2 **The City's option shall be preserved by recording this Agreement against the Museum Property, and all owners of an after-acquired interest in the Museum Property shall acquire their interest subject and subordinate to the City's rights hereunder.**

5.3 Upon a Notifying Event, then the City will, within six (6) months, notify the Society that it wishes to exercise its Option and will notify the Society as to the price it believes represents the fair market value of the Museum Property. The Society will then have sixty (60) days to determine whether it agrees to the value proposed by the City. If the parties agree, then the Society will sell the Museum Property to the City for that price within thirty (30) days thereafter.

5.4 If the parties do not agree upon the fair market value within said sixty days, then each party will name an MAI real estate appraiser having at least five (5) years of experience to give its opinion as to the fair market value of the Museum Property. The purchase price will then be the average values given by the two appraisers; provided, however, in the event that the valuations given by the two appraisers are more than ten percent (10%) apart, then the purchase price shall be determined by a third real estate appraiser named by the first two. Each party will be responsible for the fees of the appraiser nominated by that party and the cost of the third appraiser, if hired, will be shared equally by the parties.

5.5 As used herein, the fair market value will be the value which a willing buyer would pay to a willing seller for the Museum Property and all improvements and fixtures located thereon, but would exclude, for purposes of valuation, the restrictions contained in the Conservation Easement. The resulting fair market value will then be reduced by amounts previously paid by the City **during the years 2010 to 2012.**

5.6 **The parties shall follow the purchase and sale procedures set forth in Section 4 above for use of the form Purchase and Sale Agreement, and negotiation of terms.** The purchase price shall be paid in cash as closing.

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5.7 Title to the Property shall be conveyed by a Statutory Warranty Deed free and clear of all encumbrances or defects. Rights reserved in federal patents or state deed, building or use restrictions general to the area, encumbrances or defects that currently exist and the Conservation Easement, and easements not inconsistent with use of the Property for its intended purpose shall not be considered encumbrances or defects.

5.8 Closing shall occur at a title insurance company selected by the City within thirty (30) days after the purchase price has been determined as set forth herein.

5.9 Real estate taxes for the year of closing, if any, shall be pro-rated as of the date of closing. The escrow fees shall be paid one-half by each of the parties. The City will pay the cost of any title insurance policy it wishes to order. The City will pay for any recording fees.

5.10 This option is for the sole benefit of the City and may not be assigned by the City.

Section 6. Grant Applications.

The City may submit applications for grants that can fund, in part, improvements to the Museum Property, including construction of the Museum. The Society agrees to cooperate with the City in seeking such grants. If such grants are awarded, the City agrees to use such funds for the purposes they were designated, including for the Museum Property, to the extent it can do so without having to provide matching funding.

Section 7. Society's Use of City's Contributions, Ownership, Operation and Maintenance of the Gig Harbor Historical Museum.

7.1 Once constructed, the Society shall own, operate and maintain the Museum. The Society shall, consistent with the terms of this Agreement, assume sole and exclusive responsibility for the costs associated with the ownership, operation and maintenance of the Museum, which shall include the cost of acquisition of any and all equipment, furniture, exhibits, supplies, utilities and personnel.

7.2. The Society shall allow public use of the Museum subject to reasonable charges for use and admission. The Society shall make the Museum events, exhibitions, shows, etc. available without discriminating against persons on the grounds of race, color, national origin, religion, sex, age or physical handicap, or otherwise discriminating against any person or group of persons in any manner prohibited by applicable local, state or federal laws and regulations. This provision does not prohibit the Society from holding private showings or having events for private parties.

7.3 The Society may generally promote the Museum through any means of advertising designed to attract visitors, and shall schedule and book exhibits, events and exhibitions to occur at the Museum.

7.4 The Society agrees to provide public parking on the Museum Property that is clearly designated "public parking." This public parking shall be a minimum of ten stalls in the improved parking lot for the Museum.

7.5 The funds received by the Society from the City shall be used solely for the cost of construction of the Museum, payment of the construction loan, or other project expenses. The Society shall maintain books and records as are customarily and necessarily kept for the management of the construction funds, according to generally accepted accounting practices. Financial reports shall be prepared quarterly and shall be provided to the City Finance Director upon request. The Society's books of account shall be reviewed annually by an independent Certified Public Accountant, and the results of such review shall be provided to the City Finance Director within two hundred (200) days of the close of each fiscal year. The Society agrees that all of its books and records of every kind, without limitation, pertaining to the construction of the Museum shall, upon reasonable notice, be open and available for inspection by the City Administrator or Finance Director and such other officers and personnel of the City designated by the City Administrator; provided however, the names, addresses and other personal information concerning donors to the Society may be kept confidential by the Society. The City Administrator and his/her designees shall have the right to enter upon and inspect the Property and books and records held by the Society at any reasonable time during normal business hours.

Section 8. Society is an Independent Contractor. The Society shall be considered an independent contractor in the operation of the Museum, and this Agreement shall not be construed as creating any form of partnership between the City and the Society. The Society shall be solely and entirely responsible for its acts and for the acts of its officers, employees, agents, contractors and consultants. In the construction of the Historical Museum, the Society has the ability to control and direct the performance and details of the work, the City being interested only in the construction of the Museum.

Section 9. Insurance. The Society shall purchase and maintain, at its own cost, insurance **on the** Museum buildings, which shall include, but not be limited to, any and all fire, casualty and extended coverage insurance on the Museum buildings in such form and amount as **will cover replacement costs.**

9.1 The Society shall also obtain a Comprehensive General Liability insurance policy written on an **occurrence** basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broach form property damage and employer's liability.

9.2 Any payment of any deductible or self-insured retention shall be the sole responsibility of the Society. If available without additional cost, the City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on behalf of the Society, and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all the required insurance policies.

9.3 If available without additional cost, the Society's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Society's insurance shall be primary insurance with respect to negligent

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acts of the Society. Such policies shall also provide that the City will be given not less than thirty (30) days advance notice of any termination or material change to the policy.

Section 10 Indemnification.

10.1 The City shall defend, indemnify and hold the Society, its officers, officials, employees and agents harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney's fees, arising out of or in connection with the City's negligent acts or omissions on any of the property described herein, except for injuries and damages caused by the sole negligence of the Society.

10.2 The Society shall defend, indemnify and hold the City, its officers, officials, employees and agents harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney's fees, arising out of or in connection with the Society's negligent acts or omissions on any of the property described herein, except for injuries and damages caused by the sole negligence of the City.

10.3 Should a court of competent jurisdiction determine liability for damages arising out of bodily injury to persons or damages to property were caused by or resulted from the concurrent negligence of the Society (and its officers, officials, employees and agents) and the City (and its officers, officials, employees and agents), then each party's liability hereunder shall only be to the extent of each party's liability.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES EACH PARTY'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

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

Section 11. Non-waiver of Breach. The failure of either party 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.

Section 12. Resolution of Disputes and Governing Law.

12.1 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 Administrator, who shall determine what it believes to be the provision's true intent and meaning. The decision of the Administrator is not binding on the Society.

12.2 If any dispute arises between the City and the Society under any of the provisions of this Agreement which cannot be resolved in a reasonable time, or if the Society does not agree with the City's decision on the disputed matter, then the parties **may** agree to submit the dispute

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for mediation at Judicial Arbitration and Mediation Services, Inc. (“JAMS”) in Tacoma, Washington, **or the parties may mutually agree on a mediator.** To that end, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced until the matter has been submitted for mediation. Either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with one another in selecting a mediator, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. The provisions of this Section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney’s fees, to be paid by the party against whom enforcement is ordered.

12.3 If the dispute is not resolved through mediation as provided above, then jurisdiction of any resulting litigation shall be in Pierce County Superior Court, Pierce County, Washington.

12.4 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

12.5 The non-prevailing party in any action brought to enforce this Agreement shall pay the prevailing party’s reasonable expenses and attorneys’ fees.

Section 13. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective upon the date of mailing by certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing:

City of Gig Harbor
Administrator
3150 Grandview Street
Gig Harbor, WA 98335

Historical Society
Director
PO Box 744

October 27, 2006

Gig Harbor, WA 98335

Section 14. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the Museum Property and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Museum Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Museum Property. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of the Society contained in this Agreement, as such duties and obligations pertain to it.

Section 15. Assignment. Any assignment of this Agreement by the Society 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.

Section 16. 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 Society.

Section 17. 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 anything contained in any of the Exhibits conflict with the provisions of this Agreement, then this Agreement shall prevail.

Section 18. Severability. Should a court of competent jurisdiction determine that any phrase, sentence or provision of this Agreement is invalid or unconstitutional, it shall not affect the validity or constitutionality of any other provision.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this ___ day of _____, 2006.

THE CITY OF GIG HARBOR, a
Washington municipal corporation

GIG HARBOR PENINSULA
HISTORICAL SOCIETY, a nonprofit
corporation

By: _____

By: _____

Its: _____

Its: _____

October 27, 2006

Attest:

By: _____
 City Clerk

Approved as to form:

By: _____
 City Attorney

October 27, 2006

John Vodopich
City of Gig Harbor
3510 Grandview
Gig Harbor, WA 98335

Dear Mr. Vodopich:

Thank you for the opportunity to review the most recent version of the draft agreement between the City of Gig Harbor and the Gig Harbor Peninsula Historical Society. John Holmaas and I have reviewed the changes made by Carol Morris since our last meeting with you and the Council Operations Committee. The document has not yet been reviewed by our Board President, Walt Smith, or our attorney. In the interest of time, however, we wanted to share our thoughts as they stand to date.

We are confident we can come to a final agreement prior to the Council meeting scheduled for Monday, October 30th. We are happy to discuss these and any other issues that may arise by phone or in person today or next Monday. I can also be reached by cell phone this weekend at 253-973-9438.

Our questions/concerns regarding the current draft language are:

SECTION:

3.2 – The Society's fundraising timeline is to have all funds raised by 12/31/2008 (not 2007). We will not be able to meet our goal by 12/31/2007. This date needs to be changed to reflect our actual fundraising timeline here and throughout the document.

3.4. Return of funds: During our previous meetings we agreed that should the Society cease operations after the new museum is built, any future payments due from the City would be eliminated. We did not discuss repayment of prior payments. In case of closure by the museum, repayment of prior contributions will not be possible.

4.2 Return of funds: As stated above, the Society will not be in a position to return contributions made. Obviously, should the Society and the City fail to reach an agreement on the sale of the Donkey Creek property and the conservation easement, the City will not be responsible for making the payments assigned to those purchases (ie \$80,000 each). This should not be an issue, however, as according to this agreement the purchase and sale and easement agreements must be finalized prior to 12/31/2007 and the first payment is not scheduled until 1/1/2008.

Thank you for the opportunity to review this draft and provide comments. We look forward to finalizing the terms of this agreement and moving forward with this partnership for the benefit of the Gig Harbor community.

Sincerely,

Jennifer Kilmer
Executive Director