

Gig Harbor City Council Meeting

April 14, 2008

7:15 p.m.

(note later start time)



**AMENDED AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
April 14, 2008 – 7:15 p.m.
(note later starting time)**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of March 24, 2008.
2. Receive and File: a) March Building / Fire Stats; b) Gig Harbor North Traffic Options Committee Minutes; c) Operations and Public Project Committee Minutes; d) Intergovernmental Affairs Committee Minutes; e) Master Builders Article - Green Building.
3. Correspondence / Proclamations: a) Parks Appreciation Day; b) Open Government Workshop.
4. Liquor License Application: Kimball Espresso Gallery.
5. Uddenberg Lane - Phase I Environmental Assessment.
6. Purchase and Sale Agreement – Rohwer Property.
7. 2008 NPDES Receiving Water Quality Monitoring Program – Consultant Services Contract.
8. Banking Services Contract Extension.
9. Crescent Creek Shelter & Bathroom Re-roof Contract.
10. Street Naming – Borgen Loop, Cedar Court, Amber Court, Ash Lane, Kinglet Lane, Honeysuckle Lane, and Lark Lane at The Ridge at Gig Harbor.
11. Escrow Agreement for Retainage – Onshore Outfall & Force Main Replacement Project – Pivetta Brothers.
- ~~12. Onshore Outfall Project – Change Orders.~~
12. Interagency Agreement – Port Security Grant.
13. Resolution – Sole Source Provider: In-car Video Wireless Transfer System.
14. Purchase Authorization – Police Vehicle.
15. General Facilities Charge Analysis and Rate Study – Contract Extension.
16. Liquor License Renewals: The Great Australian Bite; Anthony's; Olympic 76; Kelly's Café; Tanglewood Grill; and Bistro Satsuma.
17. Special Occasion Liquor License: Prison Pet Partnership Program.
18. Approval of Payment of Bills for April 14, 2008:
Checks #57251 through #57437 in the amount of \$1,394,190.72.
19. Approval of Payroll for month of March, 2008:
Checks #5060 through #5085 in the amount of \$336,226.69.

PRESENTATIONS:

1. Parks Appreciation Day – Presentation of Proclamation.
2. Police Explorer Scout Program - John Tupper, Boy Scouts of America.

OLD BUSINESS:

1. ~~Second Reading of Ordinance – LOCAL State Treasurer Financing.~~
2. Third Reading of Ordinance – Junk Vehicles.

NEW BUSINESS:

1. Design and Engineering Services: Judson / Harborview Improvements.
2. Support for a Sand Volleyball Court.
3. First Reading of Ordinance – LOCAL State Treasurer Financing.

STAFF REPORT:

1. Police Department – Monthly Report – Chief Davis.
2. Telecommunication Facilities on City Property.
3. Update on Boys & Girls Club.
4. Public Nuisance Ordinance.
5. Citizen Survey.
6. CERB Grant Update.
7. Cushman Trail Update
8. Wastewater Treatment Plant Update.
9. Joint Meeting with PenMet Board.

PUBLIC COMMENT:

MAYOR’S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Operations Committee – Thurs. Apr. 17th at 5:00 p.m.
2. Finance Committee – Mon. April 21st at 4:00 p.m.
3. City Council / Planning Commission Joint Workstudy Session – Mon. April 21st at 6:00 p.m.
4. Volunteer Recognition Ceremony Breakfast – Tues. April 22nd at 7:30 a.m. Inn at Gig Harbor.
5. Boards & Commissions Candidate Review – Mon. April 28th at 4:30 p.m.

EXECUTIVE SESSION: For the purpose of discussion property acquisition per RCW 42.30.110(c).

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF MARCH 28, 2008

PRESENT: Councilmembers Ekberg, Young, Franich, Conan, Malich, Payne, Kadzik and Mayor Hunter.

CALL TO ORDER: 6: p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of March 10, 2008.
2. Correspondence / Proclamations: a) Recognition of State Representative Pat Lantz.
3. Receive and File: a) Westside Community Meeting Overview.
4. Appointments to Parks Commission.
5. Summer Concert Contracts.
6. First Amendment to Land Use Hearing Examiner Employment Agreement – Klockars.
7. Wastewater Comprehensive Plan Update Consultant Services Contract Amendment-HDR.
8. Eddon Boat Sediment Cleanup Project Temporary Construction Easement – Nicholich.
9. Street Naming at The Ridge at Gig Harbor.
10. Street Naming - Ancich Court.
11. Water Rights Legal Services Agreement – Tom Mortimer.
12. Purchase Authorization for Street Lights.
13. East Storage Tank Repainting Project – Testing Services – Krazan & Associates.
14. WWTP Expansion Consultant Services Contract – Parametrix, Inc.
15. Housing Needs Assessment – Consultant Services Contract – PMC.
16. Liquor License Renewals: Gig Harbor Farmers Market - Hunt; The Green Turtle; and Gig Harbor Farmers Market – Harborview Dr.
17. Liquor License Application – Fondi.
18. Approval of Payment of Bills for March 24, 2008:
Checks #57103 through #57250 in the amount of \$539,496.77.
19. Approval of Payroll for month of February, 2008:
Checks #5017 through #5059 in the amount of \$529,846.78.

Councilmember Payne asked that agenda item number nine be moved to new business for discussion.

MOTION: Move to adopt the Consent Agenda with number nine moved to new business.
Young / Payne – unanimously approved.

SPECIAL PRESENTATION:

1. Recognition of Representative Pat Lantz. Mayor Hunter praised Representative Lantz for the support given to Gig Harbor during her term in office. He presented her with a proclamation and an engraved plaque.

Representative Larry Seaquist said that it was a special honor to serve with Representative Lantz. He gave a brief summary of some of her successes including improvements to the judicial system, acquisition of parks and preservation of the heritage of Gig Harbor.

Councilmember Young also voiced his pleasure in serving with Representative Lantz. He mentioned many of the tremendous accomplishments that were realized for the community during her term. He stressed that you wouldn't have trees along Highway 16 if not for Representative Lantz.

Senator Derek Kilmer talked about how the Gig Harbor Community is a better place because of Representative Lantz. She has protected the state's heritage, encouraged the arts, worked to protect the environment, worked to keep the tolls low, and through her work in criminal justice, made this a safer community for all. He said that most important is her appreciation for the phrase "liberty and justice for all." Senator Kilmer voiced his appreciation for her twelve years of service.

Representative Lantz thanked everyone and said that she is eager to take on new challenges, mentioning a performing arts center as one possibility.

2. Congratulations Letter from State Auditor Sonntag. Mayor Hunter presented this letter congratulating the city for 15 consecutive audits with no findings to David Rodenbach, Finance Director. Mr. Rodenbach thanked him and stressed that it was a team effort by everyone at the city.

OLD BUSINESS:

1. Second Reading of Ordinance – Junk Vehicles. Rob Karlinsey, City Administrator, described the changes to the ordinance since the first reading. He said that the Mayor is recommending a limit of two covered vehicles regardless of lot size, and the inclusion of the word "private" to subsection 'A' of the exemptions section. Another addition to subsection 'A' addresses temporary tarp garages, carports and storage sheds. In Subsection 'C' an addition was made to address vehicles stored on vacant or undeveloped land at the recommendation of the city attorney.

Councilmember Franich voiced concern that changes were made to the ordinance without Council direction. Mr. Karlinsey explained that legal adjustments or clarification would be made without direction, but policy concerns would be at the direction of the Mayor or Council.

Carol Morris addressed the change regarding undeveloped or vacant land is to address the possibility of storing vehicles on vacant property leading to a junkyard. She then

addressed changes to an ordinance at a second reading. She said that Council has the option to strike the language and pass the ordinance without the suggested changes unless it is a land use ordinance, which would require another public hearing.

Councilmembers further discussed whether changes should come back as a staff recommendation without actually changing the ordinance or at least, changes should be done by redline/strikeout so that they are readily apparent.

Councilmember Kadzik suggested that because there is no urgency in passing this ordinance staff could add redlines / strikeouts before the next meeting.

MOTION: Move to table this to the next meeting so staff can add redlined / strikeouts for clarification.
Kadzik / Malich – unanimously approved.

Rob Karlinsey asked if Council had any direction on the proposed changes. Councilmember Young said he had questions on the addition of the word “private.” Councilmember Conan said that the limit of two vehicles is okay, but the changes to subsection ‘A’ are questionable. He said he liked the previous language and doesn’t have a problem with the addition of the last sentence regarding temporary tarp covers, but he doesn’t like the addition of the word “private” because this was discussed at the workstudy session.

Councilmember Malich agreed that the committee rejected the idea of including “private.” Councilmember Franich concurred, adding that he personally would like more flexibility for owners of larger lots. He then asked if Council would consider allowing the enforcement officer to grant exemptions for a good reason.

Carol Morris explained that an enforcement officer would talk to the citizen and try and get compliance before a Notice of Violation is issued. She strongly recommended that Council not consider “on the spot” exemptions because there are standards to guide use of discretion. If there are no standards, then the enforcement becomes arbitrary and capricious and could possibly lead to a lawsuit.

Councilmember Ekberg said that paragraph ‘C’ as written is fine with him but not the addition of the word “private” in paragraph ‘A’.

Councilmember Payne asked for clarification for the intent of including storage sheds in paragraph ‘A’. Mr. Karlinsey said it may be because storage sheds are smaller and inexpensive. After further discussion, staff was directed to strike through the words “storage shed” and “private” in the next version of the ordinance that comes back for consideration.

NEW BUSINESS:

1. Ratification of Vote on Ordinance 1123 – Water GFC’s. Carol Morris explained that at the last meeting, a vote was taken on the Water General Facilities Charge, but it

was brought to her attention that it was unclear whether the vote was for the main motion or the motion to bring the question before the council. She said that to avoid confusion in the future, the Mayor has agreed to restate the motion before each vote.

Ms. Morris asked for Council to vote to ratify the previous action at the last meeting.

MOTION: Move to ratify the adoption of Ordinance 1123.
Malich / Ekberg – unanimously approved.

2. Public Meeting – Proposed Scandia Heights Annexation. Matthew Keough, Associate Planner, explained that the city received a Notice to Commence Annexation Proceedings from eight property owners in a subdivision of 9.93 acres east of Peacock Hill Avenue at 101st Street Court NW. He presented the background information and offered to answer questions.

After discussion regarding fire flow and enlarging the borders, the following motion was made.

MOTION: Move to accept the Notice of Intent to Commence Annexation and to authorize the circulation of the Annexation Petition among the property owners within the modified area with conditions 1-4.
Payne / Conan – unanimously approved.

3. Resolution Approving Reimbursement for the Purchase of Four Police Vehicles. David Rodenbach explained that this resolution authorizes purchase of police vehicles utilizing the State Treasurer's LOCAL lease option program for equipment. He described the process and answered questions.

MOTION: Move to adopt Resolution No. 745 approving reimbursement for the purchase of four police vehicles.
Malich / Ekberg – unanimously approved.

4. City Retirement Plans Consulting Contract. David Rodenbach presented this contract with Aon Investment Consulting, Inc. to manage the city's retirement plans. He presented the history of the plan which has managed itself up to this point. The balance has grown so large that it is time to renegotiate the fees charged by ICMA, to develop an oversight committee, and to manage the funds. The proposal by Aon is to perform these duties for \$24,000 which will be paid from the savings negotiated with ICMA. The balance of savings will be distributed to employee accounts on a pro rata basis.

Councilmembers asked if staff could perform this function and if this had been put out to bid. Dave asked Mr. Settle to come forward and respond to this.

Greg Settle, Vice President with Aon's Seattle office, presented his background working with ICMA. He described that the service his firm is offering has been undertaken by over two dozen other local governments over similar concerns to reduce fees, display

adequate fiduciary supervision of the retirement assets to reduce employers' potential liability, as well as optimizing plans to make sure the investment options are the best available. He said that the firms are not willing to address these issues voluntarily and the city has to let ICMA know that they are serious about these issues and prepared to hire someone to do this work if they won't deliver the features as well as reduce the fees to market competitive levels. He said he couldn't overstate the importance of addressing the matter of fiduciary responsibility and potential liability to the city, adding that there are several lawsuits going on right now.

Mr. Settle further explained that he would provide the city with a study of other public employers with similar asset levels that have recently gone through a market RFP process, on which we will "piggy-back." A full-blown RFP is more expensive than anyone wants to entertain, but we can use other jurisdiction's data to renegotiate.

Councilmember Young asked about legal review of the contract as he didn't understand how we could reduce liability. Ms. Morris said that Scott Snyder, the city's personnel attorney, had reviewed the contract then offered to review it as well.

Rob Karlinsey said that forming an oversight committee will show due diligence and that is how to reduce liability. He added that the city needs assistance in setting up this committee. Mr. Karlinsey mentioned that another benefit offered by Aon is to assist in developing better investment fund options to present to ICMA. He explained that he has known Greg for several years, and was approached by him to help the city lower their fees.

Councilmember Ekberg asked again if there was flexibility in going out to bid for this service. Mr. Rodenbach responded that he isn't aware of how many organizations perform this service. After further discussion a motion was made.

MOTION: Move to table this to the next meeting.
Young / Ekberg – unanimously approved.

5. Street Naming at The Ridge at Gig Harbor. Councilmember Payne said that he had been contacted by someone who wanted to comment on this.

John Chadwell – Olympic Property Group, 4423 Pt. Fosdick Drive Suite 302. Mr. Chadwell explained that his company owns the trademark rights for the name Harbor Hill, and so they would prefer that The Ridge at Gig Harbor choose another name for the cul de sac in their neighborhood. He said it would create confusion for future homeowners.

Councilmember Young commented on the benefits of having a regional name.

MOTION: Move to table the street naming at The Ridge at Gig Harbor until the next meeting.
Ekberg / Conan – unanimously approved.

STAFF REPORT:

1. Gig Harbor Police Department – Monthly Update. No verbal report given.
2. Pt. Fosdick Sidewalk Petition – Rob Karlinsey. Rob Karlinsey talked about the success of the Westside Neighborhood Meeting last week. One thing that came from it was a petition to add sidewalks along the west side of Point Fosdick from the library to Briarwood.

Councilmember Young added that a pedestrian walkway will provide some level of safer passage for pedestrians. The new Uptown Shopping Center has encouraged much more foot traffic along this section.

Councilmember Payne pointed out that the petition was submitted by the neighborhood on the east side of the roadway, not the west. After further discussion, staff was asked to look at options.

Councilmembers praised the effort that resulted in such a good turnout at the neighborhood meeting. Rob commented that the Marketing Director had done a great job of advertising.

Rob Karlinsey then announced that he received invitations for Council to attend an open house from Bennett Homes on April 24th from 5:30 – 7:30 p.m. at the Chelsea Park Development on Hunt Street.

Carol Morris, City Attorney, asked Council if they would review her memo on standard contract language and get back to her with comments.

PUBLIC COMMENT:

Ian Ward – 7887 Beardsley Ave. Mr. Ward, City Intern, clarified that the addition of the work “private” to subsection ‘A’ of the exemptions section of the Junk Vehicle Ordinance was to address the scenario of someone putting several cars on their back property as long as they couldn’t be seen from the public view corridor.

MAYOR’S REPORT / COUNCIL COMMENTS:

Councilmember Franich asked if the contract on number fifteen on the Consent Agenda, Housing Needs Assessment, had gone out to bid. He said that the company isn’t located in the state and he wonders if there are others who could perform the service that would have a better “pulse” on the Puget Sound area.

Tom Dolan, Planning Director, explained this did not go out for bid. The reason this firm was chosen is because they are the consultants that Pierce County utilizes for their affordable housing project. Although they aren’t based in Washington, they are very familiar with Pierce County and are also doing work for University Place.

Councilmember Young said that he had seen their study and suggested this firm. Councilmember Kadzik added that he attended a Puget Sound Regional Council meeting on affordable housing and was quite impressed with their work.

Councilmember Franich then asked if other Councilmembers had an opportunity to review the Hearing Examiner's Decision on the Historical Society's five-acre property above Donkey Creek and whether there were concerns with removing this from the height restriction area.

It was suggested that this could be discussed further in Executive Session.

ANNOUNCEMENT OF OTHER MEETINGS:

1. GH North Traffic Options Committee – Wednesday, March 26, at 10:00 a.m. in Community Rooms A & B.
2. Skansie Ad Hoc Committee – Tuesday, April 8, at 6:00 p.m. in Community Room B.
3. Parks Appreciation Day Leadership Training – Tuesday, April 8, at 7:00 p.m. in Community Room A.
4. Joint Meeting with Gig Harbor Arts Commission – Monday, April 14, at 6:00 p.m. in Community Rooms A & B.
5. Council Retreat – July 11th 8:00 a.m. at the Civic Center.
6. Parks Appreciation Day – April 19th.

EXECUTIVE SESSION: For the purpose of discuss pending litigation per RCW 42.30.110(i)

MOTION: Move to adjourn to Executive Session at 7:33 p.m. for the purpose of discussing pending litigation per RCW 42.30.100(i) for approximately 30 minutes.
Franich / Payne – unanimously approved.

MOTION: Move to return to regular session at 8:08 p.m.
Kadzik / Conan – unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 8:98 p.m.
Conan / Ekberg – unanimously approved.

CD recorder utilized:
Disk #1 Tracks 1-4 (disk corrupted)
Disk #2 Tracks 1-25
Disk #3 Tracks 1-1

Charles L. Hunter, Mayor

Molly Towslee, City Clerk

City of Gig Harbor
Community Development Dept.
3510 Grandview St.
Gig Harbor, WA 98335

Memo

To: Mayor Hunter and City Council Members
From: Dick J. Bower, CBO – Building/Fire Safety Director
CC: Rob Karlinsey
Date: 4/10/2008
Re: Building and Fire Safety Report for the month of March 2008

The following report is being provided in an effort to keep you informed of the myriad activities of the building and fire safety department over the past month. If you have any questions please give me a call, e-mail or visit and I'll get you the answers.

Departmental Activities:

During the period building and fire safety staff took part in the following activities:

- Attended regional permit coordinator/counter supervisor group meeting
- Participated in meeting with designers on Harbor History Museum and Boys and Girls Club
- Attended GIS "Quick View" introduction meeting
- Attended MyBuildingPermit.com committee meetings on green building, structural codes, electronic plan review programs, and inspection services
- Coordinated City emergency coordination center exercise in association with regional earthquake exercise
- Conducted site visit with planning and public works staff and Administrator to assess residents storm water concerns
- Participated in 3 permit and enforcement process/coordination meetings with consultant and development services staff
- Participated in WABO legislative issues teleconference
- Met with other City staff on web development project
- Attended county wide coordination meeting on interpretation of IBC/IRC townhouse provisions
- Assisted GHPD with determining anti-graffiti strategy options for Peninsula Medical Center annex building
- Attended WWTP expansion project pre-application meeting
- Met with developer of Crescent Cove project to finalize requirements for fire lanes and access to site
- Met with development services staff on options for permitting in the UGA
- Conducted meeting with development services staff on archiving requirements and filing system upgrades
- Hosted monthly regional emergency planning meeting
- Met with designers on Chapel Hill west side improvement project plans
- Participated in GH North Traffic Options Meeting
- Provided comments on 15 planning/engineering permit applications
- Presented status report to Council on MBP/LIS

New Permit Applications

New Commercial -	0
New Residential -	12
Remodel / Tenant Improvement -	9
Other (Includes plumbing, mechanical, fire system, fuel gas, etc.) -	<u>72</u>
Total -	93

Total valuation - \$ 5,402,832.00
Fee revenues - \$ 37,352.00

Large Projects Reviewed and Awaiting Revisions:

- Madison Shores Marina
- Madison Shores upland development
- Northwood Medical Office Building
- Mallards Landing buildings 7A-7F

Major Plan Reviews Completed:

Processed 17 permits over the counter by appointment

Permits Issued:

Commercial -	2
Residential -	10
Remodel/TI -	6
Other -	<u>70</u>
Total Issued -	88

Total Valuation - \$ 14,927,553.00
Fee Revenues - \$ 102,376.00

Inspections:

The following inspections were performed:

Periodic inspections -	215
Final Inspections -	29
Certificate of Occupancy -	<u>5</u>
Total -	249

Enforcement:

The following enforcement actions were taken:

Investigations -	4
Stop work orders issued -	2
Citations issued -	
Civil NOV's issued -	<u>2</u>
Total -	8

Fire Inspection Referral /Refusal Follow-ups:

2

Business License Inspections:

Training:

- All staff members attended WABO Ed. Institute sessions on various code related topics including:
- Accessibility provisions of the IBC/ADA
 - Green Building
 - 2006 International Building Code update
 - 2006 IBC Means of Egress
 - 2006 Int'l. Residential Code update
 - Excelling as a code professional
 - Legal Aspects for Fire and Building Code Officials
 - 2006 Int'l. Mechanical/Fuel Gas Code update
 - Dealing with the Public

- Attended NIMS Planning Section Chief training hosted by PCDEM
- Attended pre-training session for participation in PC sponsored IEMC at the National Emergency Training Center



City of Gig Harbor
Gig Harbor North Traffic Options Committee

Summary Minutes

Wednesday, March 26, 2008 - 10:00 a.m.

Gig Harbor Civic Center – Community Rooms A & B

Committee members in attendance: Councilmembers Ekberg and Young, Rob Karlinsey, City Administrator; Stephen Misiurak, City Engineer; Tom Dolan, Planning Manager; Dick Bower, Building & Fire Safety Director; Budd Wagner, FHS; Joe Kunkel, The Healthcare Collaborative Group; Warren Zimmerman, Executive Director Chamber of Commerce; Julie Tappero, VP Chamber of Commerce Economic Dev. Board; Chris Green for Senator Derek Kilmer, Cindy Willis for Pierce County Councilmember Terry Lee, Eric Nelson for John Chadwell, Olympic Property Group.

Others present: Jeff Taraday, Asst. City Attorney; Al King, Lochner Engineering; Sterling Griffin; David Figuracion, KPCC; Jud Morris, KPBA; Dave Morris, Purdy Investments; David Halinen, Halinen Law Offices; Bob Draggoo, Peninsula Light Co.; Christian Fox, GHS; Dale Pinney, FWDS; John Alexander, Master Builders Association of Pierce County; Andrea Jerabek, Safe Streets; Mark Dorsey, North Pacific Design; Bryan Godlovey.

1. Update of Hospital Progress

- ✦ Budd Wagner – FHS: Mr. Wagner reported that the hospital project is on schedule, footings for the medical office building are going in, and the landscaping plan is underway. Franciscan Health System (FHS) has launched a campaign to raise funds for supplemental medical equipment. They have already raised \$7 of the \$10 million needed. The hospital is scheduled to open the end of January or early February '09. The contractor, Sellen should be completed in November '09.
- ✦ Joe Kunkel reported that the hospital is eight months away from getting a certificate of occupancy and ten months away from seeing patients.

2. Gig Harbor North Project Updates – Dick Bower

- ✦ Mr. Bower reported that the plumbing permits have been issued for the medical office building.

- ✚ The Harbor Crossing plat has slowed down.
- ✚ Quadrant Homes plat currently has five base plans under review and the street names have been approved and should be going up.
- ✚ The Shops at Harbor Hill have two restaurants showing interest.

3. Burnham Interchange

- ✚ a & c) Steve Misiurak reported that the short-term mitigation is under review.
- ✚ The geometric design has been submitted to the state and the City is concurrently putting together the plans and specs for the improvements to Canterwood Boulevard.
- ✚ The Canterwood Boulevard widening improvements have been “split out” from the overall short-term fix for construction this summer.
- ✚ A myriad of permits are in the process of being wrapped up which includes the fish culvert. The Corps will be onsite this Friday.
- ✚ Rob Karlinsey reported that the \$10 million interim improvements are still under design consideration and on-hold until the City discusses the conditions of the CERB grant with the state. The million dollar question is will the CERB board allow the CERB grant funds to be put towards the long-term fix, since a majority of the interim improvements will need to be ripped out. The reason that the Canterwood Boulevard improvements are being fast-tracked is because this portion of the interim improvements will not be wasted and ripped out when the long-term fix is constructed.
- ✚ b) Mr. Karlinsey stated that Lochner Engineering has tentatively been selected for the Level 3 Screening Analysis. The City put out a Request for Qualifications. An interview panel was assembled that included citizens and also representatives from FHS and Gig Harbor North Retailers. The panel unanimously selected Lochner. Their contract will be presented to City Council on April 14th. Mr. Karlinsey said that he wanted to keep this citizen panel active and asked if anyone was interested in serving on this panel.
- ✚ c) Mr. Karlinsey stated that by the end of the year, the preferred alternative should be determined and if a categorical exclusion or environmental assessment would be required. Either of the environmental determinations would take approximately six to nine months, however the City could be required to do a NEPA which is a full-blown federal EIS. He further stated that this project would continue to go through a public process that included public meetings and open houses.

4. 20-year Transportation Plan and Impact Fees

- ✚ Mr. Misiurak reported that the City is working on updating and identifying new projects in the 6-Year TIP and working concurrently on a 20-year forecasting model. Both plans are scheduled to be finalized by late May or early June and will be sent to the state by July 1st.

5. Legislative Update

- ✚ Mr. Karlinsey explained that the City is having discussions with the state to determine if the CERB grant can be used for the long-term fix. There is a

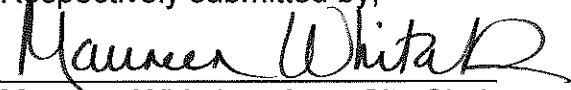
question if the funds must be spent in the current state biennium. He further stated that the City had applied for \$3 million in federal earmarks this year and \$3 million in the following year(s), but may not know anything until February '09.

6. **Setting Next Meeting Date:** A date in June at 9:00 a.m. to be determined.

Questions / Comments

- ✚ Mr. Jud Morris, Key Peninsula Business Association expressed two issues of concern:
 - 1) If the City moves the Burnham Interchange, it won't solve the backup problem on SR-16 off ramp to Purdy.
 - 2) If this access is removed, it will take longer for ambulances to get to the hospital which could result in more deaths.Mr. Morris requested to be on the citizen panel.
- ✚ Mr. Mark Dorsey, North Pacific Design inquired if the 302 Study was in trouble financially. Derek Kilmer's aid, Chris Green stated that the study had been funded. Mr. Dorsey also inquired if anyone had been contacted to be on this committee. Mr. David Figuracion had some knowledge of this and stated that applications would be going out shortly.
- ✚ Mr. Bob Draggoo, CFO, Peninsula Light stated that any of the proposed alternatives directly affects Peninsula Light and the expenses associated with relocating their lines. He asked to be kept in the loop and wanted an opportunity to weigh in on the proposed alternatives and wanted to be included on the citizen panel.
- ✚ Mr. David Halinen, Attorney for Petco expressed concern on behalf of his client with the long-term changes. Mr. Halinen requested to be included on the citizen panel.
- ✚ Mr. David Figuracion, KPCC requested to be on the citizen panel.

Respectively submitted by,



Maureen Whitaker, Asst. City Clerk



City of Gig Harbor
Gig Harbor North Traffic Options Committee

AGENDA

Wednesday, March 26 - 10:00 a.m.
Gig Harbor Civic Center – Community Rooms A&B

1. **Update of Hospital Progress**
 - Budd Wagner – FHS.
 - Joe Kunkel – FHS Project Management.
2. **Gig Harbor North Project Updates**
 - Dick Bower, Building and Fire Safety Director.
3. **Burnham Interchange**
 - (a) Hospital/Developer Improvement Update – Steve Misiurak.
 - (b) Long-term Improvements – Selection of Level III Consultant – Rob Karlinsey.
 - (c) Canterwood Drive Permitting Schedule and Approach to Interim Project Discussion.
4. **20-year Transportation Plan and Impact Fees**
 - Steve Misiurak, City Engineer.
5. **Legislative Update** – Rob Karlinsey.
6. **Setting Next Meeting Date:**
 - Wednesdays in April: 2, 9, 26, 23, 30
 - Wednesdays in May: 7, 14, 21, 28
 - Wednesdays in June: 4, 11, 18, 25

**CITY OF GIG HARBOR
COMMITTEE OUTLINE MINUTES**

City of Gig Harbor Operations & Public Projects
(Council Committee Ekberg, Franich, and Payne)

Date: March 20, 2008 Time: 3:00 p.m. Location: Public Works Conf Rm Scribe: Melanie Fleites

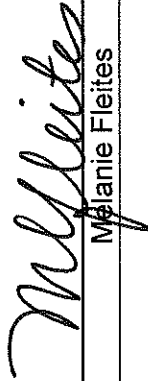
Commission Members and Staff Present: Councilmembers Steve Ekberg and Jim Franich; Rob Karlinsey, Steve Misiurak, Lita Dawn Stanton, Jeff Langhelm, Marco Malich, Darrell Winans, Cliff Johnson, Melanie Fleites, Maureen Whitaker.

Others Present: Brandon Smith, PWE; Steve Paris; Dave Freeman, SFA Inc; Randy Oxier, Hemley's Septic; John Chadwell, OPG; Greg Vermillion

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
1. Skansie Net Shed Inventory – CHA – Vlahovich Proposal – Lita Dawn Stanton	<p>Coastal Heritage Alliance prepared a scope of services for surveying, cataloging, and relocating the objects contained within the Skansie Brothers net shed.</p> <ul style="list-style-type: none"> ▪ Identify which items can/should be preserved. ▪ Potential outreach to solicit volunteers—possibly the Fisherman's Club would be both qualified and interested, 	Lita Dawn Stanton will contact the Fisherman's Club to determine their level of interest and availability in assisting in Net Shed Inventory in order to reduce cost.
2. Alternate Sewer Septic Storage Tanks – Dave Freeman	<p>Developer, Dave Freeman, requests that the City look into the possibility of changing the City's Municipal Code to allow temporary septic storage tanks. Current City Code does not allow for temporary septic storage systems.</p> <ul style="list-style-type: none"> ▪ Engineering staff does not recommend approving temporary 	Council committee moves to present to full council (4/14/08 at earliest). Committee would like Freeman to provide examples of effective uses of temporary septic storage tanks in Pierce County Businesses.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
	<p>septic storage tanks due to health/safety concerns and potential for illegal tampering or dumping.</p> <ul style="list-style-type: none"> ▪ Brandon Smith of PacWest Engineering specifies that the type of temporary septic storage tanks proposed would only be appropriate for business/commercial uses, not for SF residences. ▪ Hemley Septic representative pumps temporary septic storage tanks and ensures regular maintenance through service contracts and logs provided to health department. ▪ City Administrator, Rob Karlinsey is open to the possibility of allowing temp septic tanks for business owners, possibly with a limited window of opportunity. 	
<p>3. Rohwer/Paris Property Exchange Proposal – Steve Paris</p>	<p>Steve Paris proposes a property exchange involving his property adjacent to the City park at Crescent Creek.</p> <ul style="list-style-type: none"> ▪ Paris property may be wetland. ▪ Cannot exchange buildable land for non-buildable land. 	<p>Council needs to discuss intended use of the property at Crescent Creek before proceeding.</p>
<p>4. Sand Volleyball Court Proposal – Gregg Vermillion, Cliff Johnson</p>	<p>The Parks Commission recommends to the City Council that a portion of the existing BMX park be approved for the development of two sand volleyball courts.</p> <ul style="list-style-type: none"> ▪ Southern portion of the BMX park area is currently underutilized. 	<p>Council committee moves to present to full council (4/14/08 at earliest). Traffic impact analysis and staff report requested.</p>

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
	<ul style="list-style-type: none"> ▪ PAA has allocated money for the construction and PenMet Parks may also provide a grant to cover majority of funding. ▪ Minimum maintenance but parking might be an issue. ▪ May need a traffic impact analysis which Rob Karlinsey says the City should pay for. 	
5. Telecommunications Siting -- discussion	Discussion postponed.	
6. Burnham Interchange Interim Improvements Update – Steve Misiurak	<p>City is still waiting for Plan for Approval from Department of Transportation.</p> <p>Burnham, widening Canterwood, frontage improvements, and a 5 ft grade change.</p> <ul style="list-style-type: none"> ▪ Land donated by Dale Pinney—2 lots. ▪ July 1 to September 15 window to do work on the spring. ▪ Long term analysis (Level III) will be recommended to Council for award to HW Lochner. 	
7. Status of Watermain on Harborview Drive – Steve Misiurak & Marco Malich	<p>Marco Malich detailed failures of the water main on Harborview Drive which occurred in the last couple of months.</p> <ul style="list-style-type: none"> ▪ These water main pipes are suspected to be at least 45 years old from the WWTP to Stinson are in need of replacement. ▪ Current pipes consist of A/C and PVC 	Council committee requests a comparative analysis between patching and replacing the watermain, including price and effectiveness.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
	<p>which need to be replaced with ductile and increased in diameter.</p> <ul style="list-style-type: none"> ▪ Cost for replacement of watermain from Harborview Drive to Stinson & Stanley is estimated at \$750,000. 	
8. Cushman Trail Update – Rob Karlinsey	<p>County-City agreement has not been finalized for the Cushman Trail project.</p> <ul style="list-style-type: none"> ▪ Budget estimate for trail from Kimball to Borgen has increased from 5.5 million to 7 million. ▪ Construction would take place in three phases. ▪ Public restrooms to be located on Borgen Blvd. 	
9. Maritime Pier/DNR Tidelands – discussion	<p>Maritime Pier/DNR Tidelands issue goes before hearing examiner 5/7/08.</p> <ul style="list-style-type: none"> ▪ Rob Karlinsey opposes giving up public access at this location due to impact on fishing industry. 	<p>Voice concerns about loss of accessibility at this location in a letter to DNR—for Consent Agenda.</p>
Meeting adjourned at 5:40 p.m.	<p>Respectfully submitted: </p> <p>Melanie Fleites</p>	



City of Gig Harbor
Inter-governmental Affairs Council Committee
Councilmembers Conan, Ekberg & Payne

AGENDA

April 14, 2008 – 4:30 p.m.
Gig Harbor Civic Center – Executive Conference Room

Old Business:

1. Greater Peninsula Partnership

New Business:

1. 2009 Legislative Strategy, State and Federal
2. Water Rights

Adjourn

Next Meeting Date: May 12, 2008 @ 4:30 p.m.



**Meeting Minutes
Intergovernmental Affairs Committee
March 24, 2008**

In attendance:

Councilmember Payne
Councilmember Conan
Councilmember Ekberg
City Administrator Karlinsey

The meeting convened at 4:35 p.m.

The committee reviewed 2008 Legislative Session requests, strategy for the 2009 Session, and Federal earmark requests.

2008 Legislative Session Recap. Neither of the proposed Bills relating to extension of utility service outside city boundaries nor shoreline moratorium made it out of committee. Payne acknowledged that the City benefited favorably with WWTP funds (\$1 million). The committee discussed options for pursuing the remaining \$1 million in 2009.

2009 Legislative Strategy. It was agreed that with support from other agencies and cities it might be wise to pursue the Bill relating to utility extension outside city limits. Other funding options to consider are the Governor's *Puget Sound Initiative* and CERB Grants.

Federal Earmark Update and Strategy. Karlinsey mentioned STAG Funding and Payne suggested an assessment from our Lobbyists as to what items to pursue. Tim Schellberg and Dale Learn will be invited to the April 14th meeting.

At the regional level Karlinsey advised that the *Greater Peninsula Partnership*, a group representing City of Gig Harbor, Pierce County, Kitsap County, City of Bremerton, and the Port of Bremerton, is using regional pull to address ten hot spots in the Highway 16, Highway 3, and Highway 302 corridor.

During a discussion of Conservation Futures funds, the committee recommended applying to Pierce County for more than just one parcel.

The meeting adjourned at 5:45 p.m.

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, parks, playgrounds, nature trails, open spaces, community and cultural centers, and historic sites make a community attractive and desirable places to live, work, play and visit to contribute to our ongoing economic vitality; and

WHEREAS, parks are a place where people can reflect, re-energize or socialize; a place where everyone is welcome; and a place that builds community; and

WHEREAS, parks, greenways and open spaces provide a welcome respite from our fast paced, high-tech lifestyles while protecting and preserving our natural environment; and

WHEREAS, numerous jurisdictions, cities and organizations have joined together to create an event that encourages citizens to celebrate the value and enhanced quality of life that parks bring to our communities; and

WHEREAS, HomeStreet Bank, Starbucks Coffee, The News Tribune and many other businesses, benefactors, organizations and donors have provided sponsorships and donations to support this event that will bring citizens together to support their local parks; and

WHEREAS, hundreds of people of all ages have pledged to volunteer their time to clean-up and beautify parks and open space throughout Gig Harbor and Pierce County on Saturday, April 19, 2009;

NOW, THEREFORE, I, Charles L. Hunter, Mayor of the City of Gig Harbor, hereby designate April 19, 2008, as

PARKS APPRECIATION DAY

and encourage all citizens to celebrate by participating in this event and visiting their local parks and other regional parks throughout Pierce County.

Chuck Hunter, Mayor

Date



RECEIVED
Consent Agenda - 3b

APR 08 2008

CITY OF GIG HARBOR

April 4, 2008

Douglas G. Richardson
Mayor

Mayor Chuck Hunter
City of Gig Harbor
3510 Grandview St.
Gig Harbor, WA 98335

Don Anderson
Deputy Mayor

Ron Cronk
Council Member

**SUBJECT: Open Government Workshop for Elected Officials
and Members of Citizen Advisory Boards and
Committees**

Pad Finnigan
Council Member

DATE: April 30, 2008, 6:00 p.m.

LOCATION: Lakewood City Hall, Council Chambers

Helen McGovern
Council Member

Dear Mayor Hunter,

Claudia B. Thomas
Council Member

The City of Lakewood is holding a meeting with the Attorney General's Office regarding open government and the Open Public Meetings Act to increase understanding for members of our Council and our citizen advisory boards and committees.

Walter Neary
Council Member

We'd be happy to have your elected officials and members of boards and committees join us.

Andrew E. Neiditz
City Manager

The meeting is scheduled for Wednesday, April 30th, Lakewood City Hall Council Chambers at 6:00 p.m.

Heidi Ann Wachter
City Attorney

If you have any questions, please contact Executive Assistant Deanne Wegmann at 253-983-7702 or dwegmann@cityoflakewood.us.

Alice M. Bush, MMC
General Services Director
City Clerk

Thank you,

Douglas Richardson
Mayor
City of Lakewood

DGR:dkw





NOTICE OF LIQUOR LICENSE APPLICATION

Consent Agenda - 4

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

JAR

TO: MOLLY TOWSLEE, CITY CLERK
RE: NEW APPLICATION

DATE: 3/26/08

UBI: 602-736-645-001-0002

License: 403158 - 1U County: 27
Tradename: KIMBALL ESPRESSO GALLERY
Loc Addr: 6950 KIMBALL DR
GIG HARBOR WA 98335-1236

APPLICANTS:

DSF ENTERPRISES, INC

Mail Addr: 804 122ND STREET COURT NW
GIG HARBOR WA 98332-9639

DREILING, FRANCES KAY
1956-10-20

DREILING, STEPHAN JOSEPH
1950-05-21

Phone No.: 253-858-2625 STEVE DREILING

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

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



Subject: Robinson, Noble & Saltbush
Consultants Contract - Phase I on
Uddenberg Lane parcels.

Proposed Council Action: Authorize the
Mayor on behalf of Council to approve the
Consultants Agreement for a Phase I
Environmental Site Assessment of the
Uddenberg Lane parcels.

Dept. Origin: Administration

Prepared by: Lita Dawn Stanton
Special Projects

For Agenda of: April 14, 2008

Exhibits: Consultants Contract

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

RJK 4/7/08
Cam 4/7/08
QR 4/10/08

Expenditure		Amount		Appropriation	
Required	\$3,400	Budgeted	\$850,000	Required	0

INFORMATION / BACKGROUND

As part of the review process prior to acquiring two parcels that make up Uddenberg Lane, the City initiated a Phase I Environmental Site Assessment. Consultants for that work (Robinson, Noble & Saltbush) will review the parcels (see attached map).

FISCAL CONSIDERATION

This expenditure will come from the Judson / Stanich / Uddenberg Project in the Street Capital Fund. This project is objective #8 in the 2008 Street Capital Fund Budget.

BOARD OR COMMITTEE RECOMMENDATION

none

RECOMMENDATION / MOTION

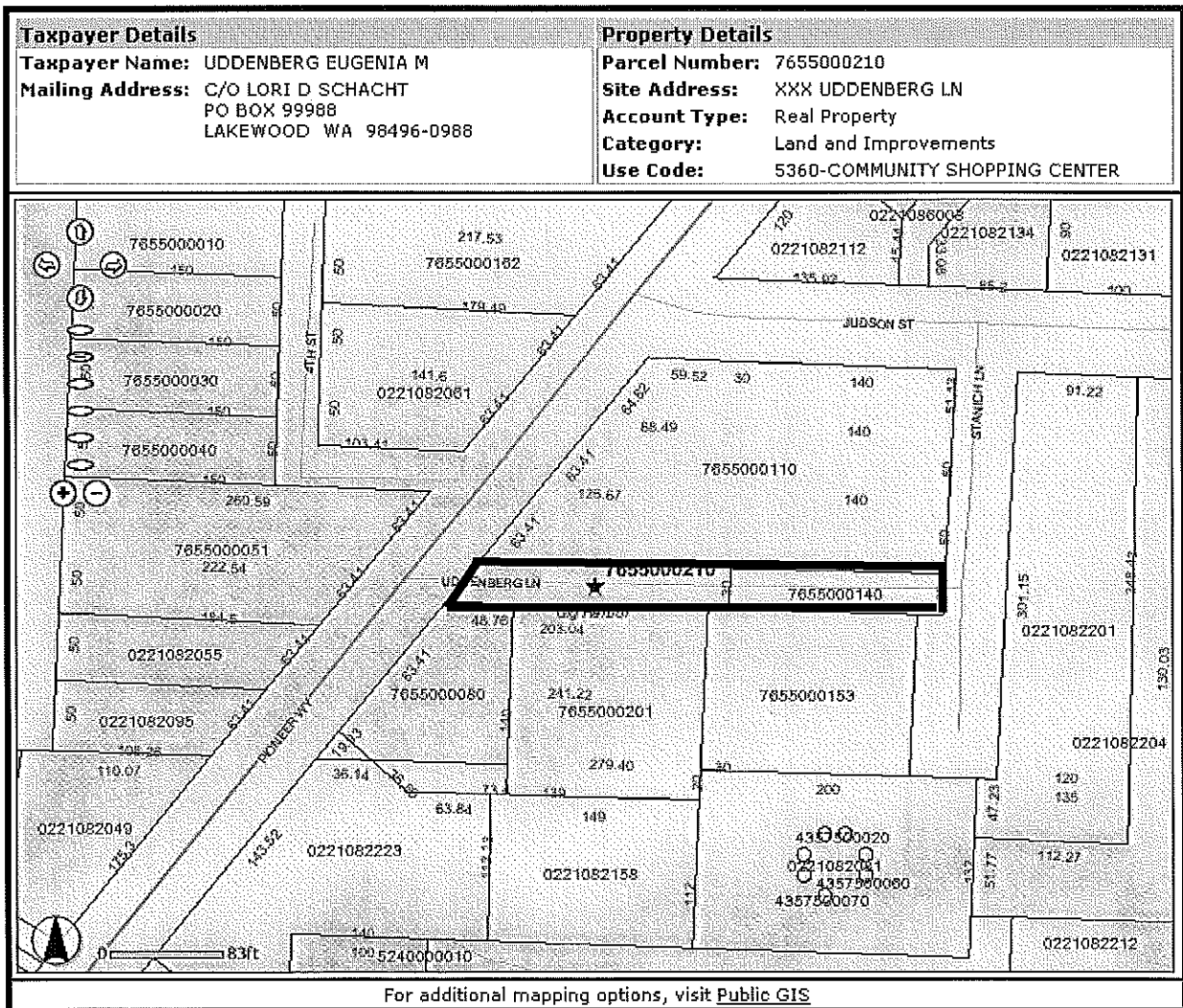
Move to: Authorize the Mayor on behalf of Council to approve the contract with Robinson, Noble & Saltbush for a Phase I Environmental Site Assessment on the two parcels that make up Uddenberg Lane not to exceed \$3,400.00

Uddenberg Lane

Parcel 765500-021-0 and 765500-014-0.

Parcel Map for 7655000210

04/03/2006 04:38 PM



**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
ROBINSON, NOBLE & SALTBUSH, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Robinson, Noble & Saltbush, Inc., a corporation organized under the laws of the State of Washington located and doing business at Tacoma, Washington (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in environmental services 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 _____, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, 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 three thousand four hundred dollars (\$3,400) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by April 28, 2008; 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 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 reasonable attorneys' fees to the extent arising out of or in connection with the Consultant's performance of services under this Agreement. 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.

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 a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible 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 or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations 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 or Director of Operations 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:
Robinson, Noble & Saltbush, Inc.
ATTN: John Hildenbrand
3011 S. Huson Street, Suite A
Tacoma, WA 98409
(253) 475-7711

City of Gig Harbor
ATTN:
3510 Grandview Street
Gig Harbor, WA 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.

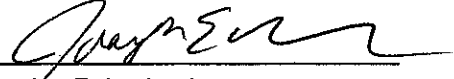
XVIII. Modification

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__.

CONSULTANT
By: 
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
Robinson, Noble & Saltbush, Inc.
ATTN: John Hildenbrand
3011 S. Huson St., Suite A
Tacoma, WA 98409
(253) 475-7711

City of Gig Harbor
ATTN:
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

APPROVED AS TO FORM:

City Attorney

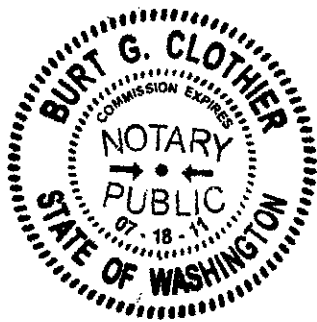
ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that JOSEPA E. BECKER 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 PRESIDENT of ROBINSON, NOBLE & SALTBUSCH, INC. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 4-3-08



[Signature]
BURT CLOTHIER
(print or type name)

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

TACOMA, WA

My Commission expires: 7-18-11

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/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

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

My Commission expires: _____

Exhibit A

**Uddenburg Lane Site
 Phase I Environmental Site Assessment Scope of Services**

Phase I Environmental Site Assessments (Phase I ESA, also known as Level One ESA studies) are conducted to protect a property owner from assuming an unknown environmental risk. The assessment gathers available information regarding past or present site activities which have the potential to cause environmental contamination. Robinson, Noble & Saltbush performs Phase I ESA's generally following the format and content of ASTM Standard E 1527-00 or ASTM Standard E-1527-05. For this project the client has elected ASTM Standard E 1527-05. Depending on the nature of the site being evaluated and the requirements of the client, additional elements beyond the scope of the ASTM standard may be included. Any additional scope of service items are detailed in the professional services agreement (PSA) to which this scope of service is attached. If an item is not indicated herein or in the applicable PSA, it is not included in the project.

The standard components of the Phase I ESA for the Uddenburg Lane Site (as further described in the attached City of Gig Harbor Purchase Order (PO Number 080402A)) will include:

- Identification of past and present site ownership and uses (as deemed relevant to evaluating the subject site).
- Inspection of the site and any structures for the presence of potentially hazardous substances. Any areas not inspected will be clearly noted in the project report.
- Description of site environmental characteristics; such as the size, layout, extent of development, natural features, etc.
- An assessment of hazardous material or waste storage, handling, or disposal practices as they pertain to evaluate the presence of an actual, and/or material threat of, a hazardous substance release. For the purposes of the Phase I ESA, a hazardous substance includes petroleum products.
- An assessment of nearby properties whose activities may have an environmental impact on the subject property.
- Conclusions regarding potential problems and recommendations for further action.

In performing the assessment Robinson, Noble & Saltbush, Inc. will utilize a review of selected available public records, historical research, an inspection of the site, and may conduct interviews with tenants, owners, and/or public agency officials to evaluate the potential environmental liabilities associated with a property.

Records Review

Review of public agency records can provide significant background information on the site, including ownership history; past uses; permits or inventories for hazardous materials or wastes; reported spills, releases or known contamination; or other regulatory actions. Agencies which may be contacted include local assessor's office, planning department, utility district, fire department, health department, agricultural commissioner, or air quality management district. State environmental protection agencies, such as the Washington State Department of Ecology, maintain databases of sites which have been investigated and may also be contacted. The U.S. Environmental Protection Agency also maintains databases of hazardous waste generators or sites with hazardous waste contamination. Robinson, Noble & Saltbush, Inc. will search applicable data bases using a data extraction and reporting firm (typically EDR, Inc). We may also conduct a physical review of agency files as deemed necessary.

Historical Research

In order to review past use of the property, documents such as title history, maps, building permits, or aerial photographs may be reviewed as appropriate. Maps, such as parcel, topographic and fire-insurance maps, will also be reviewed as applicable.

Site Inspection

A site inspection will be conducted to evaluate the subject for site activities or uses which pose a high potential for environmental contamination. These items include but are not limited to:

- storage tanks (underground and above ground)
- water wells (domestic, agricultural or industrial)
- waste water systems
- drums or chemical storage areas
- ponds or surface impoundments
- maintenance or shop areas
- sumps or storm drains
- stained soil or pavement
- transformers
- piles of waste or trash
- dead or dying vegetation
- unusual odors
- other observations that in the opinion of the field investigator indicate the possible presence of conditions of concern.

Interviews

In order to determine current and past site practices, interviews with persons familiar with the site may be conducted. This may be done in person, in writing or via telephone. Examples of the types of individuals that may be contacted include: property owners, site managers, former employees, neighbors, and/or local agency officials.

Report

The activities described above will be documented in a report. The report will present the findings of the assessment and any recommendations for further action, if necessary. Be advised that the Phase I ESA does not typically include the collection of environmental samples.



**General Fee Schedule
 October 1, 2007
 Exhibit B**

Professional Position	Typical Duties	Fee Per Hour
Principal Hydrogeologist/ Environmental Scientist	Service requiring the scientific expertise of company principals. Includes top-level project review and control, client liaison, and hydrogeologic analysis.	\$99 - \$156
Senior Associate	Senior Associate-level project management, client liaison, field services, project analysis, and report writing.	\$99 - \$136
Associate Hydrogeologist/ Environmental Scientist	Associate-level project management, client liaison, field services, project analysis, and report writing.	\$99 - \$114
Senior Hydrogeologist/ Environmental Scientist	Senior-level project management, client liaison, field services, data interpretation and analysis, and report writing.	\$87 - \$114
Project Hydrogeologist/ Environmental Scientist	Field services; data collection, reduction, interpretation and analysis; and report writing.	\$87 - \$99
Draftsperson/Technician	Technical illustration/CADD, production layout, technical aide.	\$70 - \$80

Service Category	Typical Duties	Fee Per Hour
Legal Support/Testimony	Expert witness services.	150% of above rates
Administrative Services	Contracts, technical specifications, administrative tasks, grammatical editing.	\$58 - \$72
Typist/Clerical Support	Word processing, report preparation or reproduction, general office tasks	\$52 - \$72
Subcontracts/Management Fee	Professional Services Outside Laboratory Services Construction Subcontracts	Negotiated 15% 15%
Other Costs	Travel (Auto) Travel (Other) Direct Other Expenses	\$0.58/mile Cost + 5% Cost + 5%
	Equipment Rental	See following page

This fee schedule is subject to change according to contract or Professional Services Agreement conditions.

**Hydrogeologic Equipment Rental Schedule
October 1, 2007**

<u>Equipment</u>	<u>Unit</u>	<u>Rate</u>
Water Level Transducer and Data Logger	First five days	\$80
	Each day thereafter	\$27.50
Field Laptop Computer	Per day	\$30
Electric Water Level Sounder(s)	0 to 300 ft	Flat fee per project \$30
	over 300 ft	Flat fee per project \$55
DC Submersible Purge Pump	Per pump	\$80
Double-Ring Infiltrometer	Per day	\$50
Schonstedt Gradient Magnetometer	Per day	\$75
Geonics EM-61 Metal Detector	Per day	\$500
Downhole Gamma/Resistivity/Temperature Logging Equipment (includes Draw Works)	Per day	\$1,100
Downhole Analog Caliper Logging Equipment	Per well	\$100
Draw Works	Per well	\$525
Mechanical Sieve Sample Equipment	Flat fee per well	\$25
2-inch Gasoline-powered Centrifugal Pump (includes hoses)	Per day	\$55
2-inch Submersible Pump + Controller	Per day	\$180
Generator	Per day	\$70
Survey Gear (laser level & rod)	Per day	\$85
Stream Gaging	Per day	\$75
GPS	Per day	\$22.50
Other Equipment	Negotiated	Negotiated

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Consent Agenda - 5

Environmental Equipment Rental and Consumable Schedule
October 1, 2007

<u>Equipment</u>	<u>Unit</u>	<u>Rate</u>
Water level transducer and data logger	Per day	\$100
Field Laptop Computer	Per day	\$50
Electronic Water Level Sounder	Per day	\$25
Electronic Interface Probe	Per day	\$75
DC Submersible Purge Pump	Per pump	\$80 first pump, \$40 each additional pump
DC-operated Peristaltic Pump	Per day	\$40
2-inch Gasoline-powered Centrifugal Pump	Per day	\$100
2-inch Submersible Pump + Controller	Per day	\$350
Generator	Per day	\$60
Photoionization Detector	Per day	\$75
Combustible Gas Indicator	Per day	\$65
Water Quality Meter	Per meter per day	\$200
Teflon Water Bailer	Per day	\$30
Soil Sampling Equipment (manual)	Per day	\$25
Soil Sampling Equipment (power)	Per day	\$40
Mechanical Sieve Sample Equipment	Flat fee per project	\$25
Survey Gear (laser level & rod)	Per day	\$80
Soil Vapor Extraction System	Per Month	\$750
Atmospheric Condition Monitoring Unit	Per day	\$50
Other Equipment	Negotiated	Negotiated
<u>Consumable Items:</u>		
Polyethylene Purge/Sampling Tubing	Each 10 feet	\$2.50
Silicone Peristaltic Pump Head Tubing	Each foot	\$4.00
Water Sample Bailer	Each	\$10
Bailer Rope/String	Each 10 feet	\$1.00
Personal Protection Equipment	Per day per person	\$50

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Subject: Robinson, Noble & Saltbush
Consultants Contract - Phase I on
Uddenberg Lane parcels.

Proposed Council Action: Authorize the
Mayor on behalf of Council to approve the
Consultants Agreement for a Phase I
Environmental Site Assessment of the
Uddenberg Lane parcels.

Dept. Origin: Administration

Prepared by: Lita Dawn Stanton
Special Projects

For Agenda of: April 14, 2008

Exhibits: Consultants Contract

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

RJK 4/7/08
Cam 4/7/08
QR 4/10/08

Expenditure		Amount		Appropriation	
Required	\$3,400	Budgeted	\$850,000	Required	0

INFORMATION / BACKGROUND

As part of the review process prior to acquiring two parcels that make up Uddenberg Lane, the City initiated a Phase I Environmental Site Assessment. Consultants for that work (Robinson, Noble & Saltbush) will review the parcels (see attached map).

FISCAL CONSIDERATION

This expenditure will come from the Judson / Stanich / Uddenberg Project in the Street Capital Fund. This project is objective #8 in the 2008 Street Capital Fund Budget.

BOARD OR COMMITTEE RECOMMENDATION

none

RECOMMENDATION / MOTION

Move to: Authorize the Mayor on behalf of Council to approve the contract with Robinson, Noble & Saltbush for a Phase I Environmental Site Assessment on the two parcels that make up Uddenberg Lane not to exceed \$3,400.00

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
ROBINSON, NOBLE & SALTBUSH, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Robinson, Noble & Saltbush, Inc., a corporation organized under the laws of the State of Washington located and doing business at Tacoma, Washington (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in environmental services 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 _____, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, 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 three thousand four hundred dollars (\$3,400) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by April 28, 2008; 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 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 reasonable attorneys' fees to the extent arising out of or in connection with the Consultant's performance of services under this Agreement. 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.

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 a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible 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 or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations 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 or Director of Operations 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:
Robinson, Noble & Saltbush, Inc.
ATTN: John Hildenbrand
3011 S. Huson Street, Suite A
Tacoma, WA 98409
(253) 475-7711

City of Gig Harbor
ATTN:
3510 Grandview Street
Gig Harbor, WA 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.

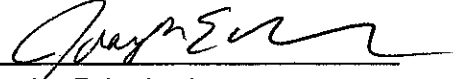
XVIII. Modification

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__.

CONSULTANT
By: 
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
Robinson, Noble & Saltbush, Inc.
ATTN: John Hildenbrand
3011 S. Huson St., Suite A
Tacoma, WA 98409
(253) 475-7711

City of Gig Harbor
ATTN:
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

APPROVED AS TO FORM:

City Attorney

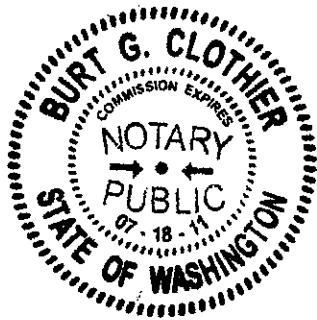
ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that JOSEPA E. BECKER 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 PRESIDENT of ROBINSON, NOBLE & SALTBUSCH, INC. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 4-3-08



[Signature]
BURT CLOTHIER
(print or type name)

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

TACOMA, WA

My Commission expires: 7-18-11

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/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

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

My Commission expires: _____

Exhibit A

Uddenburg Lane Site Phase I Environmental Site Assessment Scope of Services

Phase I Environmental Site Assessments (Phase I ESA, also known as Level One ESA studies) are conducted to protect a property owner from assuming an unknown environmental risk. The assessment gathers available information regarding past or present site activities which have the potential to cause environmental contamination. Robinson, Noble & Saltbush performs Phase I ESA's generally following the format and content of ASTM Standard E 1527-00 or ASTM Standard E-1527-05. For this project the client has elected ASTM Standard E 1527-05. Depending on the nature of the site being evaluated and the requirements of the client, additional elements beyond the scope of the ASTM standard may be included. Any additional scope of service items are detailed in the professional services agreement (PSA) to which this scope of service is attached. If an item is not indicated herein or in the applicable PSA, it is not included in the project.

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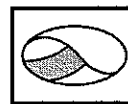
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October 1, 2007
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Principal Hydrogeologist/ Environmental Scientist	Service requiring the scientific expertise of company principals. Includes top-level project review and control, client liaison, and hydrogeologic analysis.	\$99 - \$156
Senior Associate	Senior Associate-level project management, client liaison, field services, project analysis, and report writing.	\$99 - \$136
Associate Hydrogeologist/ Environmental Scientist	Associate-level project management, client liaison, field services, project analysis, and report writing.	\$99 - \$114
Senior Hydrogeologist/ Environmental Scientist	Senior-level project management, client liaison, field services, data interpretation and analysis, and report writing.	\$87 - \$114
Project Hydrogeologist/ Environmental Scientist	Field services; data collection, reduction, interpretation and analysis; and report writing.	\$87 - \$99
Draftsperson/Technician	Technical illustration/CADD, production layout, technical aide.	\$70 - \$80

Service Category	Typical Duties	Fee Per Hour
Legal Support/Testimony	Expert witness services.	150% of above rates
Administrative Services	Contracts, technical specifications, administrative tasks, grammatical editing.	\$58 - \$72
Typist/Clerical Support	Word processing, report preparation or reproduction, general office tasks	\$52 - \$72
Subcontracts/Management Fee	Professional Services Outside Laboratory Services Construction Subcontracts	Negotiated 15% 15%
Other Costs	Travel (Auto) Travel (Other) Direct Other Expenses	\$0.58/mile Cost + 5% Cost + 5%
	Equipment Rental	See following page

This fee schedule is subject to change according to contract or Professional Services Agreement conditions.

**Hydrogeologic Equipment Rental Schedule
October 1, 2007**

<u>Equipment</u>	<u>Unit</u>	<u>Rate</u>
Water Level Transducer and Data Logger	First five days	\$80
	Each day thereafter	\$27.50
Field Laptop Computer	Per day	\$30
Electric Water Level Sounder(s)	0 to 300 ft	Flat fee per project \$30
	over 300 ft	Flat fee per project \$55
DC Submersible Purge Pump	Per pump	\$80
Double-Ring Infiltrometer	Per day	\$50
Schonstedt Gradient Magnetometer	Per day	\$75
Geonics EM-61 Metal Detector	Per day	\$500
Downhole Gamma/Resistivity/Temperature Logging Equipment (includes Draw Works)	Per day	\$1,100
Downhole Analog Caliper Logging Equipment	Per well	\$100
Draw Works	Per well	\$525
Mechanical Sieve Sample Equipment	Flat fee per well	\$25
2-inch Gasoline-powered Centrifugal Pump (includes hoses)	Per day	\$55
2-inch Submersible Pump + Controller	Per day	\$180
Generator	Per day	\$70
Survey Gear (laser level & rod)	Per day	\$85
Stream Gaging	Per day	\$75
GPS	Per day	\$22.50
Other Equipment	Negotiated	Negotiated

This fee schedule is subject to change according to contract or Professional Services Agreement conditions.

Consent Agenda - 5

Environmental Equipment Rental and Consumable Schedule
October 1, 2007

<u>Equipment</u>	<u>Unit</u>	<u>Rate</u>
Water level transducer and data logger	Per day	\$100
Field Laptop Computer	Per day	\$50
Electronic Water Level Sounder	Per day	\$25
Electronic Interface Probe	Per day	\$75
DC Submersible Purge Pump	Per pump	\$80 first pump, \$40 each additional pump
DC-operated Peristaltic Pump	Per day	\$40
2-inch Gasoline-powered Centrifugal Pump	Per day	\$100
2-inch Submersible Pump + Controller	Per day	\$350
Generator	Per day	\$60
Photoionization Detector	Per day	\$75
Combustible Gas Indicator	Per day	\$65
Water Quality Meter	Per meter per day	\$200
Teflon Water Bailer	Per day	\$30
Soil Sampling Equipment (manual)	Per day	\$25
Soil Sampling Equipment (power)	Per day	\$40
Mechanical Sieve Sample Equipment	Flat fee per project	\$25
Survey Gear (laser level & rod)	Per day	\$80
Soil Vapor Extraction System	Per Month	\$750
Atmospheric Condition Monitoring Unit	Per day	\$50
Other Equipment	Negotiated	Negotiated
<u>Consumable Items:</u>		
Polyethylene Purge/Sampling Tubing	Each 10 feet	\$2.50
Silicone Peristaltic Pump Head Tubing	Each foot	\$4.00
Water Sample Bailer	Each	\$10
Bailer Rope/String	Each 10 feet	\$1.00
Personal Protection Equipment	Per day per person	\$50

This fee schedule is subject to change according to contract or Professional Services Agreement conditions.



Subject: Purchase of Rohwer Property
- 9702 Crescent Valley Drive

Proposed Council Action:
Authorize the Purchase of the Rohwer property
in the amount of \$360,000, plus applicable
closing costs.

Dept. Origin: Administration

Prepared by: Rob Karlinsey
City Administrator

For Agenda of: April 14, 2008

Exhibits: Purchase and Sale Agreement
Initial & Date

Concurred by Mayor:

Approved by City Administrator: [Signature] 4/8/08

Approved as to form by City Atty: _____

Approved by Finance Director: _____

Approved by Department Head: _____

Table with 3 columns: Expenditure Required, Amount Budgeted, Appropriation Required. Values: \$360,000 plus applicable closing costs, \$0, \$360,000.

INFORMATION / BACKGROUND

Council directed staff to proceed with a Purchase and Sale Agreement for the property commonly known as the Miller property at 9702 Crescent Valley Drive next to the BMX Bike Track. As a condition of the Purchase and Sale Agreement, the city obtained an appraisal of the property and a Phase 1 Environmental Assessment. The property was appraised at \$360,000 by Trueman Appraisal Company. The Phase 1 Environmental Assessment was performed by Robinson Noble Saltbush, Inc. and the report showed no findings or environmental concerns.

FISCAL CONSIDERATION

The city has negotiated a cash offer to purchase the property for \$360,000.00, plus applicable closing costs. This property purchase is not included in the adopted 2008 Budget. However, near year's end, funding can be reconciled via budget savings and/or ending fund balance.

BOARD OR COMMITTEE RECOMMENDATION

Council requested action.

RECOMMENDATION / MOTION

Move to: Authorize the purchase of the Rohwer property in the amount of \$360,000.00, plus applicable closing costs.

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT hereinafter the "Agreement"), is entered into this 11 day of February, 2008, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "Purchaser" or "City") and Rick and Heidi Rohwer, husband and wife, (hereinafter the "Seller");

WHEREAS, Seller is the owner of that certain real property located at 9702 Crescent Valley Drive NW, in Gig Harbor, Washington, more particularly described in Exhibit A, attached hereto and made a part hereof by this reference (the 'Property'); and

WHEREAS, the Seller desires to sell the property upon the terms and conditions set forth herein; and

NOW, THEREFORE, for and in consideration of Ten Dollars and no cents (\$10.00), the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Purchase and Sale of the Property, Purchase Price and Manner of Payment for the Property. Upon the terms and conditions hereinafter set forth, Seller agrees to sell and Purchaser agrees to purchase the Property described in Exhibit A, together with all improvements, appurtenances, rights, licenses, privileges, easements and all of Seller's right, title and interest in and to any street or road abutting the Property, if any.

The total purchase price for the Property (the "Purchase Price") shall be Three Hundred Sixty Thousand Dollars and No Cents (\$360,000.00). The Purchaser shall not be required to pay an earnest money. Any prorations as determined in Section 5 herein shall be reflected in the amount paid to the Seller at Closing.

2. Closing of Property.

2.1 Closing Date for Property. The Closing Date for the purchase and sale of the Property shall be held no later than May 12, 2008, in the office of the Escrow Agent. In the event that this sale cannot be closed by the date provided herein due to the unavailability of either party, the Escrow Agent, or financing institution to sign any necessary document, or to deposit any necessary money, because of the interruption of available transport, strikes, fire, flood, or extreme weather, governmental relations, incapacitating illness, acts of God, or other similar occurrences, the Closing Date shall be extended seven (7) days beyond cessation of such condition, but in no event more than fourteen (14) days beyond the Closing as provided herein without the written

agreement of the parties. The Purchaser and the Seller may agree in writing to extend the Closing Date at any time.

2.2 Deliveries at Closing. At Closing, Seller shall convey to Purchaser good and marketable fee simple title to the Property and all improvements thereon, by statutory warranty deed (the "Deed"), duly executed and in recordable form and insurable as such by Chicago Title Company, Tacoma, Washington, on an ALTA form B Owner's form of title insurance policy, or if Purchaser so desires and pays any additional premium, an ALTA Extended Policy (the "Title Policy"). Title to the Property shall be conveyed by Seller to Purchaser free of all liens, leases and encumbrances other than the Permitted Exceptions, as defined in Section 9 hereof: Seller shall deliver to Purchaser at Closing the following documents (all of which shall be duly executed and acknowledged where required and, unless otherwise agreed, deposited with the Escrow Agent): (a) the Deed; (b) the Title Policy, or the irrevocable commitment of the title insurer in writing to Purchaser to deliver same in a form satisfactory to Purchaser; (c) such other documents, if any, as may be reasonably requested by the Purchaser to enable the Purchaser to consummate and close the transactions contemplated by this Agreement pursuant to the terms and provisions and subject to the limitations hereof.

3. Possession and Use. Possession of the Property shall be delivered by Seller to Purchaser at the Closing.

4. Closing Costs Relating to the Property. Title insurance premiums, loan fees and all other costs or expenses of escrow shall be paid as follows: (a) the full cost of securing the title insurance policy for Purchaser referred to herein shall be paid by the Sellers; (b) the cost of recording the Deed to Purchaser shall be paid by the Sellers; (c) the escrow fee will be paid ½ by the Seller and ½ by the Purchaser; (d) all other expenses shall be paid by the Purchaser. Encumbrances to be discharged by Seller to provide clear title or to correct any condition noted on a hazardous materials inspection report for the Property shall not be expenses of escrow.

5. Prorations. The following items shall be prorated between Purchaser and Seller as of midnight the day immediately preceding the Closing Date; such prorations favoring Purchaser shall be credited against the Purchase Price payable by Purchaser at Closing and such prorations favoring Seller shall be payable by Purchaser at Closing in addition to the cash portion of the Purchase Price payable by Purchaser at Closing:

5.1 Any applicable city, state and county ad valorem taxes for the calendar year of Closing based on the ad valorem tax bill for the Property, if then available, for such year, or if not, then on the basis of the ad valorem tax bill for the Property for the immediately preceding year. Taxes for all years prior to the calendar year of Closing shall be paid by Seller at or prior to Closing;

5.2 Utility charges, including water, telephone, cable television, garbage, storm drainage, sewer, electricity and gas, and maintenance charges, if any, for sewers. In conjunction with such prorations, Purchaser will notify, or cause to be notified, all utilities servicing the Property of the change of ownership and direct that all future billings be made to Seller (as Lessee under the Lease to be executed at the time of Closing) at the address of the Property, with no interruption of service. Purchaser shall use its best efforts to procure final meter readings for all utilities as of the Closing Date and to have such bills rendered directly to Seller. Any utility deposits previously paid by Seller shall remain the property of Seller, and to the extent necessary for Seller to receive such payments, Purchaser shall pay over such amounts to Seller at Closing and take assignment of such deposits;

5.3 Said prorations shall be based on the actual number of days in each month and twelve (12) months in each calendar year. Any post closing adjustment due either party shall be promptly made;

5.4 The parties shall reasonably agree on a final prorations schedule prior to Closing and shall deliver the same to Escrow Agent. Based in part on the prorations statement, Escrow Agent shall deliver to each party at the Closing, a closing statement containing a summary of all funds, expenses and prorations passing through escrow.

6. **Conditions Precedent to Purchaser's Obligation to Close.**

6.1 Purchaser's obligation to acquire the Property shall be conditioned upon the satisfaction, or waiver by Purchaser of the following conditions: (a) approval of this Agreement by the Gig Harbor City Council; (b) inspection by the City for Hazardous Substances, receipt and approval by the Gig Harbor City Council of all environmental and Hazardous Substances reports from the City's Consultant; (c) the City Council's approval of an appraisal commissioned and paid for as provided herein; (d) after the City Council's receipt and approval of the Hazardous Substances report and the appraisal, the City Council's discretionary decision to proceed with the sale for the Purchase Price set forth in Section 1 herein; (e) completion by Seller of all deliveries required of Seller prior to the Property Closing; (f) that there has been no breach by Seller of any of the warranties and/or covenants of this Agreement; and (g) a review of the solvency of Seller under paragraph 8.2.3.

6.2 Once the appraisal and Hazardous Substances Report is received by the Purchaser, the City Council shall consider whether this Agreement should be amended as to the Purchase Price. If the City Council does not choose to amend the Agreement as to the purchase price and desires to proceed with the purchase, the Purchaser shall immediately notify the Seller and the parties shall

proceed to Closing. If the City Council chooses to amend the purchase price, the Purchaser shall notify the Seller. If the Seller is unwilling to amend the purchase price as proposed by the Purchaser, then this Agreement shall terminate, and neither party shall have any further obligation to the other party. If the Seller is willing to amend the purchase price as proposed by the Purchaser, then the Seller shall notify the Purchaser, and the parties shall proceed to Closing.

6.3 If the City Council, in its sole discretion, determines that the contingencies in 6.1 have not been met, the Purchaser shall notify Seller that this Agreement is terminated, and neither party shall have any further obligation hereunder.

7. **Seller's Covenants.**

7.1 **Right of Inspection.** At all times prior to Closing, Seller shall (a) permit Purchaser and such persons as Purchaser may designate to undertake such investigations and inspections of the Property and the structure on the Property (including, without limitation, physical invasive testing) as Purchaser may in good faith require to inform itself of the condition or operation of the Property and (b) provide Purchaser with complete access to Seller's files, books and records relating to the ownership and operation of the Property, including, without limitation, contracts, permits and licenses, zoning information, during regular business hours upon reasonable advance notice. Seller agrees to cooperate in connection with the foregoing and agrees that Purchaser, its agents, employees, representatives or contractors shall be provided promptly upon request such information as shall be reasonably necessary to examine the Property and the condition thereof.

7.2 **Encumbrances.** The Property has been leased to Phil Schaaf, subject to the lease attached hereto as Exhibit B. This is a month-to-month lease, and the Seller agrees to terminate the lease as provided by the lease and applicable law, so that the Purchaser will have possession of the entire Property at Closing. The Purchaser and Seller agree that the Purchaser shall have no obligations under the lease, and that the Seller shall indemnify and hold the Purchaser harmless for any liability, loss, damage, claims, suits, awards, attorneys' fees or any other costs of any kind relating to the lease.

At no time prior to Closing shall Seller encumber the Property or any portion thereof with encumbrances, liens or other claims or rights (except such as may exist as of the date hereof) unless (a) such encumbrances are necessary and unavoidable, in the reasonable business judgment of Seller, for the conduct of Seller's use of the Property (which in no case shall include mortgages, deeds of trust or other voluntary security interests), (b) Seller discloses the same to

Purchaser in writing and (c) Seller covenants to remove (and does remove) the same prior to Closing. Seller agrees to provide Purchaser evidence of lien releases in connection with any liens on the Property prior to the Closing Date.

7.3 Material Changes. Seller shall: (a) promptly notify Purchaser of the occurrence of any fact, circumstance, condition or event that would cause any of the representations made by Seller in this Agreement no longer to be true or accurate and (b) deliver to Purchaser any notices of violation of law received by Seller prior to Closing.

7.4 Additional Improvements. Seller shall not enter into any agreements regarding additional improvements to be made to the Property following the Effective Date and prior to Closing, without the prior approval from Purchaser.

7.5 Compliance with Applicable Law. Seller agrees that it will not permit or cause, as a result of any intentional or unintentional act or omission on the Seller's part, or on the part of any agent of the Seller, or any third party, any release or further release of Hazardous Substances on the Property.

8. **Seller's Environmental Indemnify, Representations and Warranties**. Seller hereby represents and warrants to Purchaser as follows:

8.1 Title to Property. Seller owns fee simple title to the Property, free and clear of all restrictions, liens, easements, mortgages, covenants, exceptions and restrictions of any kind, Uniform Commercial Code financing statements, security interests, and other encumbrances, except for the Permitted Exceptions (as described in Section 9).

8.2 Hazardous Substances on the Property.

8.2.1. Definitions. (a) "Hazardous Substances" means any hazardous, toxic or dangerous substance, waste or materials that are regulated under any federal, state or local law pertaining to environmental protection, contamination remediation or liability. The term includes, without limitation, (i) any substances designated a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), the Model Toxics Control Act (Chapter 70.105D RCW), the Hazardous Waste Management Act (Chapter 70.105 RCW), and regulations promulgated there under, as these statutes and regulations shall be amended from time to time, and (ii) any substances that, after being released into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the

environment or indirectly by ingestion through the food chain, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer and/or genetic abnormalities in humans, plants or animals. For the purposes of this definition, the term "Hazardous Substances" includes, but is not limited to, petroleum chemicals, asbestos-containing material and lead paint. (b) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to, air, soils, surface water and ground water.

8.2.2. Hold Harmless, Defense and Indemnity. From and after the date of Closing, the Seller shall, to the maximum extent permitted under law, indemnify, defend, and hold the Purchaser, its officers, officials, employees, agents and assigns, harmless from and against any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, fines, punitive damages, losses, costs, liabilities and expenses, including attorney's fees, in any way arising out of or connected with the known or unknown physical or environmental condition of the Property (including, without limitation, any contamination in, on, under or adjacent to the Property by any Hazardous or Toxic substance or material), or any federal, state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, the Model Toxics Act (ch. 70.105D RCW) and the Comprehensive Environmental Response, Compensation and Liability Act. The foregoing shall include all conditions existing or arising prior to, on or after the date of Closing, and all conditions and Hazardous Substances or toxic substances or materials at, under, released or emanating from the Property. It is the express intent of the parties that after the date of Closing, the Purchaser shall have no liability whatsoever for any environmental conditions at the Property, including, without limitation, those portions of the Property that are submerged as of the date of Closing, and that the Seller shall retain such liability. Notwithstanding the foregoing, the indemnification, defense, and hold harmless granted to Purchaser herein shall not apply to any physical or environmental condition caused by the Purchaser after the date of Closing.

8.2.3 Proof of Financial Solvency. At the time of Closing the Sellers shall provide proof of financial solvency and capability to provide a reliable indemnification, defense, and hold harmless, as required by this Agreement to Purchaser's sole satisfaction.

8.2.4. Violations. Seller has not received any notice of and is not aware of any actual or alleged violation with respect to the Property of any

federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances and no action or proceeding is pending before or appealable from any court, quasi-judicial or administrative agency relating to Hazardous Substances emanating from, cause by or affecting the Property.

8.2.5. Underground Storage Tanks. To the best of Seller's knowledge, warrants that the Property contains no underground storage tanks for the storage of fuel oil, gasoline, and/or other petroleum products, Hazardous Substances, or byproducts.

8.2.6. No Assessments. No assessments have been made against the Property that are unpaid, whether or not they have become liens.

8.2.7. Boundary Lines of Property. To the best of Seller's knowledge, the improvements on the Property are located entirely within the boundary lines of the Property, and to the best of Seller's knowledge there are no disputes concerning the location of the lines and corners of the Property.

8.2.8. Litigation. Seller has no actual knowledge of any, and there is no actual or pending litigation or proceeding by any organization, person, individual or governmental agency against Seller with respect to the Properties or against the Properties. There are no outstanding claims on Seller's insurance policies, which relate to the Property. Seller has not received any notice of any claim of noncompliance with any laws, from any governmental body or any agency, or subdivision thereof bearing on the construction of the Improvements, the landscaping or the operation, ownership or use of the Property.

8.2.9. Authorization. Seller has the full right and authority to enter into this Agreement and consummate the sale, transfers and assignments contemplated herein; and each of the persons signing this Agreement and any other document or instrument contemplated hereby on behalf of Seller is authorized to do so. All of the documents executed by Seller which are to be delivered to Purchaser at Closing are and at the time of Closing will be duly authorized, executed, and delivered by Seller, are and at the time of Closing will be legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms.

8.2.10 Liens. All expenses in connection with the construction of the Property and any reconstruction and repair of the Property have been fully paid, such that there is no possibility of any mechanics' or

materialmen's liens being asserted or filed in the future against the Property in respect of activities undertaken prior to Closing.

8.2.11 Defects. Seller has not failed to disclose in full any physical defect or condition of disrepair whether concealed or visible, with respect to the Property of which Seller has knowledge.

8.2.12 True and Accurate Representations. No representation or warranty of Seller included in this Agreement contains or at Closing will contain an untrue statement of material fact, or omits or at Closing will omit to state a material fact necessary to make the statements and facts contained therein not misleading. If any event or circumstance occurs which renders any of Seller's representations or warranties herein untrue or inaccurate in any material respect, then Seller shall notify Purchaser of the event or circumstance when Seller becomes aware of it.

Seller will refrain from taking any action, which would cause any of the foregoing representations and warranties to become incorrect or untrue at anytime prior to the date of Closing. At the Closing, Seller shall reaffirm and restate such representations and warranties, subject to disclosure of any changes in facts or circumstances, which may have occurred since the date hereof. Such restated representations and warranties shall survive the Closing. If any change in any foregoing representation is a material change, and Seller does not elect to cure all such material changes prior to Closing then notwithstanding anything herein to the contrary, Purchaser, at its sole option, may either (a) close and consummate the acquisition of the Property pursuant to this Agreement, reserving any and all necessary action to specifically enforce Seller's obligations hereunder; or (b) terminate this Agreement by written notice to Seller, and neither of the parties hereto shall have any rights or obligations hereunder whatsoever, except such rights or obligations that, by the express terms hereof, survive any termination of the Agreement.

8.2.12 Payment of Real Estate Agent's Commission. The Seller shall be responsible to pay any commissions or fees due and owing to any Real Estate Agent. The Purchaser shall not be responsible to pay any commissions or fees to any Real Estate Agent, either the listing or selling broker.

9. **Title Examination and Objections**.

9.1. Title Review. Seller shall cause Ticor Title Company (the "Title Company") to furnish to Purchaser, at Purchaser's expense, a title insurance

commitment, on an ALTA approved form for the Property (the "Title Report"), to be delivered to Purchaser on or before April 1, 2008, which shall be at least 30 days prior to closing. Purchaser shall have fifteen (15) days after receipt of such Title Report to conduct an examination of Seller's title to the Property and to give written notice to Seller of any title matters, which affect title to the Property and which are unacceptable to Purchaser (the "Title Objections"). If Purchaser fails to object to any matter which is of record as of the date hereof prior to the expiration of such fifteen (15) day period, then, except with respect to any security instrument or lien affecting the Property, Purchaser shall be deemed to have waived its right to object to any such matter and all of such matters shall be deemed a permitted title exception for purposes of this Agreement (collectively, with those matters described in this Section, the "Permitted Exceptions").

9.1.1 Upon receipt from the Purchaser of a written notice of any Title Objection, together with a copy thereof the Seller shall, within fifteen (15) days of receiving such notice, provide written notice to Purchaser that Seller (a) will satisfy or correct, at Seller's expense, such Title Objection, or (b) refuses to satisfy or correct, in full or in part, such Title Objection, stating with particularity which part of any Title Objection will not be satisfied. The above notwithstanding, Seller may not refuse to satisfy security interests, liens or other monetary encumbrances affecting the Properties. As to those Title Objections which Seller agrees to satisfy or cure, or is required to satisfy or cure, Seller shall, on or before the Closing Date, (i) satisfy, at Seller's expense, security interests, liens or other monetary encumbrances affecting the Property (and all of Seller's obligations under or relating to each of the foregoing), and (b) satisfy or correct, at Seller's expense, all other Title Objections affecting the Property.

9.2 Failure to Cure. In the event that Seller fails to satisfy or cure any Title Objection of which it is notified, whether or not Seller has provided timely written notice that it refuses to satisfy or correct such objections, then on or before the Closing Date, the Purchaser shall by written notice to the Seller elect one of the following:

9.2.1 To accept Seller's interest in the Property subject to such Title Objections, in which event such Title Objections shall become part of the Permitted Exceptions, and to close the transaction contemplated hereby in accordance with the terms of this Agreement, provided that in the event any such Title Objections results from a breach by Seller of the covenants contained herein, a monetary charge or lien, or from a Title Objection other than a monetary charge or lien for which Seller has not given timely notice of its refusal to satisfy or correct, (a) such acceptance

by Purchaser of Seller's interest in the Property shall be without prejudice to Purchaser thereafter seeking monetary damages from Seller for any such matter which Seller shall have failed to so correct, and (b) if such Title Objection is a monetary charge or lien which can be satisfied or cured by the payment of a liquidated sum of money, Purchaser may cause such Title Objection to be so cured or satisfied by paying the same out of the Purchase Price to be paid; or

9.2.2 To terminate this Agreement in accordance with the provisions herein; provided however, that if the Purchaser elects to terminate this Agreement because of the existence of any Title Objection which results from a breach by Seller of its covenants herein, or any other Title Objection which Seller is required to satisfy or correct, Purchaser's cancellation shall be without prejudice to any other rights of the Purchaser herein.

9.3 Removal of Liens. Notwithstanding anything to the contrary herein contained, Seller covenants and agrees that at or prior to Closing Seller shall (a) pay in full and cause to be cancelled all loan security documents which encumber the Property as of the date hereof and as of the Closing Date, and (b) pay in full and cause to be cancelled and discharged or otherwise bond and discharge as liens against the Properties all mechanics' and contractors' liens which encumber the Property as of the date hereof or which maybe filed against the Property after the date hereof and on or prior to the Closing Date. In the event Seller fails to cause such liens and encumbrances to be paid and canceled at or prior to Closing, Purchaser shall be entitled to pay such amount to the holder thereof as may be required to pay and cancel same, and to credit against the Purchase Price the amount so paid.

9.4 Notwithstanding any language to the contrary in this Agreement, Purchaser may not object to the following title matters, which shall be considered "Permitted Exceptions": (a) real property taxes or assessments due after Closing; (b) easements consistent with Purchaser's intended use of the Property, (c) reserved oil and/or mineral rights; (d) rights reserved in federal patents or state deeds; and (e) governmental building and land use regulations, codes, ordinances and statutes.

10. Default.

10.1 By Seller. In the event of a default by Seller, Purchaser shall, in addition to any other remedy Purchaser may have, including Specific Performance, be entitled to immediately cancel this Agreement and receive a refund of its earnest money deposit and interest, provided, however, Purchaser

may, at its option, waive any default by Seller and proceed with the purchase of the Property.

10.2 By Purchaser. In the event of any default by Purchaser, prior to the close of escrow and after all applicable contingencies as described in Section 6 have been satisfied, Seller's sole remedy shall be to terminate the escrow and Purchaser's right to purchase the Property and receive the earnest money deposited by Purchaser hereunder and interest thereon as liquidated damages.

10.3 General. If a party (the "Defaulting Party") fails or refuses to perform its obligations under this Agreement or if the sale and purchase of the Property contemplated by this Agreement is not consummated on account of the Defaulting Party's default hereunder, then Escrow Agent shall (after receiving notice from the non-Defaulting Party and then giving the Defaulting Party ten (10) days' prior written notice) refund any monies deposited by the non-defaulting party, and return any documents deposited with the Escrow Agent by the non-Defaulting Party, on demand, without prejudice to any other legal rights or remedies of the non-Defaulting Party hereunder. In the event Seller is the Defaulting Party hereunder, Purchaser shall have, in addition to any right or remedy provided hereunder, the right to seek specific performance of this Agreement, or other equitable remedies against Seller in the event that Seller wrongfully fails or refuses to perform any covenant or agreement of Seller hereunder.

11. Condemnation or Destruction.

11.1 Condemnation. Seller hereby represents and warrants that Seller has no knowledge of any action or proceeding pending or instituted for condemnation or other taking of all or any part of the Property by friendly acquisition or statutory proceeding by any governmental entity. Seller agrees to give Purchaser immediate written notice of such actions or proceedings that may result in the taking of all or a portion of the Property. If, prior to Closing, all or any part of the Properties is subject to a bona fide threat or is taken by eminent domain or condemnation, or sale in lieu thereof, then Purchaser, by notice to Seller given within twenty (20) calendar days of Purchaser's receiving actual notice of such threat, condemnation or taking by any governmental entity other than the City of Gig Harbor, Washington, may elect to terminate this Agreement. In the event Purchaser continues or is obligated to continue this Agreement, Seller shall at Closing assign to Purchaser its entire right, title and interest in and to any condemnation award. During the term of this Agreement, Seller shall not stipulate or otherwise agree to any condemnation award without the prior written consent of Purchaser.

11.2 Damage or Destruction. Prior to Closing the risk of loss of or damages to the Property by reason of any insured or uninsured casualty shall be borne by Seller.

11.3 Termination. If this Agreement is terminated, neither party hereto shall have any further rights or obligations under this Agreement whatsoever, except for such rights and obligations that, by the express terms hereof, survive any termination of the Agreement.

12. Indemnification.

12.1 Seller's Indemnification. In addition to the indemnity provided in Section 8.2.2 herein, Seller shall indemnify and defend Purchaser (including its elected officials, officers, managers, employees and agents) and hold it harmless from and against any material claim, loss, liability and expense, including attorneys' fees and court costs (collectively "Claims") incurred by Purchaser on account of (a) claims by persons or entities other than Purchaser arising out of or in connection with the ownership, operation or maintenance of the Property by Seller, or any fact, circumstance or event which occurred prior to the Closing Date, including the release, threatened release or existence of Hazardous Substances on the Property; and (b) claims resulting from or arising directly or indirectly, in whole or in part, out of the breach of any representation, warranty, covenant or agreement of Seller contained in this Agreement. Notwithstanding any language to the contrary in this Agreement, Seller agrees to indemnify, defend and hold Purchaser harmless from and against any and all claims, liabilities, losses, penalties, remediation costs and expenses (including attorneys' and consultants' fees and costs) that Purchaser may incur, or have asserted against it as a result of Seller's breach of the warranties in this Agreement. At Purchaser's option, Seller shall promptly undertake any remediation required as a result of such breach at Seller's expense.

12.2 Purchaser's Indemnity. Purchaser shall indemnify and defend Seller (including its officers, officials, employees and agents) and hold it harmless from and against any material claim, loss, liability and expense, including reasonable attorneys' fees and court costs (collectively, "Claims") incurred by Seller on account of Claims resulting from or arising directly or indirectly, in whole or in part, out of the breach of any representation, warranty, covenant or agreement of Purchaser contained in this Agreement. This shall not affect Seller's obligations per the provisions of Section 8.2.2 herein.

13. Assignment. Neither party shall be entitled to assign its right, title and interest herein to any third party without the written consent of the other party to

this Agreement. Any approved assignee shall expressly assume all of the assigning party's duties, obligations, and liabilities hereunder but shall not release the assigning party from its liability under this Agreement.

14. **Facsimile or E-Mail Transmission.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of the original.

15. **Notices.** All notices, demands, and any and all other communications which may be or are required to be given to or made by either party to the other in connection with this Agreement shall be in writing and shall be deemed to have been properly given if delivered by hand, sent by fax, sent by registered or certified mail, return receipt requested, or sent by recognized overnight courier service to the addresses set out below or at such other addresses as specified by written notice and delivered in accordance herewith. Any such notice, request or other communication shall be considered given or delivered, as the case maybe, on the date of hand, fax or courier delivery or on the date of deposit in the U.S. Mail as provided above. However, the time period within which a response to any notice or request must be given, if any, shall commence to run from the date of actual receipt of such notice, request, or other communication by the addressee thereof.

SELLER: Rick and Heidi Rohwer
3516 Rust Street
Gig Harbor, WA 98335

PURCHASER: The City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
Attn: City Administrator
Phone:(253) 851-8136
Fax: (253) 851-8563

With a copy to: Carol A. Morris, City Attorney
Law Office of Carol A. Morris, P.C.
P.O. Box 948
Seabeck, WA 98380-0948
Phone:(360) 830-0328
Fax: (360) 830-0355

16. **Miscellaneous.**

16.1 Governing Law and Construction. This Agreement shall be construed and interpreted under the laws of the State of Washington. The titles of sections and subsections herein have been inserted as a matter of convenience or reference only, and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa.

16.2 Counterparts. This Agreement maybe executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

16.3 Rights, Powers and Privileges. Except as expressly provided under the terms of this Agreement, all rights, powers and privileges conferred hereunder upon the parties shall be cumulative but not restrictive of those given by law.

16.4 Waiver. No failure of either party to exercise any power given either party hereunder or to insist upon strict compliance by either party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

16.5 Time. Time is of the essence in complying with the terms, conditions and agreements of this Agreement.

16.6 Entire Agreement. This Agreement contains the entire Agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force and effect.

16.7 Survival. Each of the covenants, agreements, representations and warranties herein shall survive the Closing and shall not merge at Closing with any deed, bill of sale or other document of transfer.

16.8 Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and assigns.

16.9 Time Periods. If the Time period by which any right, option or election provided under this Agreement must be exercised or by which any acts or payments required hereunder must be performed or paid, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day.

16.10 Severability. If a court of competent jurisdiction invalidates a portion of this Agreement, such invalidity shall not affect the remainder.

16.11 Modifications. Any amendment to this Agreement shall not be binding upon any of the parties to this Agreement unless such amendment is in writing duly executed by each of the parties affected thereby.

16.12 Attorneys' Fees. If Purchaser or Seller institute suit concerning this Agreement, the prevailing party or parties is/are entitled to court costs and reasonable attorneys' fees. The venue of any suit shall be in Pierce County, Washington.

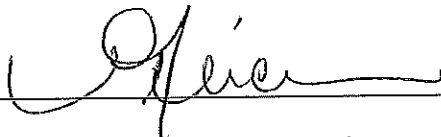
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective duly authorized representatives on the dates indicated below, to be effective as of the date and year first above written.

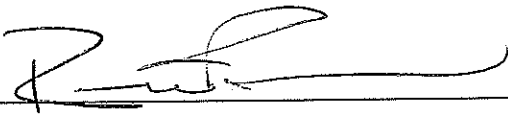
PURCHASER:

CITY OF GIG HARBOR


By:  _____
Its Mayor Proctor

SELLER:

By:  _____
Its owner

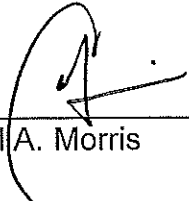
By:  _____
Its owner

ATTEST:



Molly Towslee, City Clerk

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY



Carol A. Morris

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Richard Rohwer 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 instrument of the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2/7/08

[Signature]
Tina L. Gano



(print or type name)
NOTARY PUBLIC in and for the State of Washington, residing at: Gig Harbor, WA
My Commission expires: 7-20-2010

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Heidi Rohwer 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 instrument of the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2/7/08

[Signature]
Tina L. Gano



(print or type name)
NOTARY PUBLIC in and for the State of Washington, residing at: Gig Harbor, WA
My Commission expires: 7-20-2010

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/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2-11-08

Molly Towstee

Molly Towstee

(print or type name)

NOTARY PUBLIC in and for the State of
Washington, residing at: Gig Harbor
My Commission expires: 12/2/2011



EXHIBIT A
LEGAL DESCRIPTION

9702 CRESCENT VALLEY DRIVE NW
PARCEL #0222323031

Section 32 Township 22 Range 02 Quarter 34 : S 110 FT OF E 7 AC OF N 1/2 OF S
1/2 OF SE OF SW EXC RD

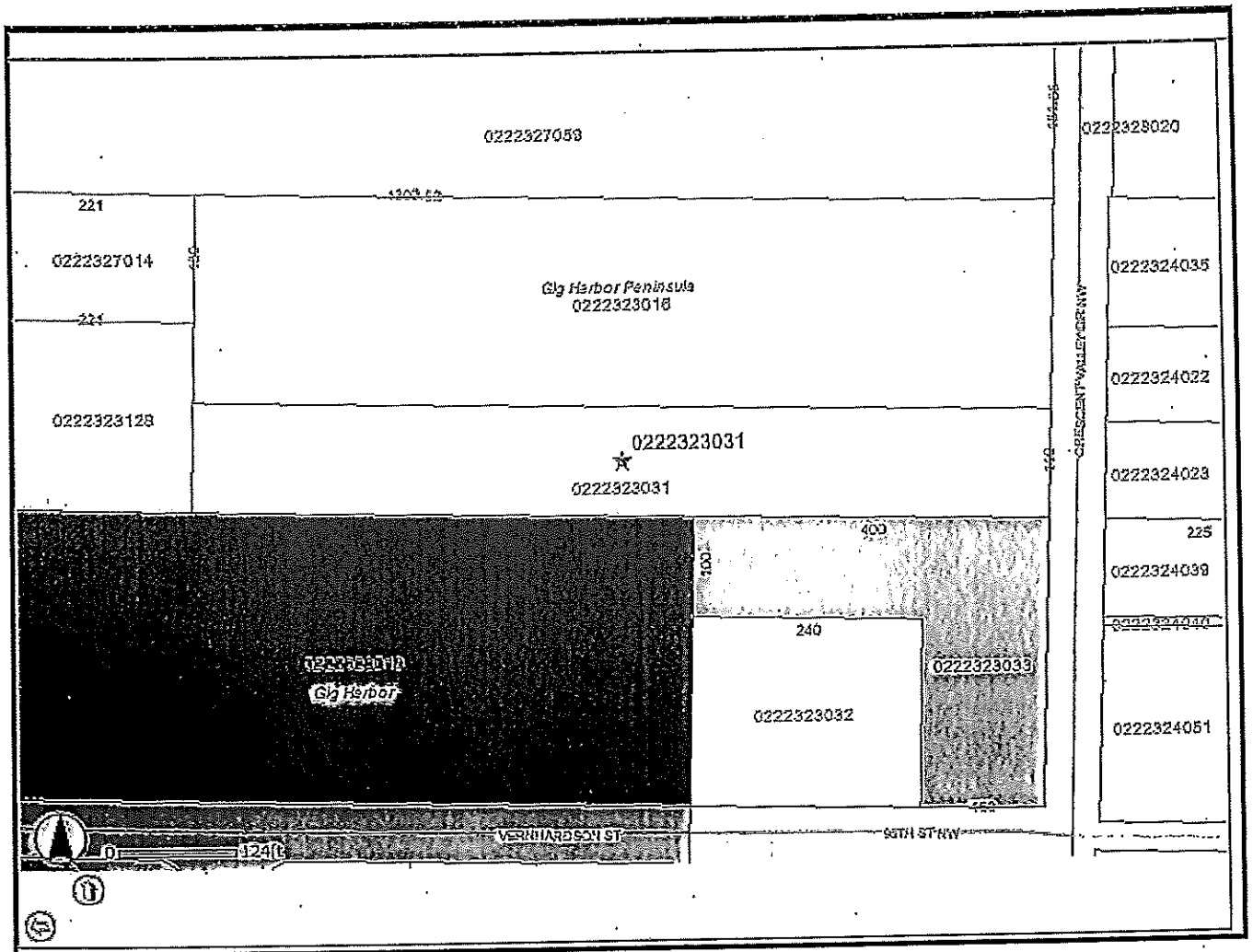


EXHIBIT B
LEASE AGREEMENT

NWMLS Form No. 68
Lease/Rental Agreement
Rev. 9/02
Page 1 of 4

LEASE / RENTAL AGREEMENT

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ALL RIGHTS RESERVED

This Agreement dated June 15, 2007
is made and entered into between Heidi Rohwer ("Lessor"),
by and through his/her "Lessor's Broker" and Phil Schaaf ("Tenant")
for the "Property" commonly known as 9702 Crescent Valley Drive
in Gig Harbor, Pierce County, Washington.

If this Agreement is for a term of more than one (1) year, the legal description of the Property will be attached as Exhibit A.

1. SECURITY DEPOSIT. Lessor acknowledges receipt from Tenant of the sum of _____, which is being deposited in a trust account in _____ Bank, _____ Branch, in _____, WA. Lessor or Lessor's

Broker will give written notice of any change in said depository. This deposit is security for performance of Tenant's obligations pursuant to this Agreement, including but not limited to payment of rent, and to indemnify Lessor for damages to and cleaning of the Property for which Tenant is responsible.

A written "Move In/Move Out Inspection Agreement" describing the condition and cleanliness of and any damage to the Property and furnishings will be signed by Lessor or Lessor's Broker and Tenant upon commencement of tenancy and a written copy given to Tenant. NO SECURITY DEPOSIT MAY BE COLLECTED UNLESS THIS CHECKLIST IS COMPLETED.

Within fourteen (14) days after termination of tenancy and vacation of premises (or abandonment of premises), Lessor will give Tenant a full and specific statement of the basis of retaining any of the deposit and a refund of any portion due Tenant, addressed as Tenant directs or in the absence thereof, to Tenant's last known address. If the deposit is insufficient to reimburse Lessor for such damages and cleaning, Tenant agrees to pay any deficiency on demand.

2. POSSESSION. In the event Tenant fails to take possession on the date indicated below, Tenant agrees to pay rent for the number of days the Property remains vacant. If, through no fault of Lessor or Lessor's Broker, Lessor cannot deliver possession of the Property to Tenant on the date indicated below, Lessor shall not be liable to Tenant for damages.

3. TERM (Check one).

a. LEASE. This Agreement is for a term of _____ commencing on _____.

This Agreement shall end at midnight on _____. Tenant must vacate the Property and surrender possession on the last day of the term. If Tenant holds over without the prior written consent of Lessor, Tenant shall be liable for rent and all other damages sustained by Lessor because of such holdover. If Tenant vacates prior to the expiration of the term, the security deposit shall be forfeited and Tenant shall be obligated for the rental payments for the remainder of the term, or until the Property has been re-rented, whichever is less.

b. MONTH-TO-MONTH. This Agreement is for a month-to-month tenancy commencing on 06/15/2007.

Lessor or Tenant may terminate this Agreement only upon written notice received by the other at least 20 days prior to the end of each monthly rental period. If any such notice of termination is not received at least 20 days in advance, then it shall not be effective until the end of the next following monthly rental period.

4. RENT. The rent is \$800:00 per month, payable in advance and due on or before the first day _____ day of each month commencing on the first month of the term. Each monthly rental period shall begin on the day rent is due. Rent shall be paid to Lessor's Broker at the address shown below to Lessor at the address shown below. Lessor acknowledges receipt of \$400.00 as the first and _____ month's rent.

5. UTILITIES. Tenant shall pay all utilities when due except: water sewer garbage _____

6. OCCUPANCY/SUBLETTING. The Property is rented as a private residence only for the following named persons:
Phil Schaaf

Tenant shall not assign this Agreement, sublet all or any portion of the Property, nor give accommodation to any roomers or lodgers, without the prior written consent of Lessor or Lessor's Broker.

7. MAINTENANCE. Tenant will at all times maintain the Property, including any yard and lawn, in a neat and clean condition and upon termination of this Agreement will leave the Property in as good condition as it is now, reasonable wear and tear excepted. Tenant agrees not to make any alterations or improvements to the Property without Lessor's prior written approval.

INITIALS: TENANT [Signature] DATE 6/15/07 LESSOR [Signature] DATE 6/15/07
TENANT _____ DATE _____ LESSOR _____ DATE _____

400 + 225 = 625.00
Gig Harbor
Page 20 of 23

LEASE / RENTAL AGREEMENT
(Continued)

- 8. **INSPECTION/SALE.** It is agreed that Lessor may enter the Property to inspect it or make alterations or repairs at reasonable times and, except in emergencies, will give two days' notice to Tenant. If Lessor wishes to show the Property to actual or prospective purchasers or tenants, only one day's notice of intent to enter shall be required. 49
50
51
- 9. **RENT LATE CHARGE/NSF CHECK.** If any rent is not paid on or before the due date, Tenant agrees to pay a late charge of _____ for each day that the same is delinquent, including the day of payment, up to a maximum of 10% of one month's rent, or _____ 52
53
54
Tenant agrees to pay a charge of _____ for each NSF check given by Tenant to Lessor. Lessor shall have no obligation to redeposit any check returned NSF. 55
56
In addition to the foregoing, Lessor may elect to terminate this Agreement for nonpayment of rent. Lessor shall notify Tenant of late rent and NSF check charges and the same must be paid within 5 days. 57
58
- 10. **RULES.** The attached Rules on page 4 are a part of this Agreement and failure to abide by them will constitute default under this Agreement. 59
60
- 11. **ATTORNEYS' FEES.** In the event it is necessary for either party to employ an attorney to enforce any terms of this Agreement, the prevailing party is entitled to reasonable attorneys' fees as provided for by law. In the event of a trial, the amount shall be as fixed by the Court. 61
62
63
- 12. **WAIVER OF SUBROGATION.** Lessor and Tenant hereby release and waive for the duration of this Agreement and any extension or renewal thereof their respective rights of recovery against each other for any loss resulting from perils of fire and/or extended coverage as defined in fire insurance policies issued to either Lessor or Tenant in effect at the time of the loss; provided that such waiver and release shall apply only in the event such agreement does not prejudice the insurance afforded by such policies. 64
65
66
67
68
- 13. **NONREFUNDABLE FEE.** Tenant agrees to pay prior to occupancy, a nonrefundable fee of _____. This nonrefundable fee shall not be returned under any conditions. 69
70
- 14. **PETS.** No dogs, cats or other animals will be permitted on the Property without the prior written consent of the Lessor or Lessor's Broker and without a fully executed Pet Agreement (NWMLS Form No. 68B). 71
72
- 15. **PERSONAL PROPERTY.** Tenant agrees that all personal property kept in or on the Property is at the risk of the Tenant. Tenant is specifically advised of the availability of and is encouraged to obtain insurance for such personal property. 73
74
- 16. **SMOKE DETECTOR.** Tenant acknowledges and Lessor certifies that the Property is equipped with a smoke detector(s) as required by RCW 48.48.140 and that the detector(s) has/have been tested and is/are operable. It is Tenant's responsibility to maintain the smoke detector(s) as specified by the manufacturer, including replacement of batteries, if required. In addition, if the Property is a multi-family building (more than one unit), Lessor makes the following disclosures: 75
76
77
78
(a) The smoke detection device is hard-wired battery operated. 79
(b) The Building does does not have a fire sprinkler system. 80
(c) The Building does does not have a fire alarm system. 81
(d) The building has a smoking policy, as follows: 82
No smoking 83
84
 The building does not have a smoking policy. 85
(e) The building has an emergency notification plan for occupants, a copy of which is attached to this Agreement. 86
 The building does not have an emergency notification plan for occupants. 87
(f) The building has an emergency relocation plan for occupants, a copy of which is attached to this Agreement. 88
 The building does not have an emergency relocation plan for occupants. 89
(g) The building has an emergency evacuation plan for occupants, a copy of which is attached to this Agreement. 90
 The building does not have an emergency evacuation plan for occupants. 91
Tenant hereby acknowledges receipt of a copy of the building's emergency evacuation routes. 92
- 17. **AGENCY DISCLOSURE.** If real estate licensees are involved in this transaction, then at the signing of this Agreement, Lessor's Agent represents Lessor both Lessor and Tenant. The Tenant's Licensee represents Lessor Tenant both Lessor and Tenant neither Lessor nor Tenant. 93
94
95

INITIALS: TENANT *JA* DATE *6/24/07* LESSOR *[Signature]* DATE *6/24/07* 96
 TENANT _____ DATE _____ LESSOR _____ DATE _____ 97

NWMLS Form No. 68
Lease/Rental Agreement
Rev. 9/02
Page 3 of 4

LEASE / RENTAL AGREEMENT
(Continued)

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Lessor's Broker represents the same party that Lessor's Agent represents. Tenant's Broker represents the same party that Tenant's Licensee represents. If Tenant's Licensee and Lessor's Agent are different salespersons affiliated with the same Broker, then both Tenant and Lessor confirm their consent to that Broker representing both parties as a dual agent. If Tenant's Licensee and Lessor's Agent are the same salesperson representing both parties, then both Tenant and Lessor confirm their consent to that salesperson and Broker representing both parties as dual agents. Tenant and Lessor confirm receipt of the pamphlet entitled "The Law of Real Estate Agency."

18. **COMMISSION.** Lessor agrees to pay Lessor's Broker the sum of _____ for negotiating this Agreement. If Tenant enters into an agreement or option to purchase the Property during Tenant's occupancy or within six (6) months thereafter, Lessor agrees to pay Lessor's Broker a sales commission of _____ or _____ % of total selling price. No Broker involved in this transaction is receiving compensation from more than one party unless disclosed on a separate addendum, in which case both Lessor and Tenant consent to such compensation.

19. **LEAD-BASED PAINT.** If the Property includes housing that was built before 1978, then the Addendum entitled "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards" (NWMLS Form 22J or equivalent), must be attached to this Agreement unless this lease/rental transaction is exempt from all applicable federal regulations.

[Signature] _____
Tenant Date 21 Jan 07

[Signature] _____
Lessor Date 21 Jan 07

Tenant Date
9102 Crescent Valley Dr NW

Lessor Date
3516 Rust Street

Tenant's Present Address
Gig Harbor WA 98332

Lessor's Address
Gig Harbor, WA 98332

City, State, Zip
253-223-2568

City, State, Zip
253-279-8975

Home Phone Work Phone
Tenant's Employer

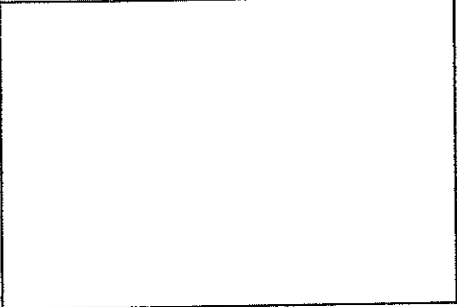
Lessor's Phone
Action Real Estate
Lessor's Broker
Heidi Rohwer
Lessor's Agent

Tenant's Broker
Tenant's Licensee

Broker's Office Address
Broker's Phone

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she/they/it signed the instrument and acknowledged it to be his/her their/its free and voluntary act for the uses and purposes mentioned in the instrument.



(Use this space for notarial stamp/seal.)

DATED: _____ 126
Signature: _____ 127
Print Name: _____ 128
Notary Public in and for the State of _____ 129
Washington, Residing at: _____ 130
My Appointment Expires: _____ 131

LEASE / RENTAL AGREEMENT
 (Continued)

RULES		132
1. Garbage. Tenant shall furnish his/her own garbage can and place it where required for pickup.		133
2. Illegal Use. Tenant shall not use the Property for any illegal purposes.		134
3. Repairs. Tenant shall promptly repair, at Tenant's expense, any broken glass in doors or windows.		135
4. Freezing Tenant shall protect the plumbing from freezing. As a minimum, Tenant shall leave the heat on low during cold weather.		136 137
5. Drains. Tenant shall relieve stoppage of drains and sewers at Tenant's expense unless resulting from a condition existing at the time Tenant moved in.		138 139
6. Nails/Painting. Tenant shall not drive any nails or screws into walls, and shall not paint anything, without the prior written consent of the Lessor or Lessor's Agent.		140 141
7. Lawns & Shrubs/Snow. Tenant will cut and water any lawn and water any shrubs, trees and landscaping so as to maintain the same in as good a condition as they presently are. In the event of snow, Tenant will remove the same from any abutting sidewalks.		142 143 144
8. Noise/Nuisance. TV, stereo, radio and musical instrument volumes shall be kept low enough so that no noise whatsoever shall escape from the Property. Tenant shall not create or permit any other nuisance on the Property.		145 146
9. Guests. Tenant is responsible for the conduct of all guests on the Property and shall insure that guests comply with these Rules.		147 148
10. Pets. If Lessor has given written permission for pets on the Property, no pet noise whatsoever shall be allowed to escape from the Property. In the case of apartments, pets shall not be allowed in the halls, common spaces or surrounding Property except on a leash and accompanied by the Tenant. It is the Tenant's responsibility to clean up and dispose of any pet excrement anywhere on the Property and on adjacent sidewalks, streets, alleys and neighbors' properties.		149 150 151 152 153
11. Vehicles. Recreation vehicles, trailers, boats and inoperable or unlicensed automobiles may not be parked or stored on the Property, on or in any parking area provided for the Property, or on any street or alley serving the Property. Repairs to any vehicles in these locations must be completed within 24 hours of commencement.		154 155 156
12. Hallways & Common Areas. If there are hallways or other common areas shared with other tenants, noise shall be kept to a minimum therein and nothing may be stored, even temporarily, therein.		157 158
13. Fireplace Insert/Wood Stove. Wood stoves are prohibited, unless provided by Lessor. No fireplace insert may be installed without Lessor's prior written permission. If permission is given, then the installation must be inspected by the applicable city or county building department, at Tenant's expense, before the same is used.		159 160 161
14. Water Beds, Pianos & Heavy Objects. No water beds, aquariums, pianos, organs, libraries or other unusually heavy objects are permitted in the Property without Lessor's written permission. As a condition to permitting a water bed, Lessor may require Tenant to provide and pay for water bed insurance.		162 163 164
15. Screens. Lessor is not obligated to provide window and/or door screens. If there are any presently installed, Lessor has no obligation to maintain or replace them.		165 166

INITIALS: TENANT AS DATE 6/21/07 LESSOR UP DATE 6/21/07 167
 TENANT _____ DATE _____ LESSOR _____ DATE _____ 168



Subject: 2008 NPDES Permit Water Quality Monitoring Program
-- Consultant Services Contract

Proposed Council Action: Authorize Consultant Services Contract for Cosmopolitan Engineering Group for the 2008 NPDES Permit Water Quality Monitoring Program

Dept. Origin: Engineering Division

Prepared by: Stephen Misiurak, P.E. *SM*
City Engineer

For Agenda of: April 14, 2008

Exhibits: Consultant Services Contract

Initial & Date

Concurred by Mayor:

Approved by City Administrator: *RBK 4/7*

Approved as to form by City Atty: *4/7/08 CAM*

Approved by Finance Director: *OP 4/10/08*

Approved by Department Head: *SM*

Expenditure Required	\$38,525.00	Amount Budgeted	\$40,000.00	Appropriation Required	0
----------------------	-------------	-----------------	-------------	------------------------	---

INFORMATION / BACKGROUND

Consultant services are needed to satisfy the water quality monitoring requirements contained within the Department of Ecology (DOE) yearly water quality reporting program. Data gathered will be used to assess long-term water quality trends in Gig Harbor due to the City's effluent discharge. The sampling program will continue previous monitoring programs designed around critical conditions of algae blooms and include other sampling requirements. A final water quality report shall also be prepared and submitted to the DOE by the middle of February 2009.

Cosmopolitan Engineering Group was selected based on their previous work for the City, familiarity and recognized expertise with the special water sampling and testing requirements, and working relationships with the Department of Ecology staff.

FISCAL CONSIDERATION

This work was anticipated in the adopted 2008 Budget and is within the 2008 Sewer budgeted allocation of \$40,000, Objective Number 3.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Move to: Authorize Consultant Services Contract with Cosmopolitan Engineering Group for the 2008 NPDES Permit Water Quality Studies in the not to exceed amount of Thirty Eight Thousand Five Hundred Twenty-Five Dollars (\$38,525.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
COSMOPOLITAN ENGINEERING GROUP**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Cosmopolitan Engineering Group, a corporation organized under the laws of the State of Washington, located and doing business at 711 Pacific Avenue, Tacoma, Washington 98402 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the water quality sampling, monitoring and report preparation for the NPDES Permit Water Quality Studies 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 March 27, 2008 including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, 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 Thirty Eight Thousand Five Hundred Twenty Five Dollars and Zero Cents (\$38,525.00) 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 March 1, 2009; 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 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 a claims made basis.

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

Consent Agenda - 7

CONSULTANT
Bill Fox, P.E., Principal
Cosmopolitan Engineering Group
711 Pacific Avenue
Tacoma, Washington 98402
(253) 272-7220

Stephen Misiurak, P.E.
City Engineer
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.

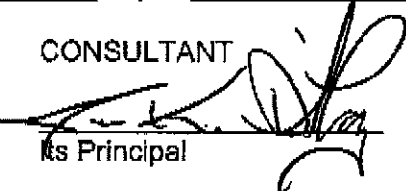
XVIII. Modification

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__.

CONSULTANT
By: 
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
CONSULTANT
Bill Fox, P.E., Principal
Cosmopolitan Engineering Group
711 Pacific Avenue
Tacoma, Washington 98402
(253) 272-7220

Stephen Misiurak, P.E.
City Engineer
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 _____)

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

Dated: _____

(print or type name)

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

My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF 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/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

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

My Commission expires: _____

2008 RECEIVING WATER QUALITY MONITORING PROGRAM**Goal**

This scope of work is intended to satisfy the water quality monitoring requirements included in Section S10 of the NPDES permit for the City of Gig Harbor wastewater treatment plant. The goal of the ambient water quality monitoring program is to provide data that can be used to assess long-term water quality trends in Gig Harbor due to the City's discharge. The sampling program will continue previous monitoring programs designed around critical conditions of phytoplankton algae blooms, and diurnal cycling of dissolved oxygen.

Sampling and Analysis Plan

The study plan approved by Ecology in 2004 shall be used for the 2008 monitoring. The only modifications will be in the dates of the sampling.

Weekly Monitoring

The City shall conduct weekly ambient water quality monitoring between August 1 and September 30. The City may monitor from a dock or other fixed structure that extends into the harbor within 1,000 feet from the outfall. Parameters measured weekly shall include temperature, dissolved oxygen, pH, and Secchi disk. Temperature, pH and dissolved oxygen shall be measured 1 ft below the water surface and 3 ft above the bottom. Monitoring shall be conducted between 2 p.m. and 3 p.m. each day. Cosmopolitan shall assist the City in planning and mobilizing for this sampling program.

Monthly Monitoring

Schedule. Cosmopolitan shall conduct three comprehensive water quality sampling events in 2008, one each in August, September and October. Monitoring for the August and September events shall be conducted as close to critical conditions as reasonably possible. The weekly monitoring described above shall be used to identify the critical conditions, which are defined as phytoplankton blooms, and indicated by elevated surface temperature, pH, dissolved oxygen saturation, and reduced water clarity (*i.e.* reduced Secchi disk readings). The monthly ambient sampling of marine waters shall be conducted between noon and 3 p.m. each event. The October sampling shall be conducted during the final week in October.

Sampling Stations. Sampling shall be conducted at the same five monitoring stations as in previous NPDES permits:

1. Colvos Passage
2. Near Jerisich Dock
3. Near the Outfall
4. Crescent Creek
5. WWTP

Sampling Requirements.

Stations 1 through 3 shall be sampled in each event for the field and laboratory analytes specified in Section S10 of the NPDES permit. Conductivity, temperature and depth

profiles will be obtained with a Sea-Bird Model SBE-19 Seacat Profiler. Stations 4 and 5 shall be sampled for the analytes specified in Section S10. PSEP protocol shall be followed in the collection and handling of water samples.

Continuous Dissolved Oxygen Monitoring

Cosmopolitan shall conduct continuous dissolved oxygen monitoring of near-bottom water at or near the same station visited in the weekly monitoring. Monitoring shall be conducted twice annually, in August and September. The measuring instrument shall be a Seabird SBE-16DO, Hydrolab, or equal approved by Ecology. The continuous monitoring station shall be mounted three feet above the bottom. Measurement frequency shall be a maximum of 30 minutes. The monitoring instrument shall be deployed for a minimum of two weeks each deployment, and shall include the dates of the monthly monitoring described above. Twice-weekly CTD/DO profiles with the SBE-19 shall be collected at the same station and depth during the deployment. The SBE-19 DO probe shall be immersed in a saturation bath adjacent to each profile. This data shall be used for calibration of the instrument and to check for instrument drift.

Reporting

The results of all field studies will be prepared for submittal to Ecology as specified in the permit. The weekly monitoring data furnished by the City shall be presented as a series of temperature profiles. A narrative section will summarize the temperature and pH trends and justify the identified critical condition for the water quality sampling.

The 2008 water quality sampling results for conventional parameters shall be presented in the same table format as the 1997-2007 results. Figures showing the 2008 results in a timeline with past data shall also be presented.

Two copies of the report shall be submitted to Ecology by February 15, 2009. Two additional copies shall be submitted to the City of Gig Harbor for their records.

EXHIBIT B - SCHEDULE OF RATES AND ESTIMATED HOURS

NPDES Permit Section S12 Water Quality Sampling - Year 2008

LABOR

Task	Name: Principal		Name: Engineer III		Name: Tech/CAD		Task Subtotal
	Rate: \$	Hrs	Rate: \$	Hrs	Rate: \$	Hrs	
1. Sampling and Analysis Plan	\$0		\$0		\$0		\$0
2. Weekly Sampling	\$0		\$0		\$0		\$0
2. Monthly Sampling Events	\$3,600	24	\$8,640	72	\$0		\$12,240
3. Continuous DO Deployments	\$0		\$0		\$1,200	12	\$1,200
4. Draft and Final Report	\$600	4	\$2,400	20	\$1,200	12	\$4,200
Subtotal		28	\$4,200	92	\$11,040	24	\$17,640

LABOR SUBTOTAL: \$17,640

DIRECT COSTS

Item	Quantity	Unit	Unit Cost	\$
Boat and Operator - RME	3	events	\$1,025	\$3,075
Sample Equipment (bottles, GPS, CTD, etc.)	3	events	\$350	\$1,050
Oceanography Lab - UW	3	events	\$380	\$1,140
Conventional Lab - Spectra	3	events	\$140	\$420
Continuous DO Deployments - RME	4	weeks	\$3,800	\$15,200
				\$0

DIRECT SUBTOTAL: \$20,885

TOTAL COST: \$38,525



Business of the City Council
City of Gig Harbor, WA

Subject: Banking Services Contract Extension

Proposed Council Action: Approve extension of the current banking services contract with Bank of America

Dept. Origin: Finance

Prepared by: David Rodenbach, Finance Director

For Agenda of: April 14, 2008

Exhibits: Contract Extension Letter, original Banking Services Agreement

Initial & Date

Concurred by Mayor: _____

Approved by City Administrator: _____

Approved as to form by City Atty: _____

Approved by Finance Director: DR 4/16/08

Approved by Department Head: _____

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required. Values are 0, 0, 0.

INFORMATION / BACKGROUND

The city issued a Request for Proposal for banking services in December 2003. As a result, an agreement for banking services was signed with Bank of America on March 23, 2004.

The current agreement has a four year term and expires March 23, 2008. The bank has offered to renew the existing contract for another three years with the same terms and conditions that were established in the original contract. There will be no increase in pricing.

Bank of America has provided excellent service to the city throughout the term of the contract.

The City Attorney has reviewed and approved this agreement.

FINANCIAL

Throughout 2007 the city spent an average of \$400 per month on banking services.

RECOMMENDATION

I recommend approval of the contract extension continuing with Bank of America as the City of Gig Harbor's banking services provider through March 23, 2011.



Government Banking

Tana Aardal
Senior Vice President

Tel 206.358.8935
Fax 206.358.8818
tana.r.aardal@bankofamerica.com

March 24, 2008

Mr. David Rodenbach, CPA
Finance Director
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

RE: Banking Services Agreement

Dear Dave:

Thank you for continuing to bank with Bank of America. We are happy to renew the existing banking services agreement for an additional three (3) years from its maturity of March 23, 2008 to March 23, 2011.

The same terms and conditions that were established in the original agreement continue to remain in effect, and with no increase in pricing. Please sign and return this letter and keep the second original for your records.

We value our business relationship with City of Gig Harbor and will continue to work with you in developing new electronic ideas that support the County's objective to deliver quality services and efficient operations at a reasonable cost.

Thank you for your friendship and for banking with Bank of America. Your bank team and I are delighted we will continue working together!

Sincerely,

Tana Aardal
Senior Vice President

City of Gig Harbor

(Signature)

By: _____
(Name)

Its: _____
(Title)

Agreement for Government Banking Services

This agreement for Government Banking Services (the "Agreement") is made as of this 23rd day of March, 2004 between the City of Gig Harbor, a Washington municipal corporation (the "City") and Bank of America, N.A., a national banking association organized under the laws of the State of North Carolina, with its principal executive offices located at 100 North Tryon Street, Charlotte, North Carolina 28255 (the "Bank").

WHEREAS, City issued a Request for Proposal ("RFP"), for providing banking services identified in Exhibit 'A' (the "Services"); and

WHEREAS, the Bank was the successful bidder under the RFP, having submitted its bid response dated December 30, 2003 (the "Bid Response"); and

WHEREAS, the parties wish to enter into this Agreement for the purpose of specifying the term and constituent documents of the agreement between City and Bank regarding the Services;

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties hereby agree as follows:

1. Integrated Agreement. The entire and integrated agreement between City and Bank related to the Services shall consist of this Agreement, Bank's service-level agreements in connection with the Services (including their respective user documentation and set-up forms), Bank's Bid Response and City's RFP as modified by the Bid Response. In the event of conflict among any of the preceding documents, such documents shall govern in the following order of precedence: (1) this Agreement, (2) Bank's service-level agreements (including but not limited to Terms and Conditions, Commercial Card, Account Signature Card, and Safe Deposit box user documentation and set-up forms), (3) the Bid Response and (4) the RFP. The integrated agreement supersedes all prior negotiations, representations, statements and agreements, whether written or oral, regarding the Services, and modifies the "General Matters" Section of the Terms and Conditions, page 37, consistent with this paragraph.
2. Compensation. City shall compensate Financial Institution for such services as in accordance with the amounts specified in Exhibit 'B', which is attached hereto and incorporated herein by this reference.
3. Commencement of Performance. Except as otherwise agreed by the parties, Bank shall begin performing each Service upon execution and delivery of this Agreement, the pertinent service-level agreement and the related set-up forms. Bank shall continue to perform such Services during the term of this Agreement.

4. Term. This Agreement is for an initial term of four (4) years. The Agreement may be extended by a written agreement signed by the duly authorized representatives of the parties.
5. Government Banking Services. The City will indemnify Bank of America against and hold the Bank harmless from and defend against any and all liabilities, claims, costs, expenses and damages of any nature (including Legal Expenses) arising out of or relating to disputes or legal actions filed or brought by parties other than the Bank and the City concerning any service provided (or allegedly not provided) to the City.

The parties agree to replace the contents of the section 'Resolution of Disputes' on page 41 of the Terms and Conditions, and to replace it with the following:

Any dispute or controversy arising from the Agreement for Governmental Banking Services and the documents incorporated therein shall be filed in Pierce County Superior Court or the U.S. District Court of Washington, Western District. The Agreement for Governmental Banking Services shall be governed by and construed in accordance with the laws of the State of Washington.

Any software license granted to the City under this Agreement are governed by and interpreted according to the laws of the State of Washington.

6. Notices. Except as may otherwise be specified in the applicable service-level agreement or set-up form, notices to City and Bank shall be sent to the addresses set forth below:

City: City of Gig Harbor
Attn: Finance Director
3510 Grandview Street
Gig Harbor, WA 98335

Bank: Bank of America
Attn: Kerrin Gibbons
800 Fifth Avenue, 34th Floor
Seattle, WA 98104

Changes in the respective address set forth above may be made from time to time by any party upon written notice to the other party.

In witness whereof, the parties have executed this Agreement as of the date first written above.

City of Gig Harbor:

By: 
[Signature]

Name: Gretchen Wilbert

Title: Mayor

BANK OF AMERICA, N.A.

By: 
[Signature]

Name: Kerrin M. Gibbons
[Type or Print]

Title: Senior Vice President
[Type or Print]

By: 
[Signature]

Name: JUDY L BONHEW
[Type or Print]

Title: VICE PRESIDENT
[Type or Print]



I certify that each signature appearing on the previous page for Client is the true signature of a person authorized to execute the form on behalf of Client, and I further certify that I have full authority to execute this certification. The Bank is entitled to rely upon this certification until written notice of its revocation is delivered to the Bank.

Guidelines for completion:	Who must sign:
If Client is a:	
corporation.....	any authorized officer, except it may not be the same officer who signed the Authorization and Agreement
limited liability company.....	any member or any authorized officer
limited liability partnership.....	any general partners
partnership.....	any general partners
sole proprietorship.....	no signature required
governmental entity.....	the entity's counsel, or others permitted by the entity's organizational documents
Note: If Client is not a U. S. legal entity, it is not required to complete this certification.	

Dated: March 26, 2004

City of Gig Harbor
[CLIENT'S LEGAL NAME]

By: *Gretchen Wilbert*
[Signature]

Name: Gretchen Wilbert
[Print or Type]

Title: Mayor
[Print or Type]



Authorization and Agreement for Treasury Services

I am an authorized representative of the organization specified below (the "Client"). The Client has received Bank of America's Treasury Services Terms and Conditions Booklet (the "Booklet") and agrees to adhere to the Booklet and any applicable User Documentation from Bank of America ("Bank"). The Services covered by the Booklet are listed on the accompanying List of Banks and Services, which we may change from time to time. Capitalized terms used in this Authorization and Agreement form, not otherwise defined, have the meanings given to them in the Booklet.

completed any testing or training requirements. The Booklet supersedes other agreements between the Client and the Bank, as described under the General Matters heading in the Booklet, with regard to the provision of Services.

After I sign below on behalf of the Client, the Client may from time to time request the Bank to provide any of the Services described in the Booklet. The Client may begin to use any such Service, subject to the Bank's approval, once the Bank has received from the Client all required and properly executed forms and the Client has successfully

I warrant that the Client has taken all action required by its organizational or constituent documents to authorize me to execute and deliver on behalf of the Client this Authorization and Agreement form and any other documents the Bank may require with respect to a Service. I am authorized to enter into all transactions contemplated by the provision of Services to the Client. These may include, but are not limited to, giving the Bank instructions with regard to Electronic Funds Transfer Services and designating employees or agents to act in the name and on behalf of the Client.

Guidelines for completion:

If Client is a:	Who must sign:
corporation.....	any authorized officer
limited liability company	all members, or any authorized officer*
partnership.....	all general partners*
limited liability partnership.....	the managing partner*
sole proprietorship	the sole proprietor
governmental entity.....	the Treasurer*


*Client's charter or organizational or constituent documents may allow others to sign instead.
Note that in most cases the Client must also complete the Certification form which follows.

Dated: March 26, 2004

City of Gig Harbor
[CLIENT'S LEGAL NAME]

Title: Finance Director
[Print or Type]

Signature

By: 
Name: David Rodenbach
[Print or Type]

Address for Client Notices:
City of Gig Harbor
Finance Director
3510 Grandview St.
Gig Harbor, WA 98335

Address for Bank Notices:
Bank of America Corporation
Documentation Management
P.O. Box 2718
Concord, CA 94527-9904
Fax Number: (925) 675-7131

Telephone No.: 253-851-8136
Fax No.: 253-851-8563

and, if filled in, the following:

Fax No.: _____

Treasury Services Terms and Conditions

AUTHORIZATION AND AGREEMENT FOR TREASURY SERVICES

I am an authorized representative of the organization specified below (the "Client"). The Client has received Bank of America's Treasury Services Terms and Conditions Booklet (the "Booklet") in the form and with the content posted on the website of Bank of America and agrees to adhere to the Booklet and any applicable User Documentation from Bank of America ("Bank"). The Services covered by the Booklet and the banks providing Services are listed on the accompanying List of Banks and Services, which we may change from time to time. Capitalized terms used in this Authorization and Agreement form, not otherwise defined, have the meanings given to them in the Booklet.

After I sign below on behalf of the Client, the Client may from time to time request the Bank to provide any of the Services described in the Booklet. The Client may begin to use any such Service once Bank has approved such use and has received all required and properly executed forms and the Client has successfully completed any testing or training requirements. The Booklet supersedes other agreements between the Client and the Bank, as described under the General Matters heading in the Booklet, with regard to the provision of Services.

I warrant that the Client has taken all action required by its organizational or constituent documents to authorize me to execute and deliver on behalf of the Client this Authorization and Agreement form and any other documents the Bank may require with respect to a Service. I am authorized to enter into all transactions contemplated by the provision of Services to the Client. These may include, but are not limited to, giving the Bank instructions with regard to Electronic Funds Transfer Services and designating employees or agents to act in the name and on behalf of the Client.

Guidelines for completion:

If Client is a:	Who must sign:
corporation	any authorized officer
limited liability company	all members, or any authorized officer*
partnership (general or limited)	any general partner*
limited liability partnership	the managing partner*
sole proprietorship	the sole proprietor
governmental entity	the Treasurer*

* Includes any individual authorized under Client's charter or organizational or constituent documents. The legal name of any member, managing member, manager or general partner who is signing and who is not an individual must appear in the signature block. **Note that in most cases the Client must also complete the Certification form which follows.**

(ORGANIZATION'S/CLIENT'S LEGAL NAME)

Dated

[Signature of Authorized Representative]

[Signature of Authorized Representative, if two are required by Client]

[Print Name of Authorized Representative]

[Print Name of Authorized Representative]

[Print Title of Authorized Representative (include the legal name of any member, managing member, manager or general partner who is signing and who is not an individual)]

[Print Title of Authorized Representative (include the legal name of any member, managing member, manager or general partner who is signing and who is not an individual)]

The following addresses may be used for giving notices in connection with this Booklet except as you or we provide the other different addresses to be used in conjunction with your accounts or particular Services.

Address(es) for Bank Notices:
Bank of America, N.A.
Documentation Management (CA4-706-04-07)
P.O. Box 27128
Concord, CA 94527-9904
Fax No.: (925) 675-7131

Address for Client Notices:

and, if filled in, the following:

Telephone: (____) _____

Telephone: (____) _____

Fax: (____) _____

Fax: (____) _____

AUTHORIZATION AND AGREEMENT CERTIFICATION

I certify that each signature appearing on the previous page for Client is the true signature of a person authorized to execute the form on behalf of Client, and I further certify that I have full authority to execute this certification. The Bank is entitled to rely upon this certification until written notice of its revocation is delivered to the Bank.

Guidelines for completion: This Certification should not be signed by the individual who signed the Authorization and Agreement.

If Client is a:	Who must sign:
corporation	any authorized officer
limited liability company	any member or authorized officer
limited liability partnership	any partner
partnership (general or limited)	any general partner
sole proprietorship	no signature required
governmental entity	the entity's counsel, or any other individual as permitted by the entity's organizational documents

The legal name of any member, managing member, manager or general partner who is signing and who is not an individual must appear in the signature block.

Note: If Client is not a U.S. based entity, it is not required to complete this certification, but must provide authorizing certificates or mandates.

_____ Dated

_____ (ORGANIZATION'S/CLIENT'S LEGAL NAME)

_____ [Signature of Certifying Representative]

_____ [Print Name of Certifying Representative]

_____ [Print Title of Certifying Representative (include the legal name of any member, managing member, manager or general partner who is signing and who is not an individual)]

TREASURY SERVICES DELEGATION OF AUTHORITY FORM

This form is optional and is to be used when you wish to delegate authority to sign various authorization forms to someone other than the person who signed the Authorization and Agreement form in the front of this Booklet.

By signing below, you authorize the incumbent of the specified position listed in Section A or each person listed in section B below, acting alone, to execute documents that we may request, and any amendments or renewals thereof, pertaining to the use of Services, including but not limited to designating one or more persons (which may include himself or herself) authorized to initiate, amend, cancel, confirm or verify the authenticity of instructions to us for Services, whether given orally, electronically or by facsimile instructions, and to revoke any authorization granted to any such person, as he or she deems appropriate. The signer of this form has the same authority described above for each Service with us, unless otherwise specified. We are entitled to rely upon this delegation until written notice of its revocation is received by us.

Guidelines for Completion: Fill out either section A or section B, or both, depending on your needs.

- To delegate authority to any person holding a specific title, fill out section A.
- To delegate authority to specific individuals by name, fill out section B.

For each name or title, indicate "All" in the "Service" column if the person or title has authority to sign documents for all Services which you receive from us. Otherwise, indicate specific Services for which the person or title has authority. For each name or title, indicate the entity or entities for which the person or title has authority to sign documents.

A. TO DELEGATE AUTHORITY TO ANY PERSON HOLDING SPECIFIC POSITIONS

Title	Service	Entity

B. TO DELEGATE AUTHORITY TO SPECIFIC INDIVIDUALS

Name	Service	Entity	Specimen Signature

CLIENT AUTHORIZATION

Client Authorization Instructions: The same person who signed the Authorization and Agreement for Treasury Services form must sign this Treasury Services Delegation of Authority form.

Dated _____

(ORGANIZATION'S/CLIENT'S LEGAL NAME)

[Signature of Authorized Representative]

[Print Name of Authorized Representative]

[Print Title (include the legal name of any member, managing member, manager or general partner who is signing and who is not an individual)]

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INTRODUCTION

Thank you for choosing the Bank of America Corporation group of financial institutions for your worldwide treasury management business needs. We appreciate the opportunity to serve you. If you have any questions about our extensive array of treasury services (including the locations where each service is available) or about this Booklet, please contact your treasury services representative.

Capitalized terms used in this Booklet are defined in the Glossary. The terms "we", "us" and "our" refer to each of the Bank of America Corporation subsidiary banks which provide you a particular Service under the terms of this Booklet. The terms "you" and "your" refer to each Client identified on the Authorization and Agreement for Treasury Services.

This Booklet contains the terms and conditions under which we provide you worldwide treasury services. It is used in conjunction with the Account Agreement which covers account terms and conditions. Please read this Booklet carefully and keep it for your records.

By signing and returning the Authorization and Agreement form in the front of this Booklet, you agree to the General Provisions section of this Booklet (which contains terms and conditions applicable to all Services), except that you agree to the Software License Section of the General Provisions only to the extent we provide you Software in connection with one or more Services. You also agree to those portions of the Treasury Services and Electronic Trade Services sections of this Booklet which contain the specific terms and conditions that relate to the Services we provide to you. If you would like an additional Service, it will be covered by the terms and conditions of this Booklet once we have approved your use of the Service. You may begin using the Service when we have received all required and properly executed forms and you have successfully completed any testing or training requirements.

Whenever you use any of the Services covered by this Booklet, you agree to be bound by these terms and conditions, as amended from time to time, and to follow the procedures in the applicable Materials.

TREASURY SERVICES

We offer a wide variety of treasury services. Each Service has many features and options. Your treasury services representative will be happy to describe these to you and to recommend those that will best meet your needs.

A List of Banks and Services is enclosed with this Booklet. This list includes the names of each Bank of America Corporation subsidiary bank offering Services under this Booklet and the names under which we currently offer those Services. Please contact your treasury services representative at any time if you wish to receive an updated list.

ACCOUNT RECONCILEMENT

Our Account Reconciliation Services will help you reconcile and manage the credit and debit activity in your accounts. Detailed information regarding such Services is available in the applicable User Documentation.

Your use of an Account Reconciliation Service does not affect any of your obligations, which are described in the applicable Account Agreement, to discover and report with respect to your accounts (including joint accounts where permitted): (i) unauthorized signatures, alterations or endorsements on checks and (ii) unauthorized Requests and other discrepancies. Your use of this Service or our receipt of information associated with this Service does not increase our duty with respect to accounts or the payment of checks.

AUTOMATED CLEARING HOUSE (ACH)

This section applies only to ACH Services within the United States of America and does not apply to cross-border ACH transactions and other International Electronic Funds Transfers which are covered by the "Wire Transfers and International Electronic Funds Transfers" section in this Booklet.

Our ACH Services allow you to transfer funds to or from your accounts by initiating Entries which may be sent through the ACH system or processed directly to accounts with us.

We may send Entries to any ACH processor selected by us or directly to another bank. Each ACH Service is described in the applicable User Documentation. You authorize us to issue Depository Transfer Checks (DTCs), as instructed by you or as reasonably determined by us to be appropriate. The capitalized ACH terms appearing in italics below are defined in the NACHA Rules.

COMPLIANCE WITH NACHA RULES AND LAWS

You agree to comply with the NACHA Rules for all Entries, whether or not an Entry is sent through the ACH network. You act as *Originator* and we act as *Originating Depository Financial Institution (ODFI)* with respect to Entries. You will deliver Entries to us as provided in the User Documentation and the NACHA Rules. The NACHA Rules govern if they conflict with this Booklet, except that the file specification requirements in the User Documentation govern if they conflict with the NACHA Rules.

Where a preauthorized debit Entry from a consumer's account varies in amount from the previous debit Entry, you will comply with the notice requirements set forth in the NACHA Rules, the Electronic Funds Transfer Act and Regulation E of the Board of Governors of the Federal Reserve System, as applicable.

AUTHORIZED PERSONS

Before using an ACH Service, you give us a written list, in a form acceptable to us, of the persons authorized by you to verify the authenticity of Entries and Reversal/Deletion Requests in accordance with the Security Procedure and to perform certain other duties in connection with such Service.

SECURITY PROCEDURE

You agree to use the Security Procedure, if any, when you deliver Entries or Reversal/Deletion Requests to us. The purpose of the Security Procedure is to verify the authenticity of Entries and Reversal/Deletion Requests delivered to us in your name and not to detect any errors in the transmission or content of Entries. Each time you use a Service, you represent and warrant that, in view of your requirements, the Security Procedure is a satisfactory method of verifying the authenticity of Entries and Reversal/Deletion Requests. You agree we may act on any Entries or Reversal/Deletion Requests after we have verified its authenticity through use of the Security Procedure.

WARRANTIES

Each time you use an ACH Service, (i) you warrant that you have obtained appropriate authorization from each *Receiver* and that Entries conform to such authorization and comply with the NACHA Rules, and (ii) you make the same warranties to us as we make under Section 2.2 (or any successor section) of the NACHA Rules.

PAYMENT WITH RESPECT TO ENTRIES

We generally debit your account on the settlement date for credit Entries (including debit Reversals), unless you are prefunding your Entries. Prefunding means that you are required to pay for all credit Entries before the settlement date as we may specify. We may, at our discretion, without prior notice to you, require prefunding before we process your credit Entries. We are not obligated to process any credit Entries, even if we have done so in the past, without having first been paid by you, but, if we do, the amount is immediately due and payable without notice or demand.

You will pay us for the amount of any returned debit Entries (including rejected debit Entries), any adjustment Entries or any returned DTCs, which we have previously credited to your account. Such amounts shall be immediately due and payable. You agree that we do not need to send a separate notice of debit Entries or DTCs which have been returned unpaid. You may request reports containing information regarding returned debit Entries and DTCs.

ACTING ON ENTRIES

We send Entries to the ACH processor for settlement on the Effective Entry Date shown on the Entries, if we receive the Entries by the applicable processing deadlines specified in the User Documentation for the ACH Service being used. We may treat Entries that we receive for processing after a deadline as if received on the next Business Day. Entries

will be deemed received by us when we receive the complete file at the location specified in the User Documentation.

REJECTION OF ENTRIES

We may reject any Entry that does not comply with the requirements of this Booklet or the applicable User Documentation, including any ACH processing limits described in the User Documentation, or that we are unable to verify through use of the Security Procedure. We may also reject any Entry that may be returned for any reason under the NACHA Rules or if you have breached your payment obligations for any ACH Service we provide to you.

Notice of rejection will be given to you by telephone, by electronic means, by facsimile or by mail within the time period specified in the User Documentation and will be effective when given. We are not liable for the rejection of any Entry and are not obligated to pay you interest for the period before you receive the notice of rejection. If an Entry is rejected for any reason, it is your responsibility to correct the Entry you intend to resubmit.

REVERSAL OR DELETION

We have no obligation to cancel or amend any Entry after we have received it. If you send us a Reversal/Deletion Request and we are able to verify the authenticity of the Reversal/Deletion Request using the Security Procedure, we will make a reasonable effort to act on your Reversal/Deletion Request. We will not be liable to you if such Reversal/Deletion Request is not effected. You agree to indemnify us in connection with any such Reversal/Deletion Request as provided in UCC 4A. Your obligations under this provision will survive the termination of any ACH Service.

PROVISIONAL PAYMENTS

You agree to be bound by the provision of the NACHA Rules providing that payment of a credit Entry by the *Receiving Depository Financial Institution (RDFI)* to the *Receiver* is provisional until the *RDFI* receives final settlement for the Entry. If final settlement is not received, the *RDFI* is entitled to a refund from the *Receiver* of the amount credited. This means that the *Receiver* will not have been paid.

Our payment of any debit Entry, returned credit Entry or credit Reversal is provisional until we receive final settlement for the Entry or Reversal. If final settlement is not received, we are entitled to a refund and we may charge your account for the amount previously credited. We may delay the availability of any amount credited for a debit Entry or credit Reversal if we believe that there may not be sufficient funds in your account to cover any chargeback or return of the Entry or Reversal.

INCONSISTENCY OF NAME AND NUMBER

An *RDFI* can make payment to a *Receiver* based solely on the account number, even if the name in the Entry differs from the name on the account. We will send an Entry to an *RDFI* based solely on the bank identifying number you provide, even if you provide us with a different *RDFI* name.

NOTICE OF ACCOUNT STATEMENT DISCREPANCIES

Information concerning Entries will be reflected in your account statements and, in some cases, in the form of written or electronic advices or reports that are produced by one of our Information Reporting Services. You must send us written notice, with a statement of relevant facts, within 14 days after you receive the first notice or statement indicating a discrepancy between our records and yours. If you fail to give the required notice, we will not be liable for any loss of interest or for compensation for any other loss or cost relating to an unauthorized or erroneous debit to your account or any other discrepancy reflected in the notice or account statement. You must notify us promptly by telephone or other electronic means approved by us for such purpose, and confirm such notice in writing, of information concerning an unauthorized or erroneous debit to your account if you learn about or discover it from any source other than a statement, advice or report from us.

AUTOMATED CLEARING HOUSE (ACH) BLOCKS AND FILTERS

This section applies only to ACH Blocks and Filters Services for Entries received in the United States of America.

With the ACH Blocks and Filters Services, you provide us with the authorization criteria for Entries you desire to receive for debit or credit to your account. We will automatically return any Entry which does not meet your authorization criteria.

We may also return an Entry that would be returned for any reason under the NACHA Rules. The ACH Blocks and Filters Services do not apply to transactions between you and us, and we may pay Entries which you have authorized us to originate against your account (e.g., loan or credit card payments), whether or not you have included these in your authorization criteria. We may also pay any Entries, reversals or adjustments which we are required to accept under the NACHA Rules, operating circulars or any other applicable rule, guideline or regulation.

You provide authorization criteria in a manner and form acceptable to us. In your authorization criteria you may specify a maximum amount for authorized Entries, in which case you must specify the amount in dollars and cents.

You agree to comply with the NACHA Rules for all Entries. Under the NACHA Rules, credit Entries are provisional and may be revoked prior to final settlement. If the credit Entry is revoked before final settlement and final settlement is not received, we may charge your account for any amount previously credited to your account. The person who originated the credit Entry is considered not to have paid you. If this happens, we do not send a separate notice.

If an ACH Blocks and Filters Service is terminated for any reason, we will no longer be obligated to monitor Entries against your authorization criteria and will receive and accept or return Entries to your account in accordance with our normal procedures. You still have the right to return Entries in accordance with the NACHA Rules.

AUTOMATED CLEARING HOUSE (ACH) CUSTOMER-INITIATED PAYMENTS

Our ACH Customer-Initiated Payments service allows your consumer or business customers to pay you for goods or services by using your website. Your customers can authorize payments to you through commands on your website or by touch-tone or voice commands on the telephone. Detailed information regarding this Service is available in the applicable User Documentation.

Payments will be made by creation of an ACH Entry to credit your account with us and will be subject to the provisions of our Automated Clearing House Services. You act as the *Originator*, your customer acts as the *Receiver* and we act as the *ODFI* with respect to the Entries. You warrant that you have obtained appropriate authorization from each *Receiver* and that Entries conform to such authorization and comply with the NACHA Rules. You also make to us the same warranties as we make with respect to Entries under the NACHA Rules.

CASHPAY®

Our CashPay® Service allows you to pay your employees and other payees by directly depositing payments to their CashPay accounts. Your payees can immediately access their money through ATMs and point of sale (POS) terminals.

CASHPAY FUNDING OPTIONS

You may fund the CashPay accounts in one of two ways: by initiating Entries through the Automated Clearing House (ACH) system or, upon our approval, by instructing us to transfer funds from a deposit account you maintain with us. (ACH Services are governed by the ACH section of this Booklet.)

If you choose to pay by the transfer of funds from your account with us, we will debit your account following receipt of your payment instructions in a mutually agreed-upon format and method. You must have sufficient Collected and Available Funds in your account to cover the transfer amount. In the event that sufficient funds are not available at the time of settlement, you agree that we may take steps to protect ourselves, including refusing to fund CashPay accounts and terminating the CashPay Service (which will not affect funds previously transferred to CashPay accounts), without incurring any liability to you or your payees.

CERTIFICATION OF ENROLLMENT INFORMATION

You must provide us information for each payee who wishes to open a CashPay account. Each time you provide us with such information or initiate a transfer of funds to a CashPay account, you certify that the following statements are true and accurate as of such date:

- The payee is entitled to receive payments issued by you, and is otherwise qualified to participate in the CashPay program.
- All information provided by you about the payee is correct, including but not limited to the payee's date of birth, address, and social security number or other identifying

information contained in another form of identification issued by a governmental entity.

- If the payee is to receive wage payments through a CashPay account, the payee is legally employable in the United States of America.
- You have provided the payee the explanatory CashPay Service information that we have provided to you for that purpose, and the payee has authorized the transfer of wages to the CashPay account.
- The payee has not cancelled the authorization to transfer the wages to the CashPay account.

You agree to notify us promptly of any changes to the payee enrollment information you have provided to us for this Service.

ADDITIONAL LIMITATION OF LIABILITY

As a general rule, ATMs cannot dispense cash in increments other than \$5, \$10 or \$20. This means that your payees may not be able to withdraw at an ATM all funds paid by you to the payees' CashPay accounts. We will wire the difference to any payee who requests such payment; however, we will not be responsible if your payees or others assert a claim against us due to this inability to withdraw all funds at an ATM.

PROMOTIONAL MATERIALS

We will provide you with a CashPay agreement and other explanatory documentation for you to give your payees. You must obtain our prior written consent if you elect to promote the CashPay service using materials (in any format) other than the documentation we provide to you for that purpose.

CHECK ISSUANCE

With our Check Issuance Services, you may request us to create checks on your behalf that are drawn on either (i) accounts maintained by you with us or another bank or (ii) accounts designated and owned by us.

AUTHORIZED PERSONS

Before using a Check Issuance Service, you give us a written list, in a form acceptable to us, of the persons authorized by you to perform certain duties in connection with such Service.

SECURITY PROCEDURE

You agree to use the Security Procedure when you deliver Check Issuance Requests or electronically transmit Stop Payment Requests to us. The purpose of the Security Procedure is to verify the authenticity of Check Issuance Requests and Stop Payment Requests delivered to us in your name and not to detect any errors in the transmission or content of these messages. Each time you use a Check Issuance Service, you represent and warrant that, in view of your requirements, the Security Procedure is a satisfactory method of verifying the authenticity of Check Issuance Requests and such Stop Payment Requests. You agree we may act on any Check Issuance Request and any electronically

transmitted Stop Payment Request the authenticity of which we have verified through use of the Security Procedure.

STOP PAYMENT REQUESTS

Generally, you may send us a Stop Payment Request with respect to a check drawn on an account designated and owned by us only if the check is lost, stolen or destroyed. In such case, you must complete and provide us with a declaration of loss and indemnity agreement reasonably acceptable to us. If you wish to stop payment on a check drawn on an account you maintain with us, you must make your request as provided in the applicable Account Agreement.

YOUR RESPONSIBILITIES

You must create and transmit to us a Check Issuance Request for each check you want us to issue on your behalf. You must make certain that each Check Issuance Request conforms in form and substance to the requirements, including cutoff times on a Business Day, described in the applicable User Documentation.

You must retransmit any Check Issuance Request or other message initially transmitted to us through a Service if you have not received an acknowledgment message from us within the time period specified in the applicable User Documentation.

In the case of checks drawn on accounts designated and owned by us, you must ensure that Collected and Available Funds, sufficient to cover the total of all checks issued, are on deposit in your accounts. We will debit your account to cover such checks when we receive your Check Issuance Request. In the case of checks drawn on accounts designated and owned by you, you will be governed by the applicable Account Agreement.

CHECK TRUNCATION

With our Check Truncation Service, we store copies of your canceled checks on microfilm or other media and destroy the checks. You do not receive your canceled checks. We will provide a copy of any check that you request for up to seven years from the date the check was paid against your account. To request a copy, you must provide us with sufficient information for us to identify the item, including the Magnetic Ink Character Recognition (MICR) serial number, account number, exact amount (dollars and cents) of the check, statement reference number, if any, and posting date. We may also ask you for additional identifying information.

Special services such as microfilm or review of dates, dollar amounts, serial numbers or signatures may not be available in connection with the Service.

Notwithstanding the Limitation of Liabilities section of this Booklet, if we are unable to provide a copy of a check as requested by you under a Service, our liability will be limited to your actual damages but will not, in any event, exceed the amount of the check.

CLIENT-PRINTED DRAFTS

With our Client-Printed Drafts Services, you use your computer (using Software we provide or by accessing our treasury management website) to print drafts (which may include drafts denominated in a currency other than the currency in which the relevant account is denominated) drawn on either (i) accounts maintained by you with us or another bank or (ii) accounts designated and owned by us.

AUTHORIZED PERSONS

Before using a Client-Printed Drafts Service, you give us a written list, in a form acceptable to us, of the persons authorized by you to perform certain duties in connection with such Service.

SECURITY PROCEDURE

You agree to use the Security Procedure when you deliver Payment Advices or electronically transmit Stop Payment Requests to us. The purpose of the Security Procedure is to verify the authenticity of Payment Advices and Stop Payment Requests delivered to us in your name and not to detect any errors in the transmission or content of these messages. Each time you use a Client-Printed Drafts Service, you represent and warrant that, in view of your requirements, the Security Procedure is a satisfactory method of verifying the authenticity of Payment Advices and such Stop Payment Requests. You agree we may act on any Payment Advice or electronically transmitted Stop Payment Request the authenticity of which we have verified through use of the Security Procedure.

STOP PAYMENT REQUESTS

Generally, you may send us a Stop Payment Request with respect to a draft drawn on an account designated and owned by us only if the draft is lost, stolen or destroyed. In such case, you must complete and provide us with a declaration of loss and indemnity agreement reasonably acceptable to us. If you wish to stop payment on a draft drawn on an account you maintain with us, you must make your request as provided in your Account Agreement.

YOUR RESPONSIBILITIES

You must verify the contents of each shipment of blank draft stock and sign and return to us the receipt accompanying each shipment or notify us of any discrepancy. You must notify us immediately if any draft stock is lost or stolen. You will be liable for any damages arising out of the loss or theft of any draft stock received by you.

You must create and transmit to us a Payment Advice for each draft you issue using a Service. You must make certain that each draft, Payment Advice and electronically transmitted Stop Payment Request conforms in form and substance to the requirements, including cutoff times on a Business Day, described in the applicable User Documentation.

You must retransmit any Payment Advice, electronically transmitted Stop Payment Request or other message initially transmitted to us through a Service if you have not received an acknowledgment message from us within the time period specified in the applicable User Documentation.

OUR RESPONSIBILITIES

When we receive the Payment Advice, we will transfer funds from your account with us to the bank account on which the draft is drawn.

We will provide you with blank draft stock and with the necessary Software and/or access to our treasury management website.

PAYMENT WITH RESPECT TO DRAFTS

You agree you will not issue any drafts using a Service which would cause your applicable account balance, according to your records, to be exceeded. If your records and ours disagree regarding the account balance, our records will control for purposes of these Services. You must ensure that Collected and Available Funds, sufficient to cover the total of all drafts issued, are on deposit in your account each Business Day before the time stated in the applicable User Documentation.

COIN AND CURRENCY ORDERS

Our Coin and Currency Order Services allow you to place orders for coin and currency with our cash vaults and, where available, to exchange paper currency for rolled coins and currency at certain banking centers or our automated business centers.

Before using a Coin and Currency Order Service, you give us a written list at our request, in a form acceptable to us, of the persons authorized by you to place coin and currency orders and to perform certain other duties in connection with a Service.

If you pick up your coin and currency order from one of our cash vaults, you must contract separately with an armored carrier service that is acceptable to us to provide for the transportation of cash orders. Armored carriers are your agents.

You authorize us to act upon any request for coin or currency made in accordance with this Booklet and the procedures described in the applicable User Documentation.

In connection with any coin and currency you order from our cash vaults using a Service, you authorize us to debit your account on the day the coin and currency order is released to your authorized agent or to the depository facility you and we have agreed upon. Each time you use a Coin and Currency Order Service, you represent and warrant with each coin and currency order that you have sufficient Collected and Available Funds in your account which, when added to funds that are available under a line of credit, are sufficient to cover your coin and currency order. We have no obligation to release a coin and currency order unless there are sufficient Collected and Available Funds in the designated account and available under a line of credit to pay for such order at the time scheduled for release of the cash to you or your agent.

COLLECTION LETTERS

Our Collection Letter Services allow you to forward us drafts, checks and travelers checks (as used in this section, "items") drawn on Canadian banks and denominated in U.S.

dollars or drawn in specified foreign currencies (as described in the applicable User Documentation) for collection.

You must prepare and forward a transmittal letter, in a form acceptable to us, along with those items you want us to process for collection in accordance with the applicable User Documentation. You agree that you will only request collection on items which are drawn on Canadian Banks in U.S. dollars or foreign currency items drawn in currencies specified in the applicable User Documentation.

We will send each item you forward to us for collection to the bank on which such item was drawn or to an appropriate correspondent bank. We will credit your account for each item on the Business Day on which we receive payment for each such item at our then-prevailing buy rate for the applicable currency. We will deduct all service fees and charges, plus any correspondent bank fees and charges, from the amount of any payment credited to your account for such items.

We will send you a written advice showing the applicable buying rate and fees and charges for each item we process as a collection item through use of a Collection Letter Service.

COMMERCIAL AND CORPORATE CARD

Our Commercial and Corporate Card Services allow you to open Card Accounts for your business purposes, as described below. With our Commercial Card Services, which are designed principally for medium-sized companies, you may obtain a single Card for managing purchases, travel and fleet spending. With our Corporate Card Services, which are designed for large companies, you may obtain separate purchasing, travel or fleet Cards or a Card combining all three functions. Detailed information regarding such services is available in the applicable User Documentation.

OUR OBLIGATIONS

We will open Card Accounts upon your request which Cardholders may use to conduct Transactions for your business. We will assume that all Transactions made on a Card Account are authorized by you until we receive and have had a reasonable period of time to act upon written notice from you that the Cardholder is no longer authorized to use the Card, Convenience Checks or the Card Account. Pursuant to your instructions, each Card Account we open shall have one or more of the following features:

- travel and entertainment
- purchasing
- fleet/automotive

We may also provide Convenience Checks on your request with respect to your Card Accounts. We can also establish a Card Account for which we assign only a Card Account number, but we do not issue a Card or Convenience Checks. If you so request, we will provide to the Cardholder, at the address you or the Cardholder specifies, a monthly billing statement reflecting the use of the relevant Card Account. We may deny

authorization of any Transaction if we suspect fraudulent activity or Unauthorized Use or for any other reason. Notwithstanding anything to the contrary in the "Limitations of Liability" section of this Booklet, we will not be liable for any failure to authorize a Transaction.

YOUR OBLIGATIONS

You shall use each Card Account solely for your business purposes.

You shall pay for each Transaction, regardless of its purpose or whether you signed a sales draft or received a receipt, in addition to our fees and charges.

You represent and warrant to us that each cardholder is a current employee or agent of your company. You will promptly furnish such financial and other information as we request for the purpose of reviewing your ability to perform your obligations to us. You represent and warrant to us that all such information about your employees, agents, or your company is accurate, sufficiently complete to give us accurate knowledge of your financial condition and in compliance with all applicable rules, regulations and laws.

You and each Cardholder will check to ensure that the information embossed on each new Card or printed on each Convenience Check is correct, and you will contact us immediately if there is an error.

CHARGE LIMITS

We will give you one total charge limit for all your Card Accounts. We will also assign an individual charge limit for each Card Account. We may increase or decrease the total charge limit or any individual limit at our discretion. You agree not to incur obligations which would cause the total charge limit for all your Card Accounts to be exceeded. If you do exceed this limit, or if any Cardholder's individual charge limit is exceeded, we may deem the entire balance owing to be immediately due and payable, and/or we may refuse any Transactions on all Card Accounts or the individual Card Account until a payment is made to reduce the balance below the total charge limit or the individual charge limit.

TRANSACTIONS IN OTHER CURRENCIES

MasterCard® or Visa® will convert to U.S. Dollars any charge made in a currency other than U.S. Dollars at a rate determined under MasterCard or Visa regulations, as applicable. The conversion rate may be different than the rate in effect on the date of the Transaction. We will post to the Card Account the converted U.S. Dollar amounts.

DISPUTES WITH MERCHANTS AND SUPPLIERS

We will have no liability for goods or services purchased with, or for a merchant's or supplier's failure to honor purchases made with, a Card Account, Convenience Check or Card. You agree to make a good faith effort to resolve any dispute with a merchant or a supplier arising from a Transaction. In a dispute with a merchant or supplier, we will be subrogated to your rights and each Cardholder's rights against the merchant or supplier and you will assign (and cause the Cardholder to assign) to us the right to assert a billing error against the merchant or supplier. You will, and will cause the Cardholder to, do whatever is necessary to enable us to exercise those rights. We may reverse from any Card Account any Transactions relating to the dispute.

A merchant or supplier may seek prior authorization from us before completing a Transaction. If you advise us in writing that you desire to restrict Transactions to merchants falling within certain categories we designate in our User Documentation, we will take reasonable steps to prevent authorization of Transactions from other types of merchants. We, however, will not be liable to you if merchants or suppliers nonetheless accept a Card, Convenience Check or Card Account for other types of Transactions, or if authorization for a Transaction is not given.

CONVENIENCE CHECKS

If we provide Convenience Checks with regard to a Card Account, they may not be used to make payment on the Card Account. We may pay a Convenience Check and post its amount to the Card Account regardless of any restriction on payment, including a Convenience Check that is post-dated, that states it is void after a certain date or that states a maximum or minimum amount for which it may be written. Once paid, Convenience Checks will not be returned to you or the Cardholder.

If you wish to stop payment on a Convenience Check, you must call us at the customer service number shown on your billing statement and provide such information as we request or is required under the relevant User Documentation. We will stop payment if we receive your request on or before the Business Day before the Business Day on which we would otherwise pay the Convenience Check. The date on which we would pay a Convenience Check may be prior to the date it would post to your Card Account. A stop payment order will remain in effect for up to six months.

CARDLESS ACCOUNTS; ACCOUNTS NOT IN NAME OF INDIVIDUAL

If you use our Corporate Card Services, we may, at your request, establish a Card Account for which no Card is issued or establish a Card Account with a designation which is not an actual individual, including, without limitation, designation of a vehicle identification number, license number, department name or "Authorized Representative" on the Card Account. Notwithstanding any other term in this Booklet, you agree to be solely responsible for the use of any such Card Account, including, without limitation, any Unauthorized Use, and you agree not to make any claim or request related to any Unauthorized Use of such a Card Account.

PAYMENT OF CARD ACCOUNTS; SECURITY INTEREST

We will provide to the Card Administrator, or other person you designate in writing to us, a monthly billing statement which will identify each Transaction posted during the billing cycle and the date of the Transaction. Unless otherwise determined by us, the official billing statement will be in paper, not electronic, form. The billing statement will also list any applicable fees and charges for the Services. If you have requested a Card Account for travel and entertainment Transactions, we will provide an additional copy of the monthly billing statement covering such use of the relevant Commercial Card to the appropriate Cardholder at the address which you or the Cardholder provides to us.

You will pay to us the total amount shown as due on each billing statement on or before the due date shown on the statement. If you do not make a payment in full by the specified due date, in addition to our other rights, we may assess a late fee and finance

charge as set forth in our schedule of fees and charges. You have no right to defer any payment due on any Card Account.

Unless otherwise agreed by us, payments must be made using an ACH service. As specified by you, we may initiate ACH debits to any deposit account at any financial institution. All payments must include the complete Card Account number in order to be processed and for you to be credited with making payment. If you arrange for direct payment by Cardholders, such an arrangement will not change your responsibilities under this Booklet, including your obligation for payment.

You grant to us a security interest and contractual right of setoff in and to all deposits now or subsequently maintained with us or any of our affiliates or Subsidiaries. In connection with that grant, you authorize us to enter into a master control agreement with our affiliates authorizing, upon the occurrence and continuance of any default, the disposition of any such deposits to satisfy all liabilities incurred in connection with these Services, without your further consent. The grant of this security interest shall survive termination of these Services.

LOST OR STOLEN CARDS; UNAUTHORIZED USE

In the event of a possible loss or theft of a Card, Convenience Check or Card Account or possible Unauthorized Use, you will give us notice by telephone or telefax to the numbers set forth in the User Documentation. You agree to give us this notice as soon as practicable but in any event within 24 hours after discovery of the known or suspected loss or theft or Unauthorized Use. If notice as provided in this paragraph is given within the first 24 hours and you assist us in investigating facts and circumstances relating to the loss, theft or possible Unauthorized Use, including without limitation obtaining an affidavit or similar written, signed statement from the Cardholder, then you will not be liable for Transactions resulting from Unauthorized Use. If we have issued fewer than ten Card Accounts to you, your liability for Transactions by a person who does not have actual, implied or apparent authority to use the Card or Convenience Check and whose use does not result in a direct or indirect benefit to you will not exceed \$50 on each Card.

LICENSE TO USE YOUR MARKS

Upon your request, we may place your trademark, tradename, service mark and/or designs ("Company's Marks") on the Cards and collateral materials. You will provide the graphics to us in sufficient time to allow for review and approval by us and, if necessary, the respective card association. You grant to us a non-exclusive license to use, during the term of the Services, Company's Marks on the Cards and on other materials related to the Card Accounts. Your indemnity under the "Protection from Third Parties" section of this Booklet covers any claim that the use of any Company Marks infringes the intellectual property right of any third party.

EXTENSION OF CORPORATE CARD SERVICES TO AFFILIATES

Upon your request and submission of a Participant Account form, we may approve one or more affiliates of which you are majority owner for participation in the Corporate Card Services. Each participating affiliate will have the same rights and obligations as you

except that no separate charge limit will be assigned. Your charge limit will apply to Transactions on all Card Accounts, including those of your participating affiliates.

You may terminate an affiliate's participation by giving us written notice and a reasonable time to act on such notice. If an approved participant is, or will no longer be, majority-owned by you, you agree to notify us immediately, and we may immediately terminate the Card Accounts of such participant.

SUPPLEMENTAL GOVERNING LAW AND RESOLUTION OF DISPUTES PROVISIONS

Notwithstanding anything to the contrary in the Governing Law provision in the General Provisions section of this Booklet, the Commercial and Corporate Card Services are governed by the laws respecting national banking associations and, to the extent not covered by those laws, by the laws of the State of Arizona, without reference to that state's principles of conflicts of law, regardless of where you reside or where a Cardholder uses a Card Account.

Notwithstanding anything to the contrary in the Resolution of Disputes provision in the General Provisions section of this Booklet, you agree to submit to the personal jurisdiction of any state or federal court in Arizona and to binding arbitration in Arizona with respect to disputes regarding the Commercial and Corporate Card Services.

ADDITIONAL TERMINATION PROVISIONS

We may immediately terminate these Services if there occurs (i) a termination event set forth in the "Termination" section of this Booklet with respect to you, a participating affiliate or a guarantor of obligations under any Card Account, (ii) a change in your ownership, if you are a privately-held entity, in excess of 50% or (iii) any of the following with respect to you, a participating affiliate or a guarantor of obligations under any Card Account:

- the failure to pay or perform any obligation, liability or indebtedness to us or any of our affiliates or subsidiaries, whether under this Booklet or any other agreement, as and when due (whether upon demand, at maturity or by acceleration);
- the failure to pay or perform any other obligation, liability or indebtedness to any other party;
- death (if an individual) or resignation or withdrawal of any partner or material owner (of a privately-held entity);
- merger or consolidation with or into another entity;
- the determination by us that any representation or warranty made to any of our affiliates or subsidiaries in any agreement is or was, when it was made, untrue or materially misleading;
- the failure to timely deliver such financial statements, including tax returns, other statements of condition or other information, as we shall request from time to time;
- the entry of a judgment which we deem to be of a material nature;

- the seizure or forfeiture of, or the issuance of any writ of possession, garnishment or attachment, or any turnover order for any property;
- the determination by us that we are insecure for any reason;
- the determination by us that any such person fails to meet credit criteria initially used by us to approve the Card Services; or
- the failure to comply with any law or regulation controlling its operation.

Upon any termination of the Card Services, (i) the entire balance outstanding on all Card Accounts shall, at our option, become immediately due and payable and (ii) you will immediately destroy, and will instruct all Cardholders to immediately destroy, all Cards and Convenience Checks. Your responsibility to pay for all Transactions regarding each Card Account will continue until a reasonable period of time after you notify us to close the Card Account or until you pay for all Transactions entered into before we close the Card Account to future use, whichever occurs later. After termination, you and all Cardholders will make no new Transactions on any Card Account. If, however, such Transactions are made, you will be liable for each of them.

COMMERCIAL DEPOSITS

With our Commercial Deposits Services, you may make deposits of coin and currency, checks and other payment instruments at one of our designated banking centers (which may include an automated business center), depository facilities (which may include a night depository facility), processing centers or cash vaults. If these deposits are delivered by you or your agent before the cutoff time specified in the applicable User Documentation, we will give you same-day provisional credit for such deposits, subject to later verification by us and our availability schedule. Banking center deposits that are immediately verified are covered under your Account Agreement.

YOUR RESPONSIBILITIES

You agree to prepare all deposits accurately and in good faith and to follow the procedures for preparation, packaging and delivery of deposits as provided in the applicable User Documentation.

For deposits made to an automated business center, you will automatically be provided a receipt. In all other cases, in order to receive a receipt of deposit, you must provide a duplicate deposit slip in addition to the number of original deposit slips required by us to process the deposit. We will stamp this duplicate deposit slip and return it to you. In all cases, deposits are subject to later verification by us.

If you use an armored carrier to transport your deposits, you must contract separately with an armored carrier service that is acceptable to us. For deposits made to one of our cash vaults, we may require that you use an armored carrier. Armored carriers are your agents.

OUR RESPONSIBILITIES

We receive your deposit and issue provisional credit to your account for the amount you declare on the deposit slip. The declared amount is subject to later verification by us.

If we find an error when we verify your deposit, we will debit or credit the amount of the error to the deposit account listed on the deposit slip, unless you and we have agreed otherwise in writing; provided, however, we reserve the right to set a standard adjustment amount (which we may change from time to time), in which case we will not make a correction to a deposit when the error is less than our current adjustment amount.

We give you same-day provisional credit for deposits delivered before the cutoff time on a Business Day. For deposits delivered after the cutoff time or on a non-Business Day, we give you provisional credit on the next Business Day.

COMMERCIAL PREPAID CARD

Our Commercial Prepaid Card Services enable you to distribute Commercial Prepaid Cards to your employees and others that permit them access to a predetermined amount of funds. Commercial Prepaid Cards may be used to withdraw cash at any ATM displaying any of the logos displayed on the Commercial Prepaid Card and to make purchases at any merchant displaying the Visa logo. Detailed information regarding such services is available in the applicable User Documentation.

OUR OBLIGATIONS

We will issue Commercial Prepaid Cards to you on your request after you have provided us such information regarding the Commercial Prepaid Card as we may require at that time. Before we issue each Commercial Prepaid Card, we will debit funds from a deposit account you maintain with us for the value amount of the Commercial Prepaid Card issued.

We will mail the Commercial Prepaid Cards to the address or addresses you provide us, together with a copy of the agreement between us and the Cardholder, our privacy policy for consumers (if applicable) and instructions for activating the Commercial Prepaid Card.

We will deduct the amount of each Transaction, which may include fees added by the ATM owner or the applicable network, from the value amount with respect to the Commercial Prepaid Card. We will also deduct applicable Cardholder fees.

You may request us to add value to previously issued Commercial Prepaid Cards by providing such information as we may require at that time. Upon receipt of your request and the required information, we will debit your deposit account with us for the amount to be added to the existing Commercial Prepaid Cards.

If there are insufficient Collected and Available Funds in your account, we have no obligation to issue or activate any Commercial Prepaid Card or to add value to any existing Commercial Prepaid Card.

COMMERCIAL PREPAID CARD CREATION

All Commercial Prepaid Cards shall identify us as the issuer and shall include such other names and trademarks as we require. If you elect to customize the Commercial Prepaid Cards, you will be responsible for any additional costs in the design or production of the Commercial Prepaid Cards. You will provide graphics, promotional material and wording to us for review and approval and you must comply with all the rules of Visa USA, Inc. and other systems or organizations, as applicable. You will allow us to use your artwork on the Commercial Prepaid Cards, provided that you shall have first reviewed and approved such use. You will indemnify and hold us harmless from any and all liabilities, claims, costs, expenses and damages of any nature (including Legal Expenses) arising from any claim that the artwork you supplied infringes the intellectual property rights of any third party.

COMMERCIAL PREPAID CARD ACTIVATION

Each Cardholder will be instructed to call a toll-free (in the U.S.A.) number and use an interactive voice response system to authenticate the Cardholder by using a number unique to the Cardholder in order to activate the Commercial Prepaid Card. During this call, the Cardholder will receive their PIN, if applicable. The Cardholder can change the PIN at that time to any four digit number. Once the call is successfully completed, the Commercial Prepaid Card will be activated. You will be responsible for informing each Cardholder of any other restrictions you may impose on the use of the Commercial Prepaid Card, and we will not have any responsibility for enforcing those restrictions.

COMMERCIAL PREPAID CARD USAGE

We may refuse to issue or add value to any Commercial Prepaid Card if we believe the Commercial Prepaid Card will or may be used in violation, or may cause us to be in violation, of any law or regulation, or any rule of any payment system.

We will use reasonable efforts to prevent any overdraft with respect to a Commercial Prepaid Card or any unauthorized use of a Commercial Prepaid Card, but cannot ensure we will be able to do so. You will reimburse us for the amount of any overdraft or for the amount of any loss resulting from such unauthorized use.

The value amount on any Commercial Prepaid Card does not constitute a deposit account, is not insured by the Federal Deposit Insurance Corporation or any other government agency, and does not accrue interest for your benefit or the benefit of the Cardholder.

CONTROLLED BALANCE ACCOUNTS

Our Controlled Balance Accounts Services let you control the transfer of funds between accounts with us. These Services may be restricted to certain account types.

Transfers you make from a U.S.-domiciled money market account using these Services are considered preauthorized transfers, are counted toward the number of transactions you are legally permitted each month, and may not be made to a checking account with an overdraft credit facility.

You may instruct us to make either date-related (where available) or balance-related (where available) transfers as described below. Once you instruct us to transfer funds between accounts, transfers begin on a mutually agreeable date or, for accounts domiciled in the United States of America, either immediately or on the date you specify.

With a date-related transfer, funds can be transferred in either direction between certain types of accounts on the date and in the amount you specify. Both interstate and intrastate funds transfers are permitted as long as you meet the requirements for the account type(s), transfer date and account location(s). If the transfer date you specify is a non-Business Day, we make the transfer on the next Business Day.

With a balance-related transfer, you may have funds transferred to an account when the balance falls below a certain amount, or from an account, when the balance rises above a certain amount, or both. We transfer the amount required to meet the account balance you specify.

You may elect to have funds transferred to or from accounts of another company/ organization using a Service. You agree that for each such account, the company/ organization will provide us with its written authorization, in a form acceptable to us, for such transfers. However, you do not need to provide us such written authorization if (i) the other company's accounts are domiciled in the United States of America and (ii) you represent and warrant that such other company is a U.S. Subsidiary and that it has authorized us to transfer funds between its accounts and your accounts.

CONTROLLED DISBURSEMENT

Our Controlled Disbursement Services provide information to you each Business Day so that you can fund the total amount of (i) controlled disbursement checks presented that Business Day and (ii) where the option is available, controlled disbursement ACH debits and any other electronic debits to which we agree and which are posted that Business Day.

ACCOUNTS

We make the Controlled Disbursement Services available through multiple Controlled Disbursement Points in different parts of the United States of America. These Points are identified on the List of Banks and Services. Subject to our approval in each case, you may use such Service through one or more of those Points. For each Controlled Disbursement Point you use, you maintain one or more Deposit Accounts with us.

For certain Controlled Disbursement Points, as more fully described in the applicable User Documentation, you may (i) draw checks bearing those respective Points' routing numbers directly on a Deposit Account and (ii) where the option is available, initiate or authorize third parties to initiate ACH debits and, subject to special agreement, other electronic debits to the Deposit Account. (For electronic debits to a Deposit Account, you must use the appropriate funds transfer Service approved by us.)

For a certain other Controlled Disbursement Point, we authorize you to draw checks on accounts we maintain at such Point, then we debit your Deposit Account(s) in the

amount(s) of the checks which are paid. With these Services, you have no account or contractual relationship with such Controlled Disbursement Point. You will not access our accounts maintained at such Point in any other manner, including but not limited to automatic debit arrangements cleared through an automated clearing house network or through wire transfers.

On each Business Day, we will inform you by the time specified in the applicable User Documentation of the total amount of debits presented for payment that day at or through a Controlled Disbursement Point and any other amounts required to be deposited in the corresponding Deposit Account(s) to cover such debits. On each such Business Day, prior to the time stated in the applicable User Documentation, you must ensure that sufficient Collected and Available Funds are on deposit in the Deposit Account(s) to cover such amounts. If we attempt to post a debit to a Deposit Account for the amount due and determine there are insufficient funds in the Deposit Account, we may dishonor or instruct the pertinent Controlled Disbursement Point to dishonor some or all of the checks then pending payment and/or, as appropriate, return or reject any electronic debit pending settlement. We may, however, in our sole discretion, allow an overdraft so some or all of such checks or electronic debits will be paid or settled. If we do so, we are not obligated to allow any such overdraft in the future.

If, for any reason, we fail to provide you timely notice of the required funding amount for a Deposit Account, and if you fund such Deposit Account according to the procedures (including funding amount and time) described in the applicable User Documentation, we will post to the Deposit Account, or instruct the Controlled Disbursement Point to post to your account, all checks presented for payment, and electronic debits received for settlement, that day. If the required funding amount nonetheless exceeds the amount funded by you and you have insufficient funds in the Deposit Account to cover the required amount, we will overdraw the Deposit Account and advance funds to cover the excess.

If we advance our own funds, repayment is immediately due and payable, and you will repay us on or before the next Business Day along with interest on such funds as specified in our schedule of charges for business account services or as otherwise agreed. If you do not, we may dishonor, or instruct the Controlled Disbursement Point to dishonor, some or all of the checks then pending final payment and/or, as appropriate, return or reject any electronic debit pending settlement even if the Deposit Account has sufficient Collected and Available Funds to cover such debits.

We may require you to maintain a specified minimum amount in any Deposit Account for which we permit you to use automated clearing house transfers to fund that Account.

If you use facsimile signatures on checks drawn on an account at a Controlled Disbursement Point, your use of such signatures is subject to the Facsimile Signatures section of this Booklet.

STOP PAYMENTS

You may request stop payments on checks drawn under a Controlled Disbursement Service by following the procedures specified in the applicable User Documentation or applicable Account Agreement. Also, you may use an Online Stop Payment Service,

which is subject to the Online Stop Payment section of this Booklet. If you use telephone, mail or facsimile transmission to request a stop payment, you agree that your stop payment request is subject to the terms described in the Account Agreement for requesting stops by telephone or mail.

If some, but not all, of the information in your stop payment request matches a check which has been presented for payment (for example, the Magnetic Ink Character Recognition (MICR) serial numbers match and the dollar amounts do not match), we may contact you to request a decision on whether or not to pay the check. If any such suspect check is not to be paid, you must promptly instruct us not to pay, or to direct a Controlled Disbursement Point not to pay, the suspect check. If you do not, the suspect check may be paid.

DISBURSEMENT IMAGE

Our Disbursement Image Services will make available to you digital images of checks and drafts paid against specified accounts. Such images may be made available to you by online transmission or by CD-ROMs containing images you may access using image CD-ROM Software.

Check and draft images will be made available to you at such times as you request and we agree. If an image of a check or draft is missing or is illegible, we will provide you a microfilm copy upon your request. Your request must include the account number, the check serial number, the exact amount (dollars and cents) of the payment and the date the payment was made. We may assess a fee for copies provided to you. We will not be liable for failure to provide copies by a given time or for failure to provide copies we are not reasonably able to provide.

Notwithstanding the Limitation of Liabilities section of this Booklet, we will not be liable for damages arising under any Disbursement Image Service in excess of the amount of the check, draft or miscellaneous debit giving rise to your damage claim. Any such claim must include the account number, the check serial number, the exact amount (dollars and cents) of the payment, the date the payment was made, the name of the payee, a detailed explanation of how the claimed loss occurred and the name, address and phone number of the payee to whom you cannot prove payment was made.

Notwithstanding the Termination section of this Booklet, in the case of a Disbursement Image Service using CD-ROMs, termination of such Service upon 30 days notice may not be effective earlier than the first day of the statement period immediately following the statement period during which such notice is given.

ELECTRONIC BILL PAYMENT CONSOLIDATION

Our Electronic Bill Payment Consolidation Service consolidates, reformats and delivers remittance information and other data related to payments received from Bill Payment Service Providers for credit to your account. Detailed information regarding the Service is available in the applicable User Documentation.

You agree that you will authorize Bill Payment Service Providers to deliver payments, remittance information and other related data to us for us to provide this Service to you.

You may also elect to have information of another company/organization reported through this Service. If you do so, you agree that you and the other company/organization will authorize the Bill Payment Service Providers to deliver payments, remittance information and other related data to us for us to provide this Service to you.

Remittance information and other data related to payments will be delivered to you in a mutually acceptable form and manner.

If you are unable to post any payments to your customers' accounts, you must promptly return such payments to us. You shall pay us immediately for the amount of any returned payments which we previously credited to your account.

ELECTRONIC DATA INTERCHANGE (EDI)

Our EDI Services allow you to disburse funds and/or deliver payment-related information to your receivers, electronically or by paper, by sending payment requests or payment-related information to us as described in the applicable User Documentation. These Services also allow you to access payments-related and remittance-related information in mutually acceptable formats received from your receivers or customers and, where available, to match specified receivables and payables against payments.

For the web-based remittance advice delivery service, you are responsible for enrollment of your receivers on the service. During enrollment you will review and verify the accuracy of all enrollment information provided by your receivers on the specified website. Upon completion of enrollment, you authorize us to deliver the confidential passwords and identifiers to your enrolled receiver to access the specified website. Your receiver must keep such passwords and identifiers confidential. We will be fully protected in relying on the correct user identification codes and passwords.

SENDING PAYMENTS AND RELATED INFORMATION

When you wish to pay your receivers, you transmit a data file to us, containing instructions for your payments, in the format and by the cutoff times specified in the applicable User Documentation. When we receive a file from you under an EDI Service, we perform certain edits on the data, translate it into the appropriate format and/or medium and send the data to the payment system specified by you, except that we may use any means of transmission, funds transfer system, clearing house or intermediary bank we reasonably select. On the specified dates, we issue your payments in the required formats.

You control the content of any payment-related information you send to us and are solely responsible for the accuracy of such information. You are solely responsible for storage of all data relating to such information so that it can be made available to individual receivers upon request.

For the web-based remittance advice delivery service, we act as an intermediary to make data and information available to or from you or your enrolled trading partners reasonably promptly after receipt of such information. We make the information available to your enrolled receivers on the specified website within one Business Day of receipt. The information will be available on the specified website for the time periods specified in the applicable User Documentation. We will not alter the content of any information that we receive from you or the trading partner. We are not responsible for the accuracy of any of the information that we receive.

Payment requests originated via the EDI Services will be subject to the terms and conditions for the underlying payment Services (Check Issuance, ACH and/or Wire Transfer and International Electronic Funds Transfer) as described in their respective sections of this Booklet.

RECEIVING REMITTANCE INFORMATION

Remittance information can be delivered to you in a mutually acceptable form and manner and will be covered under the Information Reporting section of this Booklet.

ELECTRONIC FOREIGN EXCHANGE

Our Electronic Foreign Exchange Service allows you to initiate FX Requests over the internet or by telephone. By accessing our website, you can request that we provide an FX Transaction quotation, and by accepting our quotation you can electronically enter into FX Transactions, all in accordance with the instructions provided in the applicable User Documentation.

AUTHORIZED PERSONS

Before using an Electronic Foreign Exchange Service, you give us, by completing the applicable Application, a written list of the persons authorized by you, including the Security Administrators, to perform certain duties in connection with the Electronic Foreign Exchange Service.

SECURITY PROCEDURE

You agree to use the Security Procedure, if any, when you send us FX Requests. The purpose of the Security Procedure is to verify the authenticity of FX Requests delivered to us in your name and not to detect errors in the transmission or content of the FX Requests. Each time you use an Electronic Foreign Exchange Service, you represent and warrant that, in view of your requirements, the Security Procedure is a satisfactory method of verifying the authenticity of FX Requests.

You agree that we may act on FX Requests, even if they are unauthorized, if we act in good faith and comply with the applicable Security Procedure and any written agreement with you restricting our action on FX Requests. In such cases, we may enforce or retain your payment to us for such FX Requests; provided, however, we may not enforce or retain payment if you prove that the unauthorized FX Requests were not caused by a person (i) entrusted at any time to act for you with respect to FX Requests or the applicable Security Procedure, (ii) who obtained access to your premises, computer

equipment or transmitting facilities or (iii) who obtained, from a source controlled by you, information (such as keys and passwords) which facilitated breach of the applicable Security Procedure.

EFFECTIVENESS OF FX TRANSACTIONS

You deliver FX Requests to us through the Service and we send you a quotation that you can accept electronically. You must follow all system instructions, procedures and warnings delivered to you on the website provided for the Service. Once we receive your acceptance of our quote, we send you our deal acknowledgment in accordance with the applicable User Documentation, and the FX Transaction will be binding and effective. The FX Transaction is not completed until we send this acknowledgment. You are responsible for contacting us outside the Service if you have not received our electronic acknowledgment within the time specified in the applicable User Documentation (or in the absence of such specification within a reasonable time). We will book FX Transactions at our New York office. Notwithstanding anything to the contrary in this Booklet, we reserve the right to withdraw the Service or terminate your access to the Service at any time without notice.

ACCOUNT DEBITS

You must have Collected and Available Funds in your account which, when added to funds which may be made available under a line of credit, are sufficient to cover your FX Requests. You may initiate an FX Request only if the offsetting debit to your account, including the available line of credit, will not cause you to exceed the account balance according to your records. If your records and ours disagree regarding the account balance, our records will control for purposes of our processing the FX Request.

Unless you have available funds under a line of credit with us, you are obligated to pay us the amount of any FX Request once we receive your FX Request. We will debit the account you specify for the amount of your payment before we process your FX Request. If, for any Business Day, we receive more than one FX Request and/or other items payable from your account, we may debit your account for such FX Requests and items in any sequence we determine in our sole discretion.

If you have available funds under a line of credit with us, we will debit your specified account for the amount of your payment on the settlement date of the FX Transaction. Prior to the settlement date, you can request a change to the specified settlement account for the FX Transaction by using the website for the Service. We will not be obligated to implement such a change, and the change will not be effective until we have had a reasonable opportunity to review and act upon your request.

REJECTION OF FX REQUESTS

We may reject any FX Request which does not comply with the requirements of this Booklet or the applicable User Documentation, including any processing limits described in such User Documentation, or which we have been unable to verify through use of the Security Procedure. We also may reject any FX Request which exceeds the Collected and Available Funds (including funds made available under a line of credit) on deposit with us in the applicable account. Notice of rejection is given to you by telephone, by

electronic means, by facsimile or, in event such notice cannot be given by any of those means, by mail. Notices of rejection will be effective when given.

CONFIRMATIONS AND SETTLEMENTS

You agree that FX Transactions effected through the Service are automatically confirmed and do not require any further confirmation. Foreign exchange transactions effected by a method other than the Service may also be confirmed on the website for the Service in accordance with the User Documentation. Your electronic confirmation of each such foreign exchange transaction shall have the same effect as if you had received a written confirmation from us and had reviewed, manually signed and returned the signed confirmation to us.

INTERRUPTION OF COMMUNICATIONS

In the event of a service interruption involving the Service, you may effect FX Transactions, confirm FX Transactions, and specify settlement instructions by contacting one of our trading rooms or operations centers by telephone as designated in the applicable User Documentation.

INFORMATION REPORTING

Our Information Reporting Services make certain account, transaction and related information available to help you control and manage your accounts and in connection with any questions raised by you via such Services. This may include information generated from other Services you use. You may have information reported directly to you or, with certain of our Information Reporting Services, reported at your direction to another financial institution or other entity. Detailed information regarding an Information Reporting Service is available in the applicable User Documentation.

ACCOUNTS OF OTHER COMPANIES/ORGANIZATIONS

You may elect to have accounts of another company/organization reported to you with any of our Information Reporting Services. You agree that, for each such account, the company/organization will provide us with its written authorization, in a form acceptable to us, for us to make that company's account information available to you. However, you do not need to provide us such written authorization if the other company is a U.S. Subsidiary and its accounts are domiciled in the United States of America. In that case, you represent and warrant that such other company is a U.S. Subsidiary and that it has authorized us to make its account information available to you.

ACCOUNTS AT OTHER BANKS

You may also elect to have your accounts, or accounts of another company/organization, maintained at another financial institution reported through certain of our Information Reporting Services. If you do so, you agree that you and the other company/organization will authorize the other financial institution to make the reporting information available to us and to take all other actions necessary for us to provide Information Reporting Services to you.

THIRD-PARTY INFORMATION

If you gain, through your use of one or more Services, access to any information relating to any person other than us, you or any of your Subsidiaries which have authorized your receipt of such information, you agree that you will treat such third-party information as strictly confidential and you shall not disclose it to any person outside your company or to any persons within your company except those who have a need to know. Further, you shall ensure that adequate measures have been taken to prevent the unauthorized use of any such third-party information. You agree that you will not use any such third-party information for your own purposes other than in a communication to us relating to the Service.

LOCKBOX

Our Lockbox Services involve the processing of checks and other payment instruments, such as drafts, that are received at a Lockbox Address or by special arrangement with us, excluding without limitation the processing of cash, stock certificates and tangible valuables. With a Lockbox Service, you instruct your customers to mail checks and other payment instruments you want to have processed under a Service to the Lockbox Address. We are not liable to you for losses you suffer if anything other than checks or other payment instruments are sent to the Lockbox Address. We and/or our agents will have unrestricted and exclusive access to the mail sent to the Lockbox Address.

If we receive any mail containing your lockbox number at our lockbox operations location (instead of the Lockbox Address), we may handle the mail as if it had been received at the Lockbox Address.

PROCESSING

We will handle checks received at the Lockbox Address according to the applicable Account Agreement, applicable User Documentation and our availability schedule, as if the checks were delivered by you to us for deposit to your designated account, except as modified by this Booklet.

We will open the envelopes picked up from the Lockbox Address and remove the contents. Checks and other documents contained in the envelopes will be inspected and handled in the manner specified in the set-up documents for the applicable Lockbox Address. We capture and report information related to the lockbox processing, where available, if you have specified this option in the set-up documents. As appropriate, we will endorse all checks we process on your behalf and deposit them in the account you designate for the applicable Service.

If we process an unsigned check as instructed in the set-up documents, and the check is paid, but the account owner does not authorize payment, you agree to indemnify us, the drawee bank (which may include us) and any intervening collecting bank for any liability or expense incurred by us or such other bank due to the payment and collection of the check.

If this option is available and if you instruct us not to process a check bearing a handwritten or typed notation "Payment in Full" or words of similar import on the face of the check, you understand that we have adopted procedures designed to detect checks bearing such notations; however, we will not be liable to you for losses you suffer if we fail to detect checks bearing such notations.

Unless we agree otherwise, each Business Day we will prepare and send remittance materials (images via internet, electronic file and/or paper packages) relating to the Lockbox Address to you at the address you specify for that Lockbox Address. The material will include, but is not limited to, any checks not processed in accordance with the set-up documents plus information regarding the deposit for the day. For the wholesale Lockbox Service, the package will also include invoices and other materials received at the Lockbox Address.

ACCEPTABLE PAYEES

For the Lockbox Address, you will provide to us the names of Acceptable Payees. We will process a check only if it is made payable to an Acceptable Payee and if the check is otherwise processable. In some jurisdictions outside the United States, an Acceptable Payee is limited to you and limited variations of your name. In all other jurisdictions, including the United States, you warrant that each Acceptable Payee is either you or your affiliate. If an Acceptable Payee is your affiliate, then you also warrant that such Acceptable Payee has authorized checks payable to it to be credited to the account you designate for a Lockbox Service. We may require written authorization from any such Acceptable Payee. We may treat as an Acceptable Payee any variation of any Acceptable Payee's name that we deem to be reasonable.

ONLINE STOP PAYMENT

Our Online Stop Payment Services allow you to electronically place or cancel a Stop Payment Request. This is in addition to your ability to make stop payment requests in person, by telephone or in writing as described in your Account Agreement.

A Stop Payment Request will not be effective until we review our records for the time period specified in the applicable User Documentation, determine that the check has not been paid during that period and respond to you with an online status of your request of "accepted" (rather than "rejected" or "pending").

A Stop Payment Request terminates at the end of the period designated in the applicable User Documentation, unless the Stop Payment Request is renewed or canceled earlier. A Stop Payment Request is canceled automatically when the account on which the check is drawn is closed or transferred.

REQUESTING STOP PAYMENTS

You will include in each Stop Payment Request the Magnetic Ink Character Recognition (MICR) serial number and exact amount (dollars and cents) of the check for which payment is being stopped and the account number on which the check is drawn. You understand and agree that we can only stop a check that shows exactly the same MICR

serial number and amount as that included in the related Stop Payment Request since our computer system identifies a check on the basis of the MICR serial number and the exact amount of the check.

You will review your account statements prior to transmitting any Stop Payment Request. You will not transmit any Stop Payment Request relating to a check that has been shown to be paid on such statements.

In some cases, we may pay a check even if a Stop Payment Request is in effect. For example, if one of our branches (or banking centers) or affiliates becomes a "holder in due course" of the check that you asked us to stop, we may still pay the check.

The procedures for placing and acknowledging Stop Payment Requests are described in the applicable User Documentation.

If you use any Online Stop Payment Services with respect to an account connected to a Controlled Disbursement Service, you must follow the procedures in this section rather than the Stop Payment procedures in the Controlled Disbursement Services section.

POSITIVE PAY

Our Positive Pay Services allow you to identify exception items, to request photocopies and/or electronic images of exception items and to instruct us whether to pay or return those items. In many locations, if you send us an issue file, your information may be made available at the teller line. This is called "Teller Positive Pay", which helps identify fraudulent checks that are presented for payment at many of our banking centers. With Teller Positive Pay, the decision whether to pay such an item may be made by us at the teller line.

On each Business Day, we provide you a report of checks presented to us for payment on the prior Business Day and which we have identified as exceptions based on information you have provided to us and as more fully described in the applicable User Documentation. Exceptions are determined by comparing checks presented to us (either by other depository institutions or, where applicable, for cashing at one of our banking centers) with lists of checks issued or canceled by you which you transmit electronically to us each Business Day by the time specified in the applicable User Documentation. Alternatively, where available, you may choose an option under which we report all checks presented for payment, in which case we will treat all such checks as exception items.

On the same day we report exception items to you, you must notify us, by the deadline specified in the applicable User Documentation, which checks you want us to pay or which to dishonor and return. If you fail to notify us by the deadline, we will handle the exception items in accordance with the prescribed default procedure (which you may choose where the choice is available). Where required, you will indicate which checks you want us to return, having been deemed by you to be fraudulent. Our deadlines, default procedures and procedures for acknowledging pay and return requests are described in the applicable User Documentation. In order to assist you in making your

decision whether we should pay or return exception items, you may request a copy of any exception item.

AUTHORIZED PERSONS

Before using a Positive Pay Service, you give us a written list, in a form acceptable to us, of the persons authorized by you to perform certain duties in connection with such Service.

ONLINE OPTION

You may access the daily reports of exception items via one of our online systems. Using that system, you must then notify us which exception items to pay or which to return.

You may request photocopies of exception items, which we will fax to you, as more fully described in the applicable User Documentation. Where available, you may arrange to receive and display electronic images of exception items.

MANUAL OPTION

We provide you a report of exception items. You must then notify us which items to pay or which to return.

ACKNOWLEDGMENTS

You authorize us to return checks or to pay checks in accordance with your instructions and the default procedure in the applicable User Documentation. We will have no liability for payment of a check which is unauthorized or fraudulent if (i) the check is included in a report of exception items, (ii) you have not selected a return default for exception items and (iii) you do not give us timely instructions to return the check.

You acknowledge that our Positive Pay Services do not preclude our standard check processing procedures, which may cause a check to be dishonored even if your instructions or the default procedure do not otherwise require us to return such check.

You acknowledge that, if you have our Teller Positive Pay Service, the decision whether to pay or not pay an item may be made by us at a banking center.

If you decline to use a Teller Positive Pay Service offered by us or fail to meet your applicable issue file deadlines in the User Documentation, you also acknowledge that, as between you and us, you will bear the full loss on checks which are drawn on your accounts with us and paid by us in good faith if the checks are counterfeits or bear unauthorized alterations to the amounts or unauthorized maker signatures, even if such checks would otherwise be exception items.

You acknowledge that our Positive Pay Services are intended to be used to identify and return checks which you suspect in good faith are fraudulent. They are not intended to be used as a substitute for stop payment orders on checks which are not suspected in good faith to be fraudulent. If we suspect or deem, in our sole discretion, that you are using these Services contrary to those intentions, we may require you to provide evidence that checks we return pursuant to your instructions or the return default, if applicable, were in fact fraudulent. In addition, we may hold you liable for losses we sustain on checks

which we are requested to return under these Services and which you do not reasonably establish as fraudulent checks.

We will use reasonable efforts under the circumstances to respond promptly to proper requests for copies of exception items if image items are unavailable, but you acknowledge that our failure to provide copies does not extend the deadlines by which you must notify us of your pay/no-pay decisions.

RECLEAR

Our Reclear Service resubmits a check or other payment instrument to the financial institution on which it was drawn if the check or payment instrument has been returned to us unpaid with the notation "refer to maker", "nonsufficient funds" or "uncollected funds". Generally, we will not notify you that such an item has been returned to us unpaid before we reclear it. If a recleared item is returned to us a second time, we will charge your account for the total amount of the check or payment instrument. We generally total your returned items each day, debit your account for the total amount and then send the returned checks and payment instructions to you. The items we send to you serve as your notice of the nonpayments.

RE-PRESENTMENT CHECK (RCK)

Our RCK Services allow you to collect eligible RCK checks that have been returned for insufficient or uncollected funds, using the ACH Services within the United States of America, as described in the applicable User Documentation. The creation of the RCK Entries on your behalf by us using the ACH Services will be subject to the terms and conditions of the ACH Service section of this Booklet, including but not limited to the Security Procedures requirements described in that section. The capitalized ACH terms appearing in italics below are defined in the NACHA Rules.

YOUR RESPONSIBILITIES

You authorize us to create RCK Entries on your behalf as provided in the User Documentation and the NACHA Rules. You are deemed to be the *Originator* under the NACHA Rules, and on each day you use a Service, you represent and warrant that (i) you have obtained all necessary authorizations from the *Receiver* prior to the initiation of any corresponding ACH Entry for a RCK and (ii) you accept as *Originator* all liability corresponding to the representations and warranties we as *ODFI* make under the NACHA Rules regarding RCK.

You shall pay us for the amount of any returned debit Entries (including rejected debit Entries) or any adjustment Entries accepted by us and which we have previously credited to your account. Such amounts shall be immediately due and payable by you to us. Returned debit Entries appear on your reports to the extent agreed by you and us, and you agree that we do not need to send a separate notice of debit Entries which are returned unpaid.

COMPLIANCE WITH NACHA RCK RULES AND LAWS

You agree to comply with the NACHA Rules for all Entries whether or not an Entry is sent through the ACH network. You act as an *Originator* and we act as an *ODFI* with respect to Entries. The NACHA Rules govern if they conflict with this Booklet, except that the file specification requirements in the User Documentation govern if they conflict with the NACHA Rules.

Each time you use an RCK Service (i) you warrant that you have obtained the appropriate authorization from each *Receiver* and the Entries conform to the authorization and comply with the NACHA Rules and (ii) you make the same warranties to us as we make under Section 2.2 or any successor section of the NACHA Rules.

TAX PAYMENTS

Our Tax Payment Services allow you to instruct us, using a touchtone telephone or our Software on your computer, to pay any of your taxes which are reported or filed using the tax forms as more fully described and specified in the applicable User Documentation. Based on your Tax Payment Instructions, we prepare and remit your tax deposits. Each of these Services is described in the applicable User Documentation.

SECURITY PROCEDURE

You agree to use the Security Procedure, if any, when you deliver Tax Payment Instructions and, as provided in the applicable User Documentation, cancellation requests to us. The purpose of the Security Procedure is to verify the authenticity of Tax Payment Instructions or cancellation requests and not to detect errors in the transmission or content of these messages. You represent and warrant each time you use a Tax Payment Service that, in view of your requirements, the Security Procedure is a satisfactory method of verifying the authenticity of these messages. You agree we may act on any Tax Payment Instructions or, as provided in the applicable User Documentation, cancellation requests, the authenticity of which we have verified through the use of the Security Procedure.

CUTOFF TIMES

You must comply with the deadlines specified in the applicable User Documentation for initiation of Tax Payment Instructions. If a Service allows you to send instructions to us after the cutoff time, or on a non-Business Day, we may treat these instructions as if we received them on the next Business Day.

COMMUNICATION EXPENSE AND RISK

Transmission of Tax Payment Instructions to us will be at your expense, except that we may provide a toll-free number telephone service. If that service is disrupted for any reason, you have the responsibility and risk of using alternative means of communicating Tax Payment Instructions to us accurately and in time for us to perform any Tax Payment Service.

REQUIRED INFORMATION

You will furnish us with all required information and authorizations at the times, in the manner and with the content specified in the applicable User Documentation.

TAX FORMS AND REMITTANCES

After we have received complete Tax Payment Instructions from you, we prepare the related tax forms (which may be on a magnetic tape or by electronic transmission as authorized by the Internal Revenue Service or other tax authority, as applicable) for submission to the appropriate tax authority.

If permitted by the input method, you may specify a settlement date in accordance with the User Documentation. If you use a touchtone phone as your input method, you may request a specified settlement date by calling the designated customer representative for the applicable Tax Payment Service.

For purposes of these Services, settlement date means the date you specify that the taxing authority's account is to be credited. If you do not specify a settlement date, we will pay the amount you specify on or before the tax due date. If you specify the settlement date, payment will be made on the settlement date.

ACCOUNT DEBITS

If you do not specify a settlement date, we debit your account for any tax payment on the Business Day of transmission. If you specify a settlement date, we generally debit your account on the settlement date unless you are prefunding your tax payments. Prefunding means that you pay for all tax payments by such time before the settlement date as we may specify. At our discretion, we may at any time without notice debit your account on the Business Day that Tax Payment Instructions are transmitted to us (or on any other later date). If we debit the funds on the transmission date (or any other date before the payment date), we hold the funds as a deposit liability to you, and not as trust funds, until the date when we remit the funds to the appropriate tax authority. We will not pay you interest on the funds.

We reserve the right to debit your account and to make a tax payment on your behalf earlier than the tax due date if the information in your Tax Payment Instruction is unclear or inadequate to permit us to determine the later due date under the applicable Tax Payment Service or if we otherwise reasonably decide that any delay in the payment of the tax may expose you to liability for a tax penalty. In such case we will not be liable to you for any lost use of funds.

REJECTION OF INSTRUCTIONS

We may reject your instructions during or immediately after transmission to us if they do not comply with the requirements of this Booklet or the applicable User Documentation or which we have been unable to verify through use of the Security Procedure. You will be informed of any such rejection only as specified in the applicable User Documentation, and no other notice of rejection will be provided.

In addition, we may decline to perform any Tax Payment Service or to report any tax, file any tax form, or pay any related tax for you, even if we have received instructions to do

so, if the tax payment and our related service fees and charges exceed the Collected and Available Funds on deposit in your account or your ACH processing limit. If we reject a Tax Payment Instruction for that reason, we will promptly notify you by telephone or facsimile transmission in which case we will not be liable to you for the tax payment, any interest on the amount of your tax liability, or for any tax penalty imposed on you in connection with the tax liability. You agree these means of communication are a reasonable means of notifying you.

CANCELLATION

Subject to the provisions in the User Documentation, you may cancel a Tax Payment Instruction prior to disconnection of the telephone call in the case of an instruction initiated by touchtone telephone or prior to transmission to us of an instruction initiated through your computer.

Thereafter, a Tax Payment Instruction may be canceled only if:

- The tax payment has not been remitted, credited or otherwise made available to a tax authority;
- A request to cancel provides sufficient information for us to effect the request; and
- The request is received by us by telephone or, at the option of either you or us, in writing (including facsimile transmissions) in time (but in no event later than the deadline specified in the applicable User Documentation) to afford us a reasonable opportunity to effect the request.

OVERPAYMENTS

If we make an overpayment of your tax liability due to our error, we will recredit your account for the amount of the overpayment, and you agree to take such actions as we reasonably request to obtain a refund of the overpayment and to arrange for payment of such refund to us. In any event, you agree to repay us for any overpayment upon the earlier of (i) your recovery of such overpayment or (ii) the application of the related tax credit to another of your tax payment obligations.

RECORDS AND NOTICE OF ERRORS

We will provide you with statements and confirmations containing information about your tax payments in accordance with and subject to the applicable User Documentation.

Nothing in this Booklet relieves you of any duty imposed by law or contract regarding the maintaining of records or from employing adequate audit, account and review practices customarily followed by similar businesses. You will promptly review for accuracy all records, information and statements delivered from time to time to you by us.

You must send us written notice, with a statement of relevant facts, within 14 days after you receive the first notice or statement indicating a discrepancy between our records and yours. If you fail to give the required notice, we will not be liable for any loss of interest or for any compensation for any other loss or cost relating to an unauthorized or erroneous debit to your account or because of any other discrepancy in the notice or account statement. You must notify us promptly by telephone, confirmed in writing, if

you learn or discover from any source other than a notice or statement from us of information concerning an unauthorized or erroneous debit to your account.

SUPPLEMENTAL LIMITATION OF LIABILITIES

For each Tax Payment Service, this section supplements the Limitation of Liabilities section of this Booklet.

If any Tax Payment Service is interrupted for any reason and you are unable to complete transmission of your Tax Payment Instruction to us, you will not be relieved of your obligation to make any tax payment otherwise contemplated to be made by such Service. We will not incur any liability if you fail to make any required tax payment by other means in the event of such interruption.

WIRE TRANSFER AND INTERNATIONAL ELECTRONIC FUNDS TRANSFERS

This section applies to our U.S. domestic and worldwide wire and internal funds transfer services and to our International Electronic Funds Transfer Services outside the United States of America. It does not apply to ACH Services within the United States of America, which are covered in the "Automated Clearing House (ACH)" section of this Booklet.

Wire Transfer and International Electronic Funds Transfer Services permit you to transfer funds electronically and, as appropriate, to transmit related messages as more fully described in the applicable User Documentation. These transfers are typically from your accounts with us to other accounts at our bank, at our affiliated banks or at other eligible banks. These transfers may also include transfers to your accounts with us from your accounts at other banks. These transfers may be made according to a specific request from you or according to your standing instructions (which may include daily sweeps from your accounts at our affiliated banks to your account with us). They also may be low-value batch payments made according to multiple requests within a single electronic data file for transfers to or from your accounts.

MULTIBANK

The Multibank Service permits you to relay through us your instructions to another bank to wire transfer funds from one of your accounts held at that other bank. Where feasible, we will reformat your instructions for SWIFT and relay it by SWIFT to the appropriate bank, subject to the Business Day schedules for us, SWIFT and the paying bank. Otherwise, we will use whatever means or medium we deem appropriate, including use of third-party facilities, to relay your instructions to another bank.

Before using the Multibank Service, you must provide us with the account number and bank name for each account to be debited using this Service. You also must provide the bank holding the debit account with express, written authorization (with a copy to us where requested) to act on instructions we send to it under this Service. You agree that we may rely on that authorization until we have had a reasonable opportunity to act on notice that it has been revoked.

Multibank instructions are not payment orders to us, and we have no obligation to execute, transmit or accept any payment orders made to us under the Multibank Service.

We reformat and transmit your payment order to another bank, and we have no duty to do so if your request is defective, incomplete, erroneous or inconsistent with the terms of this Booklet. We may act on your Multibank instructions as we reasonably consider appropriate notwithstanding any error, omission, defect or lack of clarity in its terms and even if the instructions appear to duplicate other Multibank requests. You agree that your indemnity of us, as set forth in the "Protection From Third Parties" section of this Booklet, applies to any claims by another bank based on our sending a Multibank instruction containing any error, omission, defect or lack of clarity.

If you wish to cancel or amend a payment order set forth in a Multibank instruction, you must contact the bank to which the payment order is directed and act in accordance with its procedures.

Reports on Multibank instructions which we have processed will be included in an Information Reporting Service which you have arranged to use.

COMPLIANCE WITH RULES AND LAWS

You agree to comply with all applicable payment system rules, including the national payment system rules and any other applicable laws and regulations of the receiving country of your transaction. You also agree to comply with the authorization and notice requirements applicable to any Request to debit another person's account.

AUTHORIZED PERSONS

Before using a Wire Transfer or International Electronic Funds Transfer Service, you give us a written list, in a form acceptable to us, of the persons authorized by you to perform certain duties in connection with such Service.

SECURITY PROCEDURE

You agree to use a Service in accordance with the relevant Security Procedure, if any. The purpose of the Security Procedure is to verify the authenticity of Requests delivered to us in your name and not to detect errors in the transmission or content of Requests. You represent and warrant each time you use a Wire Transfer or International Electronic Funds Transfer Service that, in view of your requirements, the Security Procedure is a satisfactory method of verifying the authenticity of Requests.

You agree that we may act on Requests, even if they are unauthorized, if we act in good faith and comply with the applicable Security Procedure and any written agreement with you restricting our action on Requests. In such cases, we may enforce or retain your payment to us for such Requests; provided, however, we may not enforce or retain payment if you prove that the unauthorized Requests were not caused by a person (i) entrusted at any time to act for you with respect to Requests or the applicable Security Procedure, (ii) who obtained access to your premises, computer equipment or transmitting facilities or (iii) who obtained, from a source controlled by you, information (such as keys and passwords) which facilitated breach of the applicable Security Procedure.

ACCOUNT DEBITS

You must have Collected and Available Funds in your account which, when added to funds which may be made available under a line of credit, are sufficient to cover your

Requests. You may initiate a Request only if the offsetting debit to your account, including the available line of credit, will not cause you to exceed the account balance according to your records. If your records and ours disagree regarding the account balance, our records will control for purposes of our processing the Request.

You are obligated to pay us the amount of any Request once we act on, other than to reject, your Request. At our discretion, we may at any time without notice require payment before we process your Request. Even if we have done so in the past, we are not obligated to process any Request without having first been paid by you, but, if we do, the amount is immediately due and payable without notice or demand.

Prior to initiating any wire transfer Request to debit an account of a third party, you must provide us with documents, in a form acceptable to us, evidencing the third party's authorization.

You will pay us for the amount of any returned or rejected debit transactions, or any adjustments, which we previously credited to your account.

If, for any Business Day, we receive more than one Request and/or other items payable from your account, we may debit your account for such Requests and items in any sequence we determine in our sole discretion.

ACTING ON REQUESTS

We will use any means of transmission, funds transfer system, clearing house or intermediary bank we reasonably select to transfer funds.

After we receive a Request by the applicable processing deadline (as specified in the applicable User Documentation), but no later than the value date stated in your Request (if such date is not earlier than the day such Request is received), we will act upon such Request by making applicable accounting entries or by transmitting payment instructions to the applicable bank or other party. If applicable, our acting on your Request will also be subject to the business day schedule of any of our banking centers or affiliates holding an account to be debited or credited under a Service. We may treat Requests we receive after a deadline as if we received them on the next Business Day. International Electronic Funds Transfers will be deemed received by us when we receive the complete electronic data file at the location specified in the applicable User Documentation.

REJECTION OF REQUESTS

We may reject any Request which does not comply with the requirements of this Booklet or the applicable User Documentation, including any processing limits described in such User Documentation, or which we have been unable to verify through use of the Security Procedure. We also may reject any Request which exceeds the Collected and Available Funds (including funds made available under a line of credit) on deposit with us in the applicable account. We may also reject any Request if it may be returned for any reason under the applicable national payment system rules of the receiving country of your transaction. Notice of rejection is given to you by telephone, by electronic means, by facsimile or by mail. Notices of rejection will be effective when given.

CANCELLATION OR AMENDMENT

We have no obligation to cancel or amend Requests after we receive them or to cancel or amend any particular funds transfer requested by a standing instruction which is in effect. If you send us a Request instructing us to cancel or amend a prior Request and we are able to verify the authenticity of the cancellation or amendment Request using the Security Procedure, we will make a reasonable effort to act on that Request, but we will not be liable if it is not effected. You agree to indemnify us against and hold us harmless from any and all liabilities, claims, costs, expenses and damages of any nature, including Legal Expenses, we incur in connection with your Request to amend or cancel. Your obligations under this provision will survive termination of these Wire Transfer and International Electronic Funds Transfer Services.

PROVISIONAL PAYMENTS

Payment by us for any transaction we credit to your account is provisional until we receive final settlement for the transaction. If final settlement is not received, we are entitled to a refund and we may charge your account for the amount credited. We may delay the availability of any amount credited for a transaction if we believe that there may not be sufficient funds in your account to cover chargeback or return of the transaction.

INCONSISTENCY OF NAME AND NUMBER

A beneficiary's bank (including us when we are the beneficiary's bank) may make payment to a beneficiary based solely on the account or other identifying number. We or an intermediary bank may send a Request to an intermediary bank or beneficiary's bank based solely on the bank identifying number. We, any intermediary bank and any beneficiary's banks may do so even if the Requests include names inconsistent with the account or other identifying number as long as the inconsistency is not known by us or such other bank. Neither we nor any other bank has a duty to determine whether a Request contains an inconsistent name and number.

NOTICE OF ACCOUNT STATEMENT DISCREPANCIES

Information concerning payments made pursuant to your Requests will be reflected in your account statements and, in some cases, in written or electronic advices and reports produced through one of our Information Reporting Services. You must send us notice, in writing or by electronic means approved by us for such purpose, with a statement of relevant facts, promptly after you receive the first notice or statement indicating a discrepancy between our records and yours. If you fail to give the required notice within 14 days, we will not be liable for any loss of interest or for any compensation for any other loss or cost relating to an unauthorized or erroneous debit to your account or because of any other discrepancy in the notice or account statement. You must notify us promptly by telephone, confirmed in writing, if you learn or discover from any source other than a statement, advice or report from us of information concerning an unauthorized or erroneous debit to your account.

ELECTRONIC TRADE SERVICES

Our Electronic Trade Services allow you to (i) initiate collections; (ii) instruct us to advise you of our receipt or confirmation, or the payment, of Export Letters of Credit and Advised Standby Letters of Credit received by us and naming you as beneficiary; (iii) request full or partial transfers of your Export Letters of Credit or full transfers of your Advised Standby Letters of Credit; (iv) prepare documents in connection with your Export Letters of Credit; (v) access reports on letter of credit transactions, open account transactions, collections and banker's acceptances; (vi) initiate open account transactions; (vii) instruct us to advise you of our receipt of purchase orders received by us and naming you as the supplier; and (viii) instruct us to issue standby and import letters of credit and guarantees. Detailed information regarding each Service is found in the applicable User Documentation.

ADVISED STANDBY LETTERS OF CREDIT

Our Advised Standby Letters of Credit Service allows us to advise you by electronic transmission of (i) our receipt of any standby letter of credit naming you as beneficiary; (ii) the status of any documents or payments with regard to any Standby Advised Letter of Credit; (iii) our confirmation of any such letter of credit; and (iv) any payment made pursuant to a drawing under any such letter of credit.

You may elect to have standby advised letters of credit of a Subsidiary or other entity reported to you with our Electronic Trade Letters of Credit Service. You agree that the Subsidiary or other entity will provide us with a written authorization, in a form acceptable to us, for us to make that Subsidiary or other entity's information available to you.

Full Transfers. You may request the transfer, without substitution of invoices, of all of your rights as beneficiary of Advised Standby Letters of Credit by submitting to us, for each transfer, a request providing the following information:

- Standby Letter of Credit number
- name of issuing bank
- our advice number
- name and address of second beneficiary's advising bank
- name and address of second beneficiary
- date of application

If we approve the transfer, we will place the appropriate endorsement on the Advised Standby Letter of Credit and send it to the second beneficiary or send the second beneficiary a transferred letter of credit document prepared by us. The second beneficiary will have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes.

General. The Advised Standby Letter of Credit and the transfer must be subject to UCP or ISP98, and our rights hereunder are in addition to rights we have under UCP or ISP98, as applicable.

You must provide us the original advised Standby Letter of Credit and any existing amendments. You understand that we may, at our sole discretion, refuse to approve any full or partial transfer to a second beneficiary. You acknowledge that due to conditions of the original Advised Standby Letter of Credit, certain proprietary information may be disclosed to the second beneficiary and/or to the applicant under the original Advised Standby Letter of Credit. We will have no liability to you in the event of such disclosure and, in such event, you will indemnify and hold us harmless from all claims of third parties. You acknowledge that your rights as beneficiary in the original Advised Standby Letter of Credit are irrevocably transferred to the second beneficiary(ies) who shall have sole rights. In that connection, your approval is not required for us to honor a discrepant presentation made by the second beneficiary.

For our transfer fee, we may debit your account(s) with us, which you may designate subject to our reasonable approval. You also agree to pay us on demand any expenses which may be incurred by us in connection with this transfer.

COLLECTIONS

Our Electronic Trade Collections Service allows you to initiate a collection (as that term is defined in the Uniform Rules for Collections) by delivering an instruction to a collecting bank.

The instruction will be on a form prescribed by us, but we will not have any responsibility or liability for the terms and conditions of any instruction; you accept all such responsibility and liability. Each collection will be governed by the Uniform Rules for Collections. You will promptly transmit to us a copy of the completed collection form and, upon our request, will provide to us copies of the underlying documentation.

You represent and warrant to us as of the date you transmit the instruction form to us that the collection is not prohibited under the foreign asset control or other regulations of the United States of America or the applicable laws of any other jurisdictions.

Upon our receipt of any payment of a collection, the amounts received (less related charges, disbursements and/or expenses) will be paid to you, except that if we are required to return any such payment received upon the insolvency, bankruptcy or reorganization of the presenting bank or collecting bank or other third party or for any other reason, you will repay to us the amount paid by you together with interest thereon from the date we returned the payment and so notified you at the rate specified by us in our schedule of charges. Unpaid items and related documents received by us may be returned to you by regular mail at the address specified in the Authorization and Agreement Certification form which accompanied this Booklet or such other address as may be notified by you in writing.

EXPORT LETTERS OF CREDIT

Our Export Electronic Trade Letters of Credit Service allows you to prepare export documents using electronic data captured through our electronic advise process and

allows us to advise you by electronic transmission of (i) our receipt of any Export Letter of Credit naming you as beneficiary, including the wording of an Export Letter of Credit so you can prepare export documents as per the Export Letter of Credit; (ii) the status of any documents or payments with regard to any Export Letter of Credit; (iii) our confirmation of any such letter of credit and (iv) any payment made pursuant to a drawing under any such letter of credit.

You may elect to have export letters of credit of a Subsidiary or other entity reported to you with our Export Electronic Trade Letters of Credit Service. You agree that the Subsidiary or other entity will provide us with a written authorization, in a form acceptable to us, for us to make that Subsidiary or other entity's information available to you.

You may prepare shipping documents based on your Export Letter of Credit advised details. You may then edit and locally print those documents and courier them to us for presentation.

REQUESTS FOR TRANSFERS

Partial Transfers. You may request the partial transfer, with or without substitution of invoices, of Export Letters of Credit by submitting to us, for each transfer, a request providing the following information:

- whether the transfer is with or without substitution of invoices
- Export Letter of Credit number
- name of issuing bank
- our advice number
- name and address of second beneficiary's advising bank
- amount to be transferred
- description of merchandise subject to the transfer
- name and address of second beneficiary
- unit price
- expiration date of transfer Export Letter of Credit
- latest shipment date
- number of days after shipment within which documents must be presented
- insurance percentage (if applicable)
- date of application

If we approve the transfer, we will advise the second beneficiary of the terms and conditions of the transferred credit by full text teletransmission, mail/airmail or courier (as we deem appropriate).

With respect to all partial transfers, whether with or without substitution of invoices, you may refuse to allow us to notify the second beneficiary(ies) of any future amendment(s) received under the original Export Letter of Credit.

If you elect transfer with substitution of invoices, then, on our demand, you will deliver to us within one (1) Business Day your draft, commercial invoice and any other required documents in compliance with the terms of the original Export Letter of Credit. The draft and documents are in substitution of those presented by the second beneficiary. When (i) the documents of the second beneficiary and the substitution documents from the first beneficiary are determined to comply with the terms of the Export Letter of Credit or, if determined to be discrepant, are taken up by the issuing bank and (ii) we are in receipt of funds, we will pay you in accordance with your instructions for the amount of the difference between your draft and the draft of the second beneficiary, less any fees due and payable to us in connection therewith. If you fail, at our demand, to deliver to us your drafts, invoices and other required documents as stated above, you acknowledge our right to present invoices and other documents received from the second beneficiary in accordance with the instructions of the original Export Letter of Credit. You also understand that we will not pay you the difference between the amount of the draft of the second beneficiary and the amount authorized to be paid to you under the original Export Letter of Credit.

Full Transfers. You may request the transfer, without substitution of invoices, of all of your rights as beneficiary of Export Letters of Credit by submitting to us, for each transfer, a request providing the following information:

- Export Letter of Credit number
- name of issuing bank
- our advice number
- name and address of second beneficiary's advising bank
- name and address of second beneficiary
- date of application

If we approve the transfer, we will place the appropriate endorsement on the Export Letter of Credit and send it to the second beneficiary or send the second beneficiary a transferred letter of credit document prepared by us. The second beneficiary will have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes.

General. The Export Letter of Credit and the transfer must be subject to UCP and our rights hereunder are in addition to rights we have under UCP.

You must provide us the original Export Letter of Credit and any existing amendments. You understand that we may, at our sole discretion, refuse to approve any full or partial transfer to a second beneficiary. You acknowledge that due to conditions of the original Export Letter of Credit, certain proprietary information may be disclosed to the second

beneficiary and/or to the buyer under the original Export Letter of Credit. We will have no liability to you in the event of such disclosure and, in such event, you will indemnify and hold us harmless from all claims of third parties. You acknowledge that your rights as beneficiary in the original Export Letter of Credit (up to the amount shown in your request with respect to partial transfers) are irrevocably transferred to the second beneficiary(ies) who shall have sole rights (but only up to the amount shown in your request in the case of a partial transfer). In that connection, your approval is not required for us to honor a discrepant presentation made by the second beneficiary.

For our transfer fee, we may debit your account(s) with us, which you may designate subject to our reasonable approval. You also agree to pay us on demand any expenses which may be incurred by us in connection with this transfer.

INFORMATION REPORTING

We will make available to you, subject to the terms of the Information Reporting section of this Booklet, reports on import, export and standby letter of credit transactions, banker's acceptances, collections and open account transactions, as more fully described in the applicable User Documentation.

OPEN ACCOUNT

Our Electronic Trade Open Account Service permits you electronically to (i) inform us of your purchase order details, instruct us on examining import documents for compliance with your purchase orders and instruct us to pay the presenting party and (ii) receive notification of open account transactions initiated through electronic means.

Purchase Orders. You will electronically transmit to us, in accordance with applicable User Documentation, files of purchase orders you have sent to your vendors with instructions to present documents to us. The electronic files will be in such format(s) and transmitted through such channel(s) as you have selected and we have approved. If you are not requesting us to issue an import letter of credit, each transaction will be flagged as an "open account" payment type.

When we receive import documents, we will review them according to your purchase order terms. If and as provided by the open account payment type selected by you, we will match the import documents against the pertinent purchase orders housed on our electronic database in accordance with the parameters established by you and accepted by us. We will pay the presenting vendors as provided under the open account payment type selected by you from the following three types:

- importer matching - you match the import documents against your copy of the pertinent purchase order and instruct us how much to pay to the presenter and when to pay;
- bank matching - we match the import documents against our electronic file of the pertinent purchase order, following the parameters established by you; we then

electronically inform you, indicating whether they are compliant or non-compliant, and await your payment instructions; and

- auto-pay - we match the documents as described above, and, if we determine they are compliant, make payment to the presenter, but only if you have sufficient Collected and Available Funds in the account you have designated for such purposes; if we determine that the documents are non-compliant, we make payment only upon your express instructions.

Notification of Open Account Transactions. With respect to open account notification letters, we will notify you electronically of (i) our receipt of such notices naming you as vendor and (ii) any payments made pursuant to drawings under such open account transactions. We will notify your vendors by Trade Direct, fax, courier or mail as instructed by you.

STANDBY AND IMPORT LETTERS OF CREDIT

Our Electronic Trade Letters of Credit Service allows you to request us, by electronic or fax transmission, to issue an import or standby letter of credit or a guarantee. Each letter of credit or guarantee which we agree to issue will be for your account or the account of another entity you designate. Each commercial letter of credit we issue will be subject to the UCP and, when applicable, the eUCP, and each standby letter of credit we issue will be subject to the ISP98. As a condition to our agreement to issue a letter of credit or guarantee, we may require you at any time to make with us a cash deposit, which may not accrue interest or earnings credit, and to grant us a security interest in the underlying goods and documents of title and/or any other property or accounts as we reasonably determine as security for your obligations to us. A letter of credit may be issued by any of our authorized offices within or outside the United States of America. A guarantee may be issued by any of our authorized offices outside the United States of America.

YOUR RESPONSIBILITIES

You represent and warrant to us as of the date of issuance of each import letter of credit and each drawing that:

- You or the importer has obtained all import and export licenses, registrations, filings and approvals required by any governmental authority for the goods and documents described in the letter of credit.
- The transactions underlying the letter of credit are not prohibited under the foreign asset control or other regulations of the United States of America or the applicable laws of any other jurisdiction.

You will obtain, or cause to be obtained, insurance covering fire and other usual risks on all goods described in each import letter of credit issued by us.

You will reimburse us upon demand all monies paid by us under or in respect of each such letter of credit or guarantee, including payments on any draft, acceptance, order, instrument or demand drawn or presented under the letter of credit or guarantee. You

will pay us on demand interest on all amounts paid by us or any other drawee under each letter of credit or guarantee from the date of such payment until we receive reimbursement at a rate per annum specified in the applicable User Documentation. You will reimburse us in the currency in which the letter of credit or guarantee is denominated (or, at our option, the equivalent of the denominated currency amount in U.S. Dollars or the currency of the country in which the letter of credit or guarantee was issued at the rate of exchange quoted by us in the city in which the letter of credit or guarantee was issued for the sale of the denominated currency against U.S. Dollars or such other currency on the date on which the denominated currency amount is paid by us). Regardless of the expiration of the letter of credit or guarantee, you will remain liable for all such amounts until we are released from liability to all persons entitled to draw or demand payment under the letter of credit or guarantee.

You will pay us Legal Expenses incurred by us in connection with each letter of credit or guarantee including without limitation our defense of any proceeding initiated by you to enjoin payment or negotiation by us of a letter of credit or guarantee even if you are awarded such relief, provided only that we have acted in good faith in defending such action.

If you request the issuance of a letter of credit or guarantee listing one of your Subsidiaries or another entity as the account party, each such request will be considered a request by you for the issuance of a letter of credit or guarantee, and you will assume all liabilities and obligations with respect to such letter of credit or guarantee. You represent and warrant to us that you will derive substantial economic benefit from each underlying transaction relating to each request for the issuance of a letter of credit or guarantee listing your Subsidiary or another person as the account party. Your obligations under each letter of credit or guarantee will not be released or discharged if:

- We attempt to collect any payment under such letter of credit or guarantee directly from the Subsidiary or such other entity.
- Any bankruptcy, reorganization, insolvency, receivership, moratorium or other such action effecting creditors generally is filed by or against the Subsidiary or such other entity.
- We receive payment from the Subsidiary or such other entity, but it is subsequently rescinded or must be returned by us.

OUR RESPONSIBILITIES

If we accept your request, we will issue the import or standby letter of credit as described in your electronic or fax transmission and pursuant to this Booklet and the UCP (with regard to import letters of credit) and ISP98 (with regard to standby letters of credit). If we accept your request, we will issue the guarantee as described in your electronic or fax transmission and pursuant to this Booklet.

We will pay each commercial letter of credit pursuant to its terms, this Booklet and the UCP. We will pay each standby letter of credit pursuant to its terms, this Booklet and the ISP98. We will pay each guarantee pursuant to its terms and this Booklet.

CHANGE OF LAW OR REGULATION

If, subsequent to the issuance date of a letter of credit or guarantee, we determine that the introduction of or any change in the interpretation of any law, rule, regulation or guideline or the request of a central bank or other governmental authority will increase our costs relative to our providing the Electronic Trade Letters of Credit Service, as set forth below, then, on demand, you will pay us additional amounts sufficient (as determined by us) to compensate us for such increased cost. Such increased costs could include: (i) reserve, deposit, assessment or similar requirements or (ii) increases in capital adequacy requirements.

DEPOSIT ON TERMINATION EVENT

If there occurs an event which permits us, under the Termination section of this Booklet, to terminate this Service immediately, you will deposit with us, on demand and as cash security for your obligations to us, an amount equal to the aggregate undrawn amount of the letters of credit and guarantees issued by us in the same currency as the letter of credit or guarantee, or, at our option, its equivalent in U.S. Dollars or the currency of the country in which the letter of credit or guarantee was issued. You will not withdraw any amount so deposited except to the extent such amount exceeds the undrawn and unreimbursed amount of the letter(s) of credit and guarantees. If the amount deposited by you under this Booklet for a letter of credit is in a currency different than the currency in which the letter of credit or guarantee is payable and the amount so deposited becomes less than the value of the undrawn amount of the letter of credit or guarantee because of any variation in rates of exchange, you will deposit with us additional amounts in such other currency so that the total amount deposited by you under this Booklet is not less than the equivalent value of the undrawn amount of the letter of credit or guarantee, determined by using the rate of exchange quoted by us on the date of our latest demand.

SUPPLEMENTAL LIMITATION OF LIABILITIES AND INDEMNIFICATION FOR ALL ELECTRONIC TRADE SERVICES

For each Electronic Trade Service, this section supplements the Limitation of Liability section of this Booklet.

You have sole responsibility for determining the level of security you require and assessing the suitability of the security procedures for these Services. We have no duty to investigate the authenticity of any application, instruction or other communication you provide us using an Electronic Trade Service. Also, we will have no liability to you for acting upon any application, amendment or other communication purportedly transmitted by you, even if such application, amendment or message:

- Contains inaccurate or erroneous information.
- Constitutes unauthorized or fraudulent use of an Electronic Trade Service.
- Includes instructions to pay money or otherwise debit or credit any account.
- Relates to the disposition of any money, securities or documents.

- Purports to bind you to any agreement or other arrangement with us or with other persons or to commit you to any other type of transaction or arrangement.

We are authorized, but not obliged, to rely upon and act in accordance with any application, instruction, consent or other communication by fax or other electronic transmission (including without limitation any transmission by use of our Software or the internet) received by us purporting to be a communication on your behalf without inquiry on our part as to the source of the transmission or the identity of the person purporting to send such communication. We are also authorized, but not obliged, to rely upon and act in accordance with any application, instruction, consent or other communication by telephone, purporting to be a communication on your behalf by an authorized person designated by you.

GENERAL PROVISIONS

CHANGES TO A SERVICE

You may request us at any time to change the processing instructions for any Service. We are not obligated to implement any requested changes until we have had a reasonable opportunity to act upon them. In making changes, we are entitled to rely on requests purporting to be from you. For certain changes, we may require that your requests be in writing, in a form and manner acceptable to us, or be from an authorized person you designate. In addition, certain requests for changes may be subject to our approval.

We may change, add or delete any of the terms and conditions applicable to any or all Services upon 30 days prior notice to you in writing or by electronic means. Your continued use of or failure to terminate any Service, after the effective date of the change, will indicate your agreement to the change.

COMMUNICATIONS

Any written notice or other written communication to be given under the terms of this Booklet will be addressed to the applicable address specified on the Authorization and Agreement form you return to us, except as you or we specify otherwise in writing in conjunction with your accounts or particular Services. Notices are effective upon receipt, except as otherwise provided in this Booklet or any Materials.

You agree that we may electronically monitor and/or record any telephone communications with you in those countries which permit that practice. If our records about any such communication are different from yours, our records will govern.

If you choose to use unencrypted electronic mail to initiate payment requests or other instructions or otherwise communicate with us, your use of such electronic mail with respect to a Service will be subject to the terms and conditions of this Booklet and will comply with the applicable User Documentation. In addition, you agree to bear the risk that such electronic mail may be corrupted, modified, garbled or hacked or its confidentiality may be breached by a third party and the risk that we will rely on such mail, which appears to be from you but which is unauthorized, and that such reliance will result in a loss.

CONFIDENTIALITY

OUR OBLIGATION

We acknowledge that information we obtain from you in connection with any Service we provide to you under the terms of this Booklet may be confidential. We will maintain the confidentiality of such information in accordance with our normal procedures for safeguarding customer information and the policy reflected in the Bank of America Corporation Code of Ethics.

YOUR OBLIGATION

You acknowledge our claim to proprietary rights in the Materials and that the Materials constitute our "trade secrets" or trade secrets of our licensors or vendors. You understand that all Materials are confidential and you will:

- Safeguard the Materials at all times.
- Establish and maintain procedures to assure the confidentiality of the Materials and any password or code subsequently changed by you.
- Use the Materials only for the purposes for which we provide them.
- Notify us promptly by telephone, confirmed in writing, if any Materials are lost or their confidentiality is compromised.

You will not, nor will you allow anyone else to, do any of the following without our prior consent:

- Disclose any Materials to any person or entity, except to your employees and agents with a need to know the Materials.
- Make any copies, in whole or in part, of any Materials in whatever form or medium (electronic, printed or otherwise) in which they may exist from time to time, except as provided in the Software License section.
- Translate, reverse engineer, disassemble or decompile any Software or security devices.

These confidentiality obligations continue after a Service you are using is terminated.

You have sole responsibility for the custody, control and use of all Materials. You agree that no individual will be allowed to initiate a request or other instruction contemplated in this Booklet or to have access to any Materials without proper supervision and strict security controls. If a Service requires use of user identification codes or passwords, we will be fully protected in relying on the correct user identification codes and passwords, as described in the relevant User Documentation.

GENERAL

This section does not limit either party's ability to disclose information (i) that the other party has approved by prior writing for disclosure; (ii) that is disclosed to its professional advisors or auditors; (iii) that becomes public other than through a breach of these confidentiality obligations, (iv) that was in its possession or available to it from a third party prior to its receipt of it in connection with any Service, (v) which is obtained by it from a third party who is not known by it to be bound by a confidentiality agreement with respect to that information, (vi) as required or requested by any securities exchange or regulatory body to which either party is subject or submits or (vii) as otherwise required to be disclosed by law or by legal or governmental process.

In addition, you agree (i) that we may disclose to our offices, affiliates, officers, employees and agents with a need to know any information we obtain about you and (ii)

that those offices, affiliates, officers, employees and agents may disclose such information as permitted under the immediately preceding paragraph.

You acknowledge and agree that data processing related to Services covered by this Booklet and your associated accounts may take place in countries other than those where you and your accounts with us are located. You further understand that information concerning your relationship with us may be available on our electronic data system both for information management purposes and in order to enable you to benefit from our electronic banking services. You understand and agree that, as a result, your banking relationship information may be available to some of our officers outside the country or countries where you and your accounts are located. You authorize us to transmit your banking relationship information across national borders, notwithstanding the banking secrecy laws of any of the countries involved, as necessary or appropriate to provide any Services.

It is possible that in providing the Services we will transmit Personal Data. We will only transmit Personal Data to our locations, to locations of our affiliates or to others in order to provide the Services. We may contract with others to provide data transmission or storage services to us. In that case, we will require that they treat Personal Data solely in accordance with our instructions. You agree to comply with any directions we may give you from time to time with respect to the Personal Data.

Neither party will use the other's name or refer to the other party directly or indirectly in any solicitation, marketing material, advertisement, news release or other release to any publication without receiving the other party's specific prior written approval for each such use or release, except that we may use your name as a reference in service proposals if we obtain your prior oral approval for such use.

These obligations continue after any Service you are using is terminated.

CURRENCY EXCHANGE RATES

If a Request, an Entry, a check issued under the Check Issuance Services or a draft created under the Client-Printed Drafts Services involves a currency other than the currency in which the relevant account is denominated, your funds will be exchanged for such other currency at a current rate of exchange on or before the transfer or debit date, as the case may be, in accordance with our normal procedures (including applicable User Documentation). Currency exchange rates fluctuate over time, and you acknowledge and accept the risks of such fluctuations: (i) in the case of Requests, between the time you initiate a Request and the time the transfer is either completed or is unwound due to a cancellation, amendment, rejection or return, (ii) in the case of checks, between the time you request us to create a check and the time we debit your account to cover such check and/or the time we re-credit your account if the check is stopped in accordance with the applicable stop payment procedures and (iii) in the case of drafts, between the time you print a draft, or request us to print a draft, and the time we transfer funds from your account to cover such draft.

FACSIMILE SIGNATURES

In some countries, businesses use a variety of techniques to produce a facsimile signature manually or by means of a device or machine (each generally called a facsimile signature) as a convenient method for signing checks, documents and other items. If you choose to use a facsimile signature, you must provide us with a specimen of each facsimile signature.

You are responsible for any withdrawal from your deposit account that bears or reasonably appears to us to bear your facsimile signature, regardless of by whom or by what means the signature was placed on the check. If you choose to use a facsimile signature, you are responsible even if you have not presented us with a specimen facsimile signature, or if the size, color or style of the check, or the size, color or style of the facsimile signature is different from that of the check or facsimile signature you use. We may pay the withdrawal and debit your account for it.

You agree to compensate us for all losses, claims, damages or expenses, including Legal Expenses, that result from our payment of a withdrawal bearing a facsimile that reasonably resembles your facsimile signature.

You are responsible for taking security measures and implementing procedures to prevent the forgery, theft or fraudulent or unauthorized use of your facsimile signature.

GENERAL MATTERS

AGREEMENT

Except with respect to a click-wrap online privacy policy to which you agree when you use a Service through Bank of America Direct®, this Booklet constitutes and represents the entire agreement between you and us regarding the Services we provide you anywhere in the world and supersedes and extinguishes all prior agreements, understandings, representations, warranties and arrangements of any nature (including requests for proposals and other sales material), whether oral or written, between you and us relating to any such Service (including any International Treasury Services Terms and Conditions booklet, but excluding the current Account Agreement). This Booklet will be controlling in the event of any conflict between it and any relevant User Documentation, any other document or written or oral statement (including but not limited to any Account Agreement, except as applicable law requires otherwise), but excluding the click-wrap online privacy policy noted above. Current User Documentation is available upon request.

This Booklet is binding upon each of you and our respective successors and permitted assigns. You may with our prior written consent, assign any of your rights or duties described in this Booklet. This Booklet is not for the benefit of any other person, and no other person has any right under this Booklet against you or us, and nothing contained in this Booklet creates any agency, fiduciary, joint venture or partnership relationship between you and us.

NOTICE OF FINAL AGREEMENT. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF

**PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.
THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

GENERAL OBLIGATIONS

We are responsible only for performing the Services expressly provided for in this Booklet. We may contract with an outside vendor in providing any of these Services.

With respect to any Service, we will provide you with assistance by telephone at the numbers and during the hours specified by us in writing from time to time.

You are responsible for maintaining the security of your data and ensuring that it is adequately backed-up. We are not responsible for your loss of your data.

ORAL INSTRUCTIONS

Except as otherwise provided in this Booklet with respect to compliance with any applicable Security Procedure, we may rely on oral instructions from any person who identifies himself or herself by a name which is included on a written list from you of persons authorized to give such instructions. You will update this list from time to time as necessary to reflect any changes in authorized persons. Except as otherwise expressly stated in this Booklet, we are not required to act on any instruction from any person or to give notices to any person.

SEVERABILITY; NO WAIVER

If any provision of this Booklet or the application of any such provision to any person or set of circumstances is determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Booklet, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, are not impaired or otherwise affected and continue to be valid and enforceable to the fullest extent permitted by law.

No delay or failure to exercise any right or remedy under this Booklet is deemed to be a waiver of such right or remedy. No waiver of a single breach or default under this Booklet is a waiver of any other breach or default. Any waiver under this Booklet must be in writing.

GOVERNING LAW

Except as otherwise expressly provided in this Booklet for a particular Service, with respect to each Service, this Booklet is governed by and interpreted according to (i) U.S. federal law and (ii) the law of (A) the state in the United States of America in which the account (or the principal account, in the case of multiple accounts) associated with such Service is located or, if there is no such state or no account associated with such Service, (B) the State of New York, without reference to the principles of conflicts of law of the U.S. and of such state.

If you are headquartered, or are using a Service, outside the United States of America, and if requested by us, you must appoint an agent for service of process in England, Hong Kong, Singapore and/or the United States of America, and you irrevocably agree

that any writ, summons, order, judgment or other document relating to or in conjunction with any proceeding, suit or action may be served on you in such jurisdiction.

LIMITATION OF LIABILITIES

ALL SERVICES OTHER THAN ELECTRONIC FUNDS TRANSFER SERVICES

We are liable to you only for actual damages incurred as a direct result of our failure to exercise reasonable care in providing a Service.

ELECTRONIC FUNDS TRANSFER SERVICES

For Requests and Entries which are subject to UCC 4A, we are liable only for damages required to be paid under UCC 4A or the Fedwire Regulation, as applicable, except as otherwise agreed in this Booklet.

For all Requests and Entries not subject to UCC4A and for all other obligations under the Electronic Funds Transfer Services sections, our liability is limited to actual damages, resulting directly from our willful misconduct or our failure to exercise reasonable care, not exceeding the following, as applicable: (i) in case of an excessive debit to your account, the amount of the excess plus compensation equivalent to interest; (ii) in case of payment to an account not specified by you, the amount of the payment plus compensation equivalent to interest; (iii) in case of any delay in crediting a debit Entry or DTC to your account, the amount of compensation equivalent to interest for the period of delay; or (iv) in all other cases, the actual damages incurred by you. You will use reasonable efforts to assist us in recovering the amount of any overpayment for which we are liable.

If we are obligated to pay interest compensation, we will pay such compensation or credit your account, as we determine, upon your written request. We calculate compensation for the relevant period as specified in the Account Agreement or as advised by your customer services representative.

If you transmit a Request to us by way of a funds-transfer system or other third-party communications system not specifically required by us, the system is deemed to be your agent for that purpose. We are not liable to you for any discrepancy between the terms you transmit to such system and the terms it then transmits to us.

ALL SERVICES

In no event will we be liable for any indirect, consequential or punitive loss, damage, cost or expense of any nature or any economic loss or damage, expense and loss of business, profits or revenue, goodwill and anticipated savings, loss of or corruption to your data, loss of operation time or loss of contracts, even if advised of the possibility of such loss, damage, cost or expense.

We will not be responsible for the acts or omissions of you or your officers, employees or agents (including but not limited to the amount, accuracy, timeliness or authorization of any instructions or information from you) or the acts or omissions of any other person or entity, including but not limited to any clearing house association or processor, any U.S. Federal Reserve Bank or any other country's central bank, any other financial institution or any Supplier, and no such person or entity will be deemed our agent.

If you permit any Subsidiary or other person to access one of our Service installations on your premises through use of a remote access software package, we will not be responsible or liable for such Subsidiary or person's use or misuse of our Services or access to accounts owned by you and for which you did not authorize that Subsidiary or person to have access via your installation. We may and will treat all instructions and information received by us through this arrangement as provided by and for the benefit of you and subject to all our rights under this Booklet with respect to the pertinent Services.

We will not be liable for and will be excused from any failure or delay in performing our obligations for any Service if such failure or delay is caused by circumstances beyond our control, including any natural disaster (such as earthquakes or floods), emergency conditions (such as war, riot, fire, theft or labor dispute), legal constraint or governmental action or inaction, breakdown or failure of equipment, breakdown of any Supplier, or your act, omission, negligence or fault.

We also will not be liable for any failure to act on our part if we reasonably believed that our action would have violated any law, rule or regulation.

OVERDRAFTS

With respect to a Service, we may, at our sole discretion, allow an overdraft to occur in your account. Except as we agree or advise you otherwise in writing, you must repay us immediately, without demand, the amount of such overdraft plus any overdraft charges. In such cases, the fact that we previously allowed an overdraft to occur does not obligate us to do so in the future. Additional terms and conditions contained in your Account Agreement may apply.

PAYMENT FOR SERVICES

You must maintain and designate account(s) with us which we will use for debiting or crediting with respect to all payments and deposits and related adjustments and charges. Except as otherwise provided, you must have Collected and Available Funds on deposit in your account(s) sufficient to cover such obligations. For purposes of satisfying your payment obligations, we may consider any overdraft line of credit or other arrangement you have with us.

SERVICE CHARGES

You will pay us for each Service you use according to our schedule of charges currently in effect for you, except as we agree otherwise (in writing) from time to time. At your request, we will provide you a copy of the current schedule of charges for the applicable Service. All charges are subject to change upon 30 days prior written notice to you (unless otherwise agreed in writing), except that any increase in charges to offset any increase in fees charged to us by any Supplier for services used in delivering any Service may become effective in less than 30 days.

You will pay us for Software support in excess of that contemplated in the General Provisions sections of this Booklet. The charges for such extra support will be as

specified by us before such charges are incurred or as otherwise agreed by you and us from time to time.

We will, on a monthly basis, debit your account with us for payment of charges due, unless you arrange another payment procedure acceptable to us.

TAXES

All Service charges are exclusive of sales, value-added and use taxes, stamp and other duties and other governmental charges imposed on any Service or Materials and not based on our net income. Such taxes, duties and charges are payable by you.

PROTECTION FROM THIRD PARTIES

You will indemnify us against and hold us harmless from and defend us against any and all liabilities, claims, costs, expenses and damages of any nature (including Legal Expenses) arising out of or relating to disputes or legal actions by parties other than you and us concerning any Service. The obligations contained in the preceding sentence will continue after a Service you are using is terminated. This section does not apply to any cost or damage attributable to our gross negligence or intentional misconduct.

REPRESENTATIONS AND WARRANTIES

On and as of each day we provide any Service to you, you represent and warrant to us that:

- Your agreement to each provision contained in this Booklet is a duly authorized, legal, valid, binding and enforceable obligation;
- The debiting of any account as provided in this Booklet is not inconsistent with any restriction on the use of that account;
- All approvals and authorizations required to permit the execution and delivery of the Agreement and Authorization form and any other necessary documentation, and the performance and consummation by you of the transactions contemplated under each Service, have been obtained, including but not limited to due authorization from each applicable third party to allow you to transfer funds and access information from such party's account;
- Your performance of your obligations will not violate any law, regulation, judgment, decree or order applicable to you; and
- There is no lawsuit, tax claim or other dispute pending or threatened against you which, if lost, would impair your financial condition or ability to pay us under the terms of this Booklet.

RESOLUTION OF DISPUTES

We try to resolve our clients' Service problems or disputes as quickly as possible. In most cases, we can resolve a problem by telephone.

Any dispute or controversy concerning your use of Services described in this Booklet will be decided by binding arbitration conducted in the United States of America (except as you and we expressly agree otherwise) in accordance with the United States Arbitration Act (Title 9, U.S. Code) under the Commercial Arbitration Rules of the American Arbitration Association. Under these procedures, the dispute is submitted to a neutral person for determination in place of a trial before a judge or jury. Judgment upon the award made by the arbitrator may be entered in any court having jurisdiction.

Without regard to the foregoing, any dispute or controversy that arises from an Electronic Funds Transfer Service will be decided by a judge without a jury in a United States of America federal or state court (except as you and we expressly agree otherwise in writing). **This means that in these instances you waive any right to a trial by jury in any action or proceeding and agree that such action or proceeding will be tried before a judge without a jury.**

Either you or we may exercise self-help remedies or obtain provisional or ancillary remedies from a court. You or we may exercise or obtain these remedies at any time, even while the arbitration or trial by a judge is pending. By exercising or obtaining any such remedies, neither you nor we waive the right to request that a dispute or controversy be decided by arbitration or trial by a judge.

SOFTWARE LICENSE

This section applies to all Software we provide to you after you return the Agreement and Authorization form unless we provide you a separate license agreement for specific Software (including a "click-wrap" Software license you may obtain from us by downloading from our website and including, in the case of the Commercial and Corporate Card Services, the licenses for Visa InfoSpan, MasterCard SmartData and any other third-party Software we provide you in connection with such Services). Notwithstanding anything to the contrary in the "General Provisions" section of this Booklet, the software licenses granted to you under this Software License section are governed by and interpreted according to the laws of the State of California without reference to its principles of conflicts of law.

LICENSE

For each Software application we provide to you for one or more Services, we grant you a non-exclusive, non-transferable license for the use of that Software and its related Materials. Each license is granted solely for use in object code form only in connection with one or more Services. You may use the Software only in accordance with the applicable User Documentation.

The Software, its source code, the related Materials and all copyright, patent, trademark, trade secret and other rights in them are and will remain the exclusive property of us or our licensors. You will secure and protect the Software (including all copies) in a manner consistent with the maintenance of our rights and those of our licensors. In order to protect those rights, you will reproduce and incorporate copyright notices and all other proprietary legends prescribed by us in any permitted copies. You may not remove,

obscure or otherwise tamper with or alter any such notices or legends affixed to or otherwise contained in the Software or related Materials or copies. You will also take appropriate action to instruct and obligate your representatives who are permitted access to the Software (including copies) to comply with your obligations to protect the Software.

We are obligated to provide you only with those updates, upgrades or new releases of Software which we make generally available to our other customers who license the same Software. Any corrections, updates, upgrades or new releases that we provide to you must be installed by you promptly or by such later time as we specify, and will be deemed part of the Software upon delivery to you. We will provide support only for the most current version of Software we have provided to you.

You will, at your expense, cause a computer to be installed and kept in good condition and working order at your site for use of the Software. The computer and its components must be equipment which is acceptable as specified by us from time to time.

We may assist you with the installation of Software on your computer and with the training of persons who will use the Software, but we will not bear any responsibility for the proper installation and use of the Software. Except as you and we may agree otherwise, you will be deemed to have accepted the Software upon its installation and upon our having made such training available to you.

You may not (i) sell, assign, transfer, license, sublicense or publish the Software or copies of the Software or (ii) disclose, display or otherwise make available the Software or copies thereof to third parties without our express approval.

You may not copy, or allow anyone else to copy, the Software or related Materials, except that you may make two copies for backup and archival purposes. You may not electronically distribute, or allow anyone else to electronically distribute, Software except from the network server on which it is installed to workstations on that network.

You will provide us notice, in writing or by electronic means approved by us for such purpose, each time you make a permitted copy of Software (except for backup or archival copies) or electronically distribute it to a workstation, indicating the location and date of the copy or distribution. We may audit your site to confirm compliance with this Software License section if you fail to make the reports called for or if we reasonably believe you are using unauthorized copies of Software.

You may not alter, repair, modify or adapt any Software or related Materials, including, but not limited to, translating, reverse engineering, decompiling, disassembling or creating derivative works from it.

You agree to inform our client support unit of all errors, difficulties or other problems with the Software of which you become aware. We will make reasonable efforts to fix or provide workarounds for material reported errors and to provide you with support and consultation concerning the Software. The reasonable effort, support and consultation will be such as we, in our sole discretion, determine. You will cooperate with us in the expeditious resolution of such errors, difficulties or other problems by providing us, on

request, a listing of input, output and all other data which we may reasonably request in order to reproduce operating conditions similar to those present when such errors, difficulties or other problems were discovered.

You may move the Software to another computer replacing the one on which the Software was originally installed or to another site, but only after you give us notice, in writing or by electronic means approved by us for such purpose, specifying the new computer and site. We will have reasonable access to Software while it is at your site to provide assistance or to verify the status or location of Software.

A license to Software and related Materials will terminate automatically if you breach a material term of the license or if the Services for which you are using the Software are terminated. In addition, in the event of a breach of your confidentiality obligations with respect to the Software, we may seek any remedy provided by law or equity.

LIMITED WARRANTY/DISCLAIMERS

You acknowledge that the Software has not been produced to meet your specific requirements and has not been tested in every possible combination and operating environment. You are responsible for satisfying yourself that the Software is satisfactory for your purposes.

You further understand and agree that we make no representation concerning the completeness, accuracy, operation or performance of the Software or its compatibility with any hardware. You acknowledge that the operation of the Software may not be uninterrupted or error-free.

We warrant that the Software will substantially conform to the documentation provided with the Software for a period of 60 days after delivery to you provided that: (i) the Software is used by you in strict compliance with the terms of this Booklet and the related Materials, (ii) the Software is not modified in any way by you and (iii) you promptly notify us and reproduce for us any defects, errors or bugs in the Software. We will use reasonable efforts to correct or work around any Software errors reported by you or, at our discretion, but in any event if our efforts are unavailing, we will accept return of the Software and refund any license fees paid by you.

You agree that the foregoing is your sole and exclusive remedy for breach of warranty and our sole obligation in connection with the performance or operation of the Software and related Materials.

Except as specifically stated above and in the Infringement Indemnity subsection below and notwithstanding any other provision in this Booklet or otherwise, we make no representation or warranty, express or implied, written or oral, and, to the full extent permitted by law, disclaim all other warranties including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose, regarding the Software, the related Materials and all other property, services or rights covered by this Booklet.

To the extent permitted by applicable law, and except as otherwise provided in this section, we will not be liable for damages of any kind arising out of the use of, or inability to use, the Software or accompanying documentation.

You agree that the United Nations Convention on Contracts for the International Sales of Goods will not apply to our provision to you or your use of any Software.

Neither you nor we limit or exclude our liability to the other for death, personal injury, willful misrepresentation, willful default or fraud.

INFRINGEMENT INDEMNITY

Notwithstanding your indemnity of us in the "Protection From Third Parties" section of this Booklet, we will defend at our own expense or settle any action brought against you to the extent it is based on a claim that your use of the Software and/or Materials provided by us to you pursuant to this Booklet infringes any Berne Convention country copyright or any United States of America or United Kingdom patent, trade secret or trademark of any third party, and we will pay all costs and damages finally awarded in any such action.

Our obligation is subject to (i) prompt notice from you of any such claim or action, (ii) your not having made any admission of liability or agreed to any settlement or compromise, (iii) your providing to us, in a prompt and timely manner, the documents, information and assistance we reasonably request, (iv) our having sole control of defending such claim or action, (v) your having used the current version of the Software and Materials, as provided to you by us, in compliance with the terms of this Booklet and the related Materials and (vi) our obligations under this indemnity being our only obligations to you with respect to any infringement claim in connection with your use of the Software.

EXPORT CONTROLS

You understand and acknowledge that our obligations to provide the Software, technical assistance, any media in which any of the foregoing is contained, training and related technical data (collectively "Data") will be subject in all respects to all applicable laws and regulations as shall from time to time govern the export or diversion of certain products and technology to and from certain countries. You warrant and agree that you will comply in all respects with the export and reexport restrictions applicable to the Data shipped to you and will otherwise comply with all applicable laws and regulations governing export and diversion of the Software and technical data in effect from time to time.

SUPPLEMENTAL IMAGE CD-ROM SOFTWARE LICENSE PROVISIONS

This subsection supplements this Software License section with respect to Software we provide you for the Disbursement Image Service under which we provide you with CD-ROMs and shall control in the event of conflict between it and the balance of the Software License section.

We warrant for a period of 45 days after the CD-ROM creation date appearing on the CD-ROM that such CD-ROM itself will be free of defects in material and workmanship. If we provide you a CD-ROM which contains a media defect or is unreadable in its entirety, you must notify us within the 45-day period.

Our disclaimer of warranties in this Software License section applies to CD-ROMs as well as to the Software and related Materials.

You may not electronically distribute the Image CD-ROM Software to any workstation other than the one for which such Software is originally installed on your site.

Notwithstanding anything to the contrary in the Termination section of this Booklet, if a Disbursement Image Service under which we provide you with CD-ROMs is terminated for a reason other than your breach of this Software License section, you may continue to use the Software for such Service after termination of such Service for six months, or for such longer period as we approve, subject to the terms of this Software License section or such other software license agreement as we, at our election, require you to sign for this purpose. At the end of such six-month or longer period, the license for your use of the Software for such Disbursement Image Service will then terminate automatically.

SUPPLEMENTAL IMAGE (POSITIVE PAY) SOFTWARE LICENSE PROVISIONS

This subsection supplements this Software License section with respect to Software we provide you for the Image Positive Pay Service and shall control in the event of conflict between it and the balance of the Software License section.

You may not electronically distribute the CCR (C Compression Routines) Software for Windows 3.1 provided to you in connection with the Image Positive Pay Service to any workstation other than the one for which such Software is originally installed on your site.

TERMINATION

Either you or we may terminate any or all Services upon 30 (60 in the case of Corporate Card Services) calendar days prior written notice to the other party. Notwithstanding the foregoing sentence, we may terminate any or all Services effective immediately, and we will send you notice of the termination, if any of the following occurs:

- You breach any of the terms and conditions in this Booklet or any other agreement with us;
- You terminate, liquidate or dissolve your business or dispose of a substantial portion of your assets;
- You fail generally to pay your debts as they become due;
- You, voluntarily or involuntarily, become the subject of any bankruptcy, insolvency, reorganization or other similar proceeding;
- You initiate any composition with your creditors;
- You experience a material adverse change in your financial condition or your ability to perform your obligations under the terms and conditions in this Booklet; or
- Any guaranty of your obligations to us terminates, is revoked or its validity is contested by the guarantor, or any of the events set forth in the above five bullet points attributable to you occur to the guarantor.

If a Service you are using is terminated for any reason, you will do the following:

- Immediately stop using any Materials relating to the terminated Service;
- Erase or delete any Software we have provided relating to the terminated Service to the extent it is stored in your computers; and
- At our option, either return to us or destroy all Materials relating to the terminated Service and certify to us that you have done so.

These obligations will continue after a Service you are using has been terminated.

Termination of a Service you use does not affect your payment obligations for services we provide to you before the Service is terminated, and any such termination is in addition to our other rights under applicable law and under the terms of this Booklet. Also, termination of any Service you use does not release you or us from any of our respective obligations which arose or became effective before such termination. Upon termination, all amounts owed by you and outstanding will become immediately due and payable.

GLOSSARY OF TERMS

The following are some important terms that appear in this Booklet.

Acceptable Payee. Your name and any other payee name you provide to us as an acceptable payee for checks to be processed under the Lockbox Service.

Account Agreement. The current signature card, International Account Agreement or SAOTC and the publication(s), as amended from time to time, we provide you containing terms and conditions applicable to each deposit, savings or current account for which you use a Service.

Bill Payment Service Provider. Any entity, which may include us, you authorize to deliver payments, remittance information and other related data from your customers to us for the Electronic Bill Payment Consolidation Service.

Business Day. Each day on which the bank or bank office providing or facilitating a Service is open for business related to that Service.

Card. Each plastic charge card which we issue for your Card Account under our Commercial or Corporate Card Services.

Card Account. Each MasterCard or Visa account which we issue to you or to a Cardholder under our Commercial or Corporate Card Services, including an account for which only an account number and no Card is provided.

Cash Advance. Use of a Card Account to obtain cash from a participating financial institution, merchant or ATM, to write a Convenience Check or to obtain items readily convertible into cash, such as money orders, travelers checks, foreign currency, lottery tickets, casino chips and race-track wagers.

Card Administrator. One or more individuals designated by you in writing, as our primary contact for the Card Accounts, who is authorized to take actions necessary or appropriate to maintain the Card Accounts, including without limitation designating persons to receive Card Accounts, receiving communications from us related to the Card Accounts, requesting the closure of Card Accounts and otherwise communicating with us with respect to the Card Accounts.

Cardholder. Your employee or any other person who you designate in writing and who we approve to receive a Card Account or a Commercially Prepaid Card. If you or a Cardholder makes a Commercial Prepaid Card, a Card Account number or Convenience Check available to another party, that person will also be considered a Cardholder.

Check Issuance Request. Using the Check Issuance Service, a message transmitted from you to us requesting us to issue a check on your behalf drawn on either accounts you maintain with us or accounts designated and owned by us.

Collected and Available Funds. Funds in an account equal to the ledger balance minus float which, in our reasonable determination, are not subject to a hold, dispute or legal process preventing their withdrawal.

Commercial Prepaid Card. A pre-paid magnetic strip-based plastic card issue by us for a Cardholder's purchase of goods or services or for cash withdrawals.

Controlled Disbursement Point. Each bank office designated by us through which checks issued under the Controlled Disbursement Service will be cleared or routed.

Convenience Check. A check which we may provide to you to draw on a Card Account.

Deposit Account. One or more demand deposit accounts maintained by you with us and used in connection with our Controlled Disbursement Service.

Depository Transfer Checks (DTCs). Depository transfer checks and preauthorized checks to debit *Receivers'* accounts to accomplish the same purpose as debit Entries. (*Receiver* is defined in the NACHA Rules.)

Effective Entry Date. The date specified, in accordance with the NACHA Rules, on the Entry by the *Originator* on which the *Originator* intends the Entry to be settled. (*Originator* is defined in the NACHA Rules.)

Electronic Funds Transfer Services. ACH Services, International Electronic Funds Transfer Services and Wire Transfer Services.

Entries. Entries has the meaning provided in the NACHA Rules and also includes any data for Entries and any prenotification.

eUCP. The rules for electronic presentation of documents under the UCP.

Fedwire. The funds transfer system owned and operated by the Federal Reserve Banks of the United States of America, but excludes the system for making automated clearing house transfers.

Fedwire Regulations. Subpart B of Regulation J of the Board of Governors of the Federal Reserve System of the United States of America, as amended from time to time.

FX Transaction. A transaction between you and us, permitted under the Electronic Foreign Exchange Service, for the purchase of one currency in exchange for the sale of another currency (including without limitation any foreign exchange spot, swap or outright forward transaction or option), including any transaction that effects the pre-delivery, extension, rollover or splitting of such a transaction.

FX Request. A request by means permitted under the Electronic Foreign Exchange Service to enter into an FX Transaction.

International Account Agreement. A form of Account Agreement used in some countries.

International Electronic Funds Transfer Services. Electronic payment services for transfers to or from your account outside the United States of America or to or from your account in the United States of America to or from an account in a different country. These services include low-value batch payments made according to multiple requests within a single electronic data file. International Electronic Funds Transfer Services exclude ACH Services within the United States of America and exclude Wire Transfer services.

ISP98. The "International Standby Practices 1998" developed by the Institute of International Banking Law & Practice and endorsed and published by the International Chamber of Commerce or such later revision as may be adopted and be in effect on the date the subject standby letter of credit is issued.

Legal Expenses. Reasonable lawyer's fees, allocated costs of staff counsel (unless prohibited by applicable law), fees and expenses of litigation and any other fees and expenses incurred in enforcing any provision of this Booklet.

Lockbox Address. The post office address we assign to you or we accept from you for the Lockbox Service.

Materials. The Software, user identification codes, passwords, codes, keys, test keys, security devices, embedded algorithms, digital signatures and certificates, other similar devices and information, User Documentation and related documentation we provide to you.

NACHA Rules. The rules of the National Automated Clearing House Association (including any other clearing house rules applicable to automated clearing house transactions), as amended from time to time.

Payment Advice. Using the Client-Printed Drafts Services, an electronic message transmitted by you to us advising us that you have created a draft.

Personal Data. Information we receive from you in connection with the Services consisting of an individual's bank accounts or other financial data or identifying a living individual.

PIN. A personal identification number which a Cardholder may receive when activating a Commercial Prepaid Card.

RCK. A "Re-Presented Check Entry" as defined in the NACHA Rules.

Request. A request by means permitted under the relevant Wire Transfer or International Electronic Funds Transfer Service to transfer funds to or from a specified account or beneficiary (including standing instructions) or to amend or cancel a prior request to transfer funds.

Reversal/Deletion Request. A request for a Reversal or a request to delete a previously delivered Entry.

Reversals. Data for reversing Entries.

SAOTC. Each form of Standard Account Opening Terms and Conditions used in certain countries as an Account Agreement.

Security Procedure. Unless we agree otherwise with you, the applicable security procedure described in the Materials for your data delivery type or Service for verifying the authenticity of Entries, Requests, Reversal/Deletion Requests, Payment Advices, Check Issuance Requests, Stop Payment Requests, FX Requests or Tax Payment Instructions.

Service. With respect to a Bank of America Corporation subsidiary bank, a treasury management service provided in a specific Bank location and covered by this Booklet.

Software. The programs and data files provided by us for use on a computer in connection with one or more particular Services.

Stop Payment Request. A message you send us using the Online Stop Payment Services, the Check Issuance Services or the Client-Printed Drafts Services to request that payment be stopped on a check or draft which, in the case of the Online Stop Payment Services, must be drawn on an eligible account you have with us.

Subsidiary. Any entity in which more than 50% of the ownership interest is owned, directly or indirectly, by you. The term "Subsidiary" does not include affiliates or other entities in which 50% or less of the ownership interest is owned, directly or indirectly, by you.

Supplier. Any private or common carrier communication or transmission facility, any time-sharing supplier or any mail or courier service.

SWIFT. The international electronic message-transfer service known as the Society for Worldwide Interbank Financial Telecommunication.

Tax Payment Instruction. An instruction by means permitted under the relevant Tax Payment Service to pay any taxes using any of the tax forms specified in the applicable User Documentation.

Transaction. The purchase or reservation of goods or services or a cash advance made or facilitated by use of a Stored Value Card, a Commercial Card, Convenience Check or Card Account.

UCC 4A. Article 4A of the Uniform Commercial Code - Funds Transfers, as adopted by the state in the United States of America whose law applies to a Service, as amended from time to time.

UCP. The Uniform Customs and Practices for Documentary Credits, 1993 Revision, ICC Publication No. 500 or such later revision as may be adopted by the International Chamber of Commerce and be in effect on the date the subject letter of credit is issued.

Unauthorized Use. Use of a Card Account, Card or Convenience Card by a person (i) who is not your Cardholder, employee or agent, (ii) who does not have actual, implied or apparent authority to use the Card Account and (iii) whose use does not benefit you directly or indirectly.

Uniform Rules for Collections. The Uniform Rules for Collections, ICC Publication No. 522, or such later revision as may be adopted by the International Chamber of Commerce and be applicable to a collection.

User Documentation. Any written information we provide you, including information in electronic format, as amended from time to time, which contains detailed instructions regarding the use of a Service, as provided by a particular banking center or office. User Documentation may vary from one jurisdiction to another. Current User Documentation is available upon your request.



Subject: Crescent Creek Shelter & Bathroom Reroof Contract

Proposed Council Action: Authorize the award and execution of the contract for the Crescent Creek Shelter & Bathroom Reroof Contract to The Roof Doctor Inc. for their bid quotation in the amount of twenty-four thousand six hundred ninety-seven dollars and sixty cents (\$24,697.60) including sales tax.

Dept. Origin: Public Works - Operations

Prepared by: *Marco Malich*
Marco Malich
Interim Director of Operations

For Agenda of: April 14, 2008

Exhibits: Construction Services Contract

Initial & Date

Concurred by Mayor:

Approved by City Administrator: *PK 4/7/08*

Approved as to form by City Atty: *Cam 4/7/08*

Approved by Finance Director: *DR 4/9/08*

Approved by Department Head: *MM*

Expenditure	Amount	Appropriation
Required	\$24,697.60	Required \$0
Budgeted	\$30,000.00	

INFORMATION / BACKGROUND

The 2008 Parks Development Budget, Objective No. 1, provides \$30,000 for the replacement of the existing cedar shake roofs on the bathroom and shelter at City Park at Crescent Creek.

In accordance with the City's Small Works Roster Process (Resolution No. 592), seven potential contractors were contacted for price quotations. Only two contractors responded with the following price quotation proposals:

- The Roof Doctor Inc. \$ 24,697.60, including sales tax
- United Pacific Structures Inc. \$ 31,552.00, including sales tax

FISCAL CONSIDERATION

This work is within the \$30,000 budget that was anticipated in the adopted 2008 Budget, identified under the Parks Development Budget, Objective No. 1.

BOARD OR COMMITTEE RECOMMENDATION – N/A

RECOMMENDATION / MOTION

Move to: Authorize the award and execution of the contract for the Crescent Creek Shelter & Bathroom Reroof Contract to The Roof Doctor Inc. for their bid quotation in the amount of twenty-four thousand six hundred ninety-seven dollars and sixty cents (\$24,697.60) including sales tax.

**AGREEMENT FOR CONSTRUCTION SERVICES
BETWEEN GIG HARBOR AND
THE ROOF DOCTOR INC.**

THIS AGREEMENT, is made this 31st day of March, 2008, by and between the City of Gig Harbor (hereinafter the "City"), and The Roof Doctor Inc., a Washington limited liability company, located and doing business at 5620 S. Adams Street, Tacoma, WA 98409, (hereinafter "Contractor").

WHEREAS, the City desires to hire the Contractor to perform the work and agrees to perform such work under the terms set forth in this Agreement; and

WHEREAS, in the process of selection of the Contractor and award of this contract, the City has utilized the procedures in RCW 39.04.155(3);

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

I. Description of Work. The Contractor shall perform all work as described below, which is attached hereto as Exhibit A and incorporated herein by this reference, in a workman-like manner according to standard construction practices. The work shall generally include the furnishing of all materials and labor necessary to re-roof the existing shelter and bathroom with cedar shakes, haul away and dispose of debris, replace all metal flashing, and completely clean up jobsite. The Contractor shall not perform any additional services without the express permission of the City.

II. Payment.

A. The City shall pay the Contractor the total sum twenty-four thousand six hundred ninety-seven dollars and sixty cents (\$24,697.60) including sales tax, for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for these tasks, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed change order.

B. After completion of the work, the City shall pay the full amount of an invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Contractor 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 - owner relationship will be created by this Agreement. As the Contractor is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of the Contractor shall be, or shall be deemed to be the employee, agent, representative or subcontractor of the City. In the performance of the work, the Contractor 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 subcontractors of the Contractor. The Contractor will be solely and entirely responsible for its acts and for the acts of the Contractor's agents, employees, representatives and subcontractors 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 Contractor performs hereunder.

IV. Duration of Work. The City and the Contractor agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement by both parties. The Contractor shall perform all work required by the Agreement on or before May 30, 2008. The indemnification provisions of Section IX shall survive expiration of this Agreement.

V. Prevailing Wages. Wages paid by the Contractor shall be not less than the prevailing rate of wage in the same trade or occupation in Pierce County as determined by the industrial statistician of the State Department of Labor and Industries and effective as of the date of this contract.

Before any payment can be made, the Contractor and each subcontractor shall submit a "Statement of Intent to Pay Prevailing Wages" to the City, which has been approved by the State Department of Labor and Industries. Each voucher claim (invoice) submitted by the Contractor for payment of work shall have an "Affidavit of Wages Paid", which states that the prevailing wages have been paid in accordance with the pre-filed "Statement(s) of Intent to Pay Prevailing Wages".

VI. Waiver of Performance Bond and Retainage: Limited Public Works Process. As allowed in RCW 39.04.155(3) for limited public works projects, the City has waived the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW for the work described in Exhibit A.

VII. Termination.

A. Termination Upon City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon five (5) days written notice to the Contractor.

B. Termination for Cause. If the Contractor refuses or fails to complete the tasks described in Exhibit A, to complete such work by the deadline established in Section IV, or to complete such work in a manner satisfactory to the City, then the City may, by written notice to the Contractor, give notice of its intention to terminate this Agreement. On such notice, the Contractor shall have five (5) days to cure to the satisfaction of the City or its representative. If the Contractor fails to cure to the satisfaction of the City, the City shall send the Contractor a written termination letter which shall be effective upon deposit in the United States mail to the Contractor's address as stated below.

C. Excusable Delays. This Agreement shall not be terminated for the Contractor's inability to perform the work due to adverse weather conditions, holidays or mechanical failures which affect routine scheduling of work. The Contractor shall otherwise perform the work at appropriately spaced intervals on an as-needed basis.

D. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for services satisfactorily performed by the Contractor to the effective date of termination, as described in a final invoice to the City.

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

IX. Indemnification. The Contractor shall indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, and shall pay for all costs, 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 Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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 Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONTRACTOR'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.

X. Insurance.

A. The Contractor 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 Contractor's own work including the work of the Contractor's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Contractor 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

- C. The Contractor is responsible for the payment of any deductible or self-insured retention that is required by any of the Contractor's insurance. If the City is required to contribute to the deductible under any of the Contractor's insurance policies, the Contractor shall reimburse the City the full amount of the deductible.
- D. The City of Gig Harbor shall be named as an additional insured on the Contractor'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 Contractor's insurance policies.
- E. It is the intent of this contract for the Contractor's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Contractor'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 Contractor 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 Contractor's coverage.

The Contractor shall procure and maintain for the duration of this Agreement, comprehensive general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its employees, agents or subcontractors. The cost of such insurance shall be borne by the Contractor. The Contractor shall maintain limits on such insurance in the above specified amounts: The coverage shall contain no special limitations on the scope of protection afforded the City, its officials, officers, employees, agents, volunteers or representatives.

The Contractor agrees to provide the City with certificates of insurance evidencing the required coverage before the Contractor begins work under this Agreement. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. The City reserves the right to require complete, certified copies of all required insurance policies at all times.

XI. Entire Agreement. The written provisions and terms of this Agreement, together with all exhibits attached hereto, all bids specifications and bid documents 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.

XII. City's Right of Supervision. Even though the Contractor 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 Contractor 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 Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

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

XIV. Warranties. The Contractor hereby warrants that it is fully licensed, bonded and insured to do business in the State of Washington as a general contractor. The Contractor will warranty the labor and installation of materials for a one (1) year warranty period.

XV. 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 Contractor.

XVI. Assignment. Any assignment of this Agreement by the Contractor without the written consent of the City shall be void.

XVII. 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 as of the date of mailing by registered or 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.

XVIII. 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.

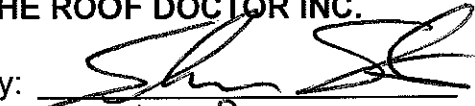
XIX. Resolution of Disputes. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City, and the City shall determine the term or provisions' true intent or meaning. The City shall also decide all questions 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 Contractor under any of the provisions of this Agreement which cannot be resolved by the City's determination in a reasonable time, or if the Contractor does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be with the 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 prevailing party shall be reimbursed by the

other party for its costs, expenses, and reasonable attorney's fees incurred in any litigation arising out of the enforcement of this Agreement.

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

THE ROOF DOCTOR INC.

By: 
Its VICP Pres.

THE CITY OF GIG HARBOR

By: _____
Its Mayor

Notices should be sent to:

The Roof Doctor Inc.
Attn: Shane Slater
5620 S. Adams Street
Tacoma, WA 98409
Phone: 253-472-8582

City of Gig Harbor
Attn: Marco Malich
Interim Director of Operations
3510 Grandview Street
Gig Harbor, Washington 98335
Phone: 253-851-6170

Approved as to form:

By: _____
City Attorney

Attest:

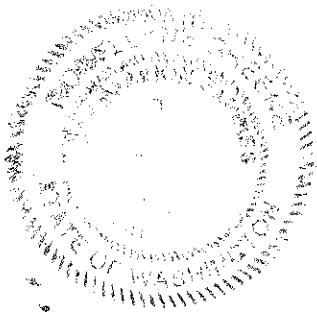
By: _____
Molly M. Towslee, City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF Thurston)

I certify that I know or have satisfactory evidence that Shane Slater 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 The Roof Doctor Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 4-9-08

Roseezy Lucie
Notary Public in and for the
State of Washington,
Residing at Oley, Wash
My appointment expires: 1-1-11




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 she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the **Mayor of the City of Gig Harbor**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

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

Exhibit A

<p style="font-size: 24pt; font-weight: bold;">Proposal</p> <p style="font-size: 36pt; font-weight: bold; margin: 0;">THE ROOF DOCTOR INC.</p> 		<p><i>Ken Slater Roofing</i> serving all of Western Washington since 1959 CONT. REGISTER NO. ROOF DI - 188NS</p>
<p>Mailing Address: P.O. Box 9387 Tacoma, WA 98490 253-472-8582</p>		
<p>PROPOSAL SUBMITTED TO CITY OF GIG HARBOR ATTN. MARCO MALICH</p>	<p>PHONE (253) 377-2114</p>	<p>DATE 3/20/2008</p>
<p>STREET 3510 GRANDVIEW STREET</p>		<p>JOB NAME CRESENT CREEK RE-ROOFING PROJECT</p>
<p>CITY, STATE AND ZIP CODE GIG HARBOR, WA 98335</p>		<p>JOB LOCATION 3303 VANHARDSON STREET</p>
<p>ARCHITECT SHANE SLATER</p>	<p>DATE OF PLANS</p>	<p>GIG HARBOR, WA 98332</p>
<p>ARCHITECT JOB PHONE</p>		
<p>We hereby submit specifications and estimates for:</p>		
<p>TEAR-OFF AND RE-ROOF MEDIUM CEDAR SHAKES</p>		
<ol style="list-style-type: none"> 1. Tear off all existing layers of cedar shakes. Remove nails and prep runners. Haul away and dispose of debris caused by our work. 2. Apply # 1 medium cedar shakes. Installed 20-22" to the weather. #1 medium treated. 3. Install new metal flashing to complete. 4. Clean up debris caused by our work. 		
<p style="font-size: 24pt; font-weight: bold; text-align: center;">RECEIVED</p> <p style="text-align: center;">MAR 21 2008</p> <p style="text-align: center;">CITY OF GIG HARBOR PUBLIC WORKS DEPT.</p>		<p>Kitchen \$ 14,900.00 Bathroom \$ 7,800.00 Sales tax not included</p>
<p>We propose hereby to furnish material and labor – complete in accordance with above specifications, for the sum of: _____ dollars (\$ _____).</p>		
<p>Payment to be made as follows: Payment to be determined upon acceptance of proposal</p>		
<p><small>All work to be completed in a workmanlike manner according to standard roofing practices. Any replacement of damaged sheathing, soft board, or structural damage, or necessity to mortar, cut, and counter-flash chimneys and vents will constitute an extra charge over and above the stated contract sum. Down payments are non-refundable. Contractor is authorized to substitute roofing materials as long as the substitute meets or exceeds the specifications of the quoted material. Time of performance of work will be in accordance with contractor's availability. Owner to carry standard peril insurance on the premises. Our workers are fully covered by Workers Compensation Insurance.</small></p>		<p>Authorized Signature <u>Shane Slater</u></p> <p>Note: This proposal may be withdrawn by us if not accepted within <u>30</u> days.</p>
<p>Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.</p>		
<p>Date of Acceptance: _____</p>		<p>Signature _____ Signature _____</p>



Subject: – Street naming, Borgen Loop, Cedar Court, Amber Court, Ash Lane, Kinglet Lane, Honeysuckle Lane, and Lark Lane at The Ridge At Gig Harbor.

Proposed Council Action: Approve the proposed naming of Borgen Loop, Cedar Court, Amber Court, Ash Lane, Kinglet Lane, Honeysuckle Lane, and Lark Lane for the 120 –lot, single family development in the plat of The Ridge at Gig Harbor, located at Harbor Hill Drive and Borgen Boulevard. This plat is not within the Historical Names Area.

Dept. Origin: Building/Fire Safety

Prepared by: Dick Bower
Building & Fire Safety Director

For Agenda of: April 14, 2008

Exhibits: Letter from applicant dated February 5, 2008, Site plan of development

	Initial & Date
Concurred by Mayor:	
Approved by City Administrator:	<u>RJK 4/7/08</u>
Approved as to form by City Atty:	<u>CAM 4/7/08</u>
Approved by Finance Director:	
Approved by Department Head:	<u>DB</u>

Expenditure		Amount		Appropriation	
Required	0	Budgeted	0	Required	0

INFORMATION / BACKGROUND

Matthew A. Ruetters, PLS, PacWest Engineering, PC, has requested the naming of the streets in the plat of The Ridge at Gig Harbor, a 120-lot development, located at Harbor Hill Drive and Borgen Boulevard. This plat is not within the Historical Names Area. The street designated as loop is consistent with GHMC 12.12.030.G. Loops shall be small loop-type streets to carry the name of the street from which they originate. Streets designated as courts are consistent with GHMC 12.12.030.F. Courts shall be permanently closed avenues which run easterly-westerly, such as a cul-de-sac. Streets designated as lanes are consistent with GHMC 12.12.030.H. Lanes or other street names with (PVT) designation shall be private roads. Request for comments were sent to local agencies and departments, and no comments were received.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

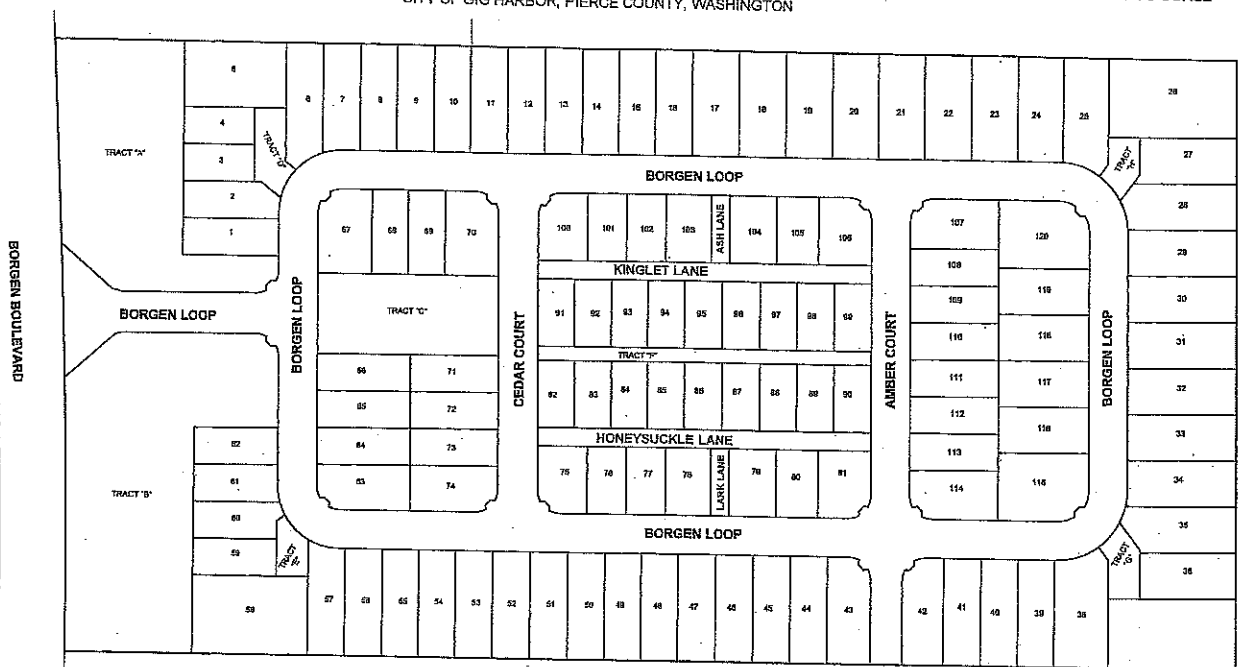
None

RECOMMENDATION / MOTION

Move to approve the proposed naming of streets in the plat of The Ridge of Gig Harbor, located at Harbor Hill Drive and Borgen Boulevard, to be named Borgen Loop, Cedar Court, Amber Court, Kinglet Lane, Honeysuckle Lane, Lark Lane, and Ash Lane, as shown on the attached plat map.

PLAT OF THE RIDGE AT GIG HARBOR
 A PORTION OF THE SOUTHEAST QUARTER, OF THE SOUTHWEST QUARTER OF SECTION 30
 TOWNSHIP 22 NORTH, RANGE 2 EAST, WILLAMETTE MERIDIAN,
 CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON

NOT TO SCALE




PUBLIC STREET NAMES:

BORGEN LOOP
 CEDAR COURT
 AMBER COURT

PRIVATE STREET NAMES:

ASH LANE
 KINGLET LANE
 HONEYSUCKLE LANE
 LARK LANE

NO.	DATE	REVISION	BY	APPROV	 PacWest Engineering, LLC 5009 PACIFIC HWY E, UNIT 9-0 Fife, WA 98424 Phone (253) 926-3400 Fax (253) 926-3402	THE RIDGE AT GIG HARBOR PREPARED FOR: UNITED WESTERN DEVELOPMENT, INC.	STREET NAMING EXHIBIT	DESIGN	N/A	SHEET	1 OF 1	
								DRAWN	JLR		DWS	STRNAMEX.DWG
								CHECKED	N/A		DATE	
								APPROVED	N/A	PROJECT	05-229	



Subject: Escrow Agreement for Retainage
-- Onshore Outfall & Force Main
Replacement Project (CSSP-0802)

Proposed Council Action: Authorization the Mayor to execute the Escrow Agreement with Pivetta Brothers Construction, Inc. and Sterling Savings Bank.

Dept. Origin: Engineering Division

Prepared by: Stephen Misiurak, P.E.
City Engineer

For Agenda of: April 14, 2008

Exhibits: Escrow Agreement

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

PK 4/9/08
N/A
CB 4/9/08
[Signature]

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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INFORMATION / BACKGROUND

Pivetta Brothers Construction, Inc. was awarded the construction contract for the Onshore Outfall and Force Main Replacement Project at the February 25, 2008 council meeting. Pivetta has requested that their retainage be placed in an escrow account with Sterling Savings Bank. Sterling Savings Bank is certified as a public depository by the Washington Public Deposit Protection Commission. Exhibit A of the agreement limits investments to those allowed by the State of Washington and the City's investment policy.

FISCAL CONSIDERATION

The retained percentage is 5% of each progress payment.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize the Mayor to execute the Escrow Agreement with Pivetta Brothers Construction, Inc. and Sterling Savings Bank.

Project No.: CSSP-0502
Project Name: Onshore Outfall
Escrow No.: 59997861372

ESCROW AGREEMENT

TO: Bank Name: STERLING SAVINGS BANK
Branch: Burien
Address: 224 S.W. 152nd St
City, State Zip: Burien, WA 98146
Phone: 206-243-6869

The undersigned, Pivetta Brothers Construction Inc. hereinafter referred to as Contractor, has directed the City of Gig Harbor, hereinafter referred to as Agency, to deliver to you its warrants or checks which shall be payable to you and the Contractor jointly. Such warrants or checks are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

INSTRUCTIONS

1. The Agency shall deliver to you from time to time checks or warrants payable jointly to you and the Contractor. You are hereby authorized by the Contractor to endorse in the Contractor's name any such check or warrant so that you may receive the proceeds thereof and invest the same. The power of endorsement hereby granted to you by the Contractor shall be deemed a power coupled with an interest and shall be irrevocable during the term of this escrow. Although you may be a payee named in such warrants or checks as shall be delivered to you, your duties and responsibilities with respect to the same shall be only those duties and responsibilities which a depository bank would have pursuant to Article 4 of the Uniform Commercial Code of the State of Washington for an item deposited with it for collection as of the date such check or warrant shall be delivered to you. The proceeds from collection shall be used by you to purchase, as directed by the Contractor, bonds or other securities chosen by the Contractor and approved by you, and the Agency. For the purpose of each such purchase, you may follow the last written direction received by you from the Contractor, provided such direction otherwise conforms with the restrictions on investments recited herein. Attached (Exhibit A) is a list of such bonds, or other securities approved by the Agency. No further approval is necessary if any of these bonds or securities are selected by the Contractor. Other bonds or securities, except stocks, may be selected by the Contractor, subject to express written approval of you and the Agency. Purchase of such bonds or other securities shall be in a form which shall allow you alone to reconvert such bonds or other securities into money if you are required to do so by the Agency as provided in Paragraph 4 of this Escrow Agreement.

The investments selected by the Contractor, approved by the Agency and purchased by you must mature on or prior to the date set for the completion of the contract, including extensions thereof or thirty days following the final acceptance of said improvement or work.

2. When and as interest on the securities held by you pursuant to this Agreement accrues and is paid, you shall collect such interest and forward it to the Contractor at its address designated below unless with your written consent you are otherwise directed in writing by the Contractor.

3. You are not authorized to deliver to the Contractor all or any part of the securities held by you pursuant to the Agreement (or any moneys derived from the sale of such securities, or the negotiation of the Agency's warrants or checks) except in accordance with written instructions from the Agency. The Agency shall inform you and keep you informed in writing of the name of the person or persons with authority to give you such written instructions. Compliance with such instructions shall relieve you of any further liability related thereto. Upon request by you, the Agency shall advise you in writing of any change in the estimated completion date. If the estimated completion date is changed, you are authorized to reinvest the moneys held hereunder in accordance with the new estimated completion date.

4. In the event the Agency orders you to do so in writing, and notwithstanding any other provisions of this Agreement, you shall, within thirty-five (35) days of receipt of such order, reconvert into money the securities held by you pursuant to this Agreement and return such money together with any other moneys, including accrued interest on such securities, held by you hereunder, to the Agency.

5. Payment of all fees shall be the sole responsibility of the Contractor and shall not be deducted from any property placed with you pursuant to this Agreement until and unless the Agency directs the release to the Contractor of the securities and moneys held hereunder whereupon you shall be granted a first lien upon such property released and shall be entitled to reimburse yourself from such property for the entire amount of your fees and any unanticipated amounts which might be owing as provided for herein.

In the event that you are made a party to any litigation with respect to the property held by you hereunder, or in the event that the conditions of this escrow are not promptly fulfilled or that you are required to render any services not provided for in these instruction, or that there is any assignment of the interests of this escrow or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services from the Contractor and reimbursement from the Contractor for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

6. Should you at any time and for any reason desire to be relieved of your obligations as escrow holder hereunder, you shall give written notice to the Agency and Contractor. The Agency and Contractor shall, within twenty (20) days of the receipt of such notice, jointly appoint a successor escrow holder and instruct you to deliver all securities and funds held hereunder to said successor. If you are not notified of the appointment of the successor escrow holder within twenty (20) days, you shall return the subject matter hereof to the Agency and upon so doing, it absolves you from all further charges and obligations in connection with this escrow.

7. This Agreement shall not be binding until executed by the Contractor and the Agency and accepted by you.

8. This instrument contains the entire agreement between you, the Contractor and the Agency, with respect to this escrow and you are not a party to nor bound by any instrument or agreement other than this; you shall not be required to take notice of any default or any other matter, not be bound by nor required to give notice or demand, not required to take any action whatever except as herein expressly provided; you shall not be liable for any loss or damage that is caused by your failure to perform as required under this instrument, and any loss or damage caused by your own negligence or willful misconduct.

9. The foregoing provisions shall be binding upon the assigns, successors, personal representatives and heirs of the parties hereto.

10. This Escrow Agreement may only be amended or modified upon the written consent of each party's duly authorized representative.

The undersigned have read and hereby approve the instructions as give above governing the administration of this escrow and do hereby execute this Agreement on this _____ day of _____, 200__.

BANK: STERLING SAVINGS Bank
Branch: Burien
Address: 224 S.W. 152nd ST
City, State/Zip: Burien, WA 98146
Phone: 206-243-6869

Contractor: Pivetta Brothers Const - Inc
Address: PO Box 370
City, State Zip: Sumner WA 98390
Phone: 253-862-7890

[Signature]
Authorized Signature

By: [Signature]
Authorized Signature

Title: AVP

Title: President

#59997861372
Escrow Account No.

The above escrow instructions received and accepted this _____ day of _____, 200__.

CITY OF GIG HARBOR

Title: Mayor

Exhibit "A"

List of Type of Bonds or Securities that are Approved
by the City of Gig Harbor

1. Bills, certificates, notes or bonds of the United States.
2. Other obligations of the United States or its agencies.
3. Obligations of any corporation wholly-owned by the government of the United States.
4. Indebtedness of the Federal National Mortgage Association.
5. Time deposits in Commercial Banks, Mutual Savings Banks or Savings and Loan Associations.

In no event shall the City of Gig Harbor approve investments in stock of any company, association or corporation. In all cases, the investments selected must mature on or prior to the date set for completion of the contract, including extensions thereof.

**Please indicate which type of Bonds or Securities that have
been selected by circling the appropriate number above.**



Subject: Approval of an Interagency Agreement between the Washington State Patrol and the City of Gig Harbor governing our recently awarded Port Security Grant.

Dept. Origin: Police Department

Prepared by: Chief Mike Davis

For Agenda of: April 14, 2008

Exhibits:

Initial & Date

Proposed Council Action: Approve the attached Interagency Agreement

Concurred by Mayor:

Approved by City Administrator: LMK 4/9/08

Approved as to form by City Atty: CR 4/9/08

Approved by Finance Director: AD 4/9/08

Approved by Department Head: AD 4/9/08

Expenditure	Amount	Appropriation
Required \$40,863 (25% Match)	Budgeted \$40,863	Required

INFORMATION / BACKGROUND

The attached interagency agreement outlines the grant compliance requirements associated with the Port Security Grant the City of Gig Harbor was awarded to purchase a replacement marine patrol vessel. This agreement is with the Washington State Patrol, who is the grant administrator.

City Attorney Carol Morris has reviewed the agreement and approved it as to form.

FISCAL CONSIDERATION

The 25% match (\$40,863) of the total purchase price (\$163,450.00) of the proposed marine patrol vessel is included in our 2008 capital budget.

RECOMMENDATION / MOTION

Move to: Approve the attached Interagency Agreement with the Washington State Patrol

WASHINGTON STATE PATROL INTERAGENCY AGREEMENT Port Security Grant Program		WSP Contract No. C080666FED
		Other Contract No.
This Agreement is between the State of Washington, Washington State Patrol and the Public Agency identified below, and is issued pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.		
PUBLIC AGENCY NAME Gig Harbor Police Department		Public Agency Federal Employer Identification Number (mandatory, for tax purposes)
Public Agency Location Address 3510 Grandview Street Gig Harbor WA 98335		Public Agency Mailing Address (if different from location address)
Public Agency Contact Name Chief Mike Davis		Public Agency Contact Telephone (253) 851-2236
Public Agency Contact Fax (253) 851-2399		Public Agency Contact E-mail Address DavisM@cityofgigharbor.net
WSP Contact Information		
WSP Project Manager Name and Title Ms. Arel Solie Homeland Security Section Manager		WSP Project Manager Address Homeland Security Division PO Box 42600, Olympia WA 98504-2600
Telephone (360) 704-2962	Fax (360) 704-2975	E-mail Address arel.solie@wsp.wa.gov
WSP Administrative Contact Name and Title Mr. Jeff Hugdahl Grants and Contracts Manager		WSP Administrative Contact Address PO Box 42602 Olympia WA 98504-2602
Telephone (360) 753-0602	Fax (360) 664-0657	E-mail Address jeff.hugdahl@wsp.wa.gov
Federal Assistance Information		
Is the Public Agency a subrecipient of federal assistance for the purposes of this agreement? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		CFDA Number(s) 97.056
Federal Grant Award Name Port Security Grant Program		Federal Grant Award Number 2006-GB-T6-0086
Is this agreement funded by a federal award for research and development? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Federal Award Year 2006
Agreement Start Date October 1, 2007	Agreement End Date February 28, 2009	Maximum Agreement Amount Federal Share: \$122,587 Cash Match: \$40,863
This Agreement, including the attached Terms and Conditions and any other documents incorporated by reference, contains all of the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind the parties. The parties signing below warrant that they have read and understand this Agreement and have the authority to enter into this Agreement.		
FOR THE WASHINGTON STATE PATROL:		FOR THE PUBLIC AGENCY:
WSP Signature _____ Date _____	Public Agency Signature _____ Date _____	
Printed Name and Title John R. Batiste, Chief		Printed Name and Title

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL 11/27/2007

1. **Definitions.**

"Agreement" means this Interagency Agreement, including all documents attached or incorporated by reference.

"Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) \$5,000.

"Public Agency" means the entity performing services under this Agreement and includes the Public Agency's officers, directors, trustees, employees and/or agents unless otherwise stated in this Agreement. For the purposes of this agreement, the Public Agency shall not be considered an employee or agent of WSP.

"Supplies" means an article of nonexpendable, tangible personal property that does not meet the definition of Equipment.

"WSP" means the State of Washington, Washington State Patrol, and its officers, directors, trustees, employees and/or agents.

2. **Statement of Work.** The Public Agency shall perform the services as set forth in Exhibit A, Statement of Work, which is attached hereto and incorporated herein.
3. **Payment.** WSP shall pay the Public Agency an amount not to exceed the Maximum Agreement Amount specified on Page 1 of this Agreement, minus any matching requirements held by the Public Agency as specified in this Agreement.
4. **Agreement Alterations and Amendments.** WSP and the Public Agency may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind WSP and the Public Agency.
5. **Assignment.** The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express written consent of the other party.
6. **Certification regarding Debarment, Suspension or Ineligibility.** If federal funds are the basis for this Agreement, the Public Agency certifies that neither the Public Agency nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency. If requested by WSP, the Public Agency shall complete and sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Public Agency for this Agreement shall be incorporated into this Agreement by reference. Further, the Public Agency agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on the "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs" which can be found at www.epls.gov.
7. **Compliance with Civil Rights Laws.** During the period of performance for this Agreement, both parties shall comply with all federal and state nondiscrimination laws.
8. **Disputes.** In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: The Chief of WSP shall appoint

a member to the Dispute Board. The Public Agency shall appoint a member to the Dispute Board. The Chief of WSP and the Public Agency shall jointly appoint a member to the Dispute Board. The Dispute Board shall evaluate the dispute and make a determination of the dispute. The determination of the Dispute Board shall be final and binding to all parties to this Agreement. As an alternative to this process and if applicable, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

9. **Indemnification.** The Public Agency shall be responsible for and shall indemnify and hold WSP harmless for all claims resulting from the acts or omissions of the Public Agency and its subcontractors. WSP shall be responsible for and shall indemnify and hold the Public Agency harmless for all claims resulting from the acts or omissions of WSP and its subcontractors.
10. **Independent Capacity.** The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.
11. **Inspection; Maintenance of Records.** During the term of this Agreement and for one year following termination or expiration of this Agreement, the Public Agency shall give reasonable access to the Public Agency's place of business and records to WSP and any other employee or agent of the State of Washington or the United States of America for the purpose of inspecting the Public Agency's place of business and its records, and monitoring, auditing and evaluating the Public Agency's performance and compliance with applicable laws, regulations, rules and this Agreement.

During the term of this Agreement and for six years following termination or expiration of this Agreement, the Public Agency shall maintain records sufficient to document (i) performance of all acts required by statute, regulation, rule, or this Agreement; (ii) substantiate the Public Agency's statement of its organization's structure, tax status, capabilities and performance; and (iii) demonstrate accounting procedures, practices and records which sufficiently and properly document the Public Agency's invoices to WSP and all expenditures made by the Public Agency to perform as required by this Agreement.

12. **Order of Precedence.** In the event of any inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule the inconsistency shall be resolved by giving precedence in the following order to:

Applicable federal and state law, regulations and rules;
Exhibit A, Statement of Work;
Any other provision of this Agreement; and
Any document incorporated by reference.

13. **Personnel.** WSP officers performing work under the terms of this Agreement shall be under the direct command and control of the Chief of WSP or designee, and shall perform duties required under this Agreement in a manner consistent with WSP policy and regulations, and applicable federal, state and local laws. The assignment of WSP personnel under this Agreement shall be at the discretion of the Chief of WSP or designee.

14. **Rights in Data.** Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by WSP. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyrights, patent, register, and the ability to transfer these rights.
15. **Savings.** In the event that funds WSP relied upon to establish this Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, WSP may immediately terminate this Agreement by providing written notice to the Public Agency. This termination shall be effective on the date specified in the notice of termination.
16. **Severability.** If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.
17. **Single Audit Act Compliance.** If the Public Agency is a subrecipient of a federal award as identified on Page 1 of this Agreement, the Public Agency shall comply with Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.
18. **Subcontracting.** Except as otherwise provided in this Agreement, the Public Agency may subcontract for any of the services provided under this Agreement with the prior, written approval of WSP. The Public Agency shall be responsible for the acts and omissions of any subcontractor.
19. **Termination.** Except as otherwise provided in this Agreement, either party may terminate this Agreement upon thirty (30) calendar days written notification. If this Agreement is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Agreement for performance rendered prior to the effective date of termination.
20. **Waiver.** A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing and signed by an authorized representative of the party and attached to the original Agreement.

Exhibit A

STATEMENT OF WORK

1. **Purpose.** The purpose of this Agreement is to provide the Public Agency with specialized Equipment and Supplies to support Tactical Support Groups within the Puget Sound region in order to protect and identify potential terrorist threats to the Washington State Ferries system. Funds for Equipment and Supplies provided to the Public Agency under this Agreement have been provided by the Department of Homeland Security agreement number 2006-GB-T6-0086, Port Security Grant Program (PSGP) for federal fiscal year 2006, CFDA No. 97.056.

This Agreement funds 75% of the cost of the purchase of the Equipment and Supplies identified in Exhibit B, Approved Equipment List, which is attached hereto and incorporated herein. The Public Agency is responsible for providing a cash match of 25% of the cost of the purchase of the Equipment and/or Supplies. Any cash match provided by the Public Agency must be of non-federal origin.

2. **Billing Procedure.** WSP shall reimburse the Public Agency upon receipt of a properly executed invoice(s), which shall be submitted to the WSP Project Manager by the Public Agency not more often than monthly. All invoices submitted for payment by the Public Agency shall reference WSP's agreement number.

The Public Agency shall purchase the Equipment and/or Supplies identified in Exhibit B. Upon receipt of this Equipment and/or Supplies the Public Agency shall invoice WSP for 75% of the cost of the Equipment and/or Supplies. As backup for the invoice the Public Agency must attach a copy of the Equipment and/or Supplies vendor's invoice(s) and/or packing slip(s) showing the total cost of the Equipment and/or Supplies for which the Public Agency seeks reimbursement. The invoice shall document the Public Agency's 25% share of Equipment costs. The Public Agency shall submit the final invoice not later than 60 days from the Agreement End Date.

3. **Reports.** The Public Agency shall provide the following reports using the format indicated in Exhibit C, Port Security Grant Program Progress Report, to the WSP Project Manager:
 - a. Semi-Annual Reports. The Public Agency shall submit semi-annual reports for the periods of the start of the Agreement through December 31, 2007; January 1 through June 30; and July 1 through December 31, during the period of performance of this Agreement. The Public Agency shall submit these reports no later than fifteen (15) days after the end of each reporting period.
 - b. Final Report. The Public Agency shall submit a final report for the full period of performance of this Agreement no later than thirty (30) days after the end of this Agreement.

4. **Evaluation and Monitoring.** The Public Agency shall cooperate with and freely participate in any monitoring or evaluation activities conducted by WSP. The Public Agency shall give reasonable access to the Public Agency's place of business and records to any other employee or agent of the State of Washington or the United States of America for the purpose of monitoring, auditing and evaluating the Public Agency's performance and compliance with applicable laws, regulations, rules and this Agreement.

5. Equipment Management.

- a. Title to Equipment and/or Supplies. Upon successful completion of the terms of this Agreement, all Equipment and/or Supplies purchased by the Public Agency with Agreement funds will be owned by the Public Agency.
- b. Use of Equipment and/or Supplies. The Public Agency shall be responsible for any and all operation, maintenance, replacement, and for the safe operation of the Equipment and/or Supplies, including all questions of liability.
- c. Equipment Records. The Public Agency shall maintain Equipment records that include: a description of the Equipment; the manufacturer's serial number, model number, or other identification number; the source of the Equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; who holds title; the acquisition date; the cost of the Equipment and the percentage of federal participation in the cost; the location, use and condition of the Equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the Equipment. Equipment records shall be retained by the Public Agency for a period of six (6) years from the date of the disposition, replacement or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the Public Agency until all litigations, claims, or audit findings involving the records have been resolved.
- d. Inventories. The Public Agency shall take a physical inventory of the Equipment and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Public Agency to determine the cause of the difference. The Public Agency shall, in connection with the inventory, verify the existence, current utilization, and continued need for the Equipment. The Public Agency shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage or theft shall be investigated and a report generated. The Public Agency will develop adequate maintenance procedures to keep the property in good condition.
- e. Disposition of Equipment. If the Public Agency is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return. When original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal agency, disposition of the equipment will be made as follows:
 - Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of by the Public Agency with no further obligation to the awarding agency.
 - Items of equipment with a current per-unit fair market value of more than \$5,000 may be retained or sold and the Public Agency shall compensate the federal sponsoring agency for its share.

8. Federal Regulation Compliance.

- a. DHS Financial Guide. The Public Agency shall adhere to all financial and procurement guidance, including competitive processes and other procurement requirements as documented in WSP of Homeland Security Financial Guide found at

http://www.dhs.gov/xlibrary/assets/Grants_FinancialManagementGuide.pdf. Local and state procurement and contracting regulations take precedent over these requirements when local and state regulations are more stringent.

- b. **Grant Guidance.** The Public Agency is required to be in compliance with the FFY06 Port Security Grant Guidance through monitoring of expenditures and periodic reviews of equipment inventories. The Public Agency shall plan and implement equipment purchases, exercises, training, planning and management & administration in accordance with the FFY06 Port Security Grant Guidance, which can be found at http://www.ojp.usdoj.gov/odp/docs/FY06_PSGP_070306_FINAL.PDF as well as all subsequent policy changes.
 - c. **NIMS.** The Public Agency understands National Incident Management System (NIMS) compliance is required to receive Federal preparedness assistance grants beginning October 1, 2006. The Public Agency certifies, by signing this Agreement, that the Public Agency and its principals have met NIMS compliance requirements and state reporting requirements for Federal Fiscal Year 2006 (FFY06) and shall meet NIMS compliance requirements and state reporting requirements for subsequent federal fiscal years during the performance period of this Agreement. The NIMS Integration Center (NIC) web page (<http://www.fema.gov/emergency/nims/index.shtm>) provides information about NIMS and guidance to determine the extent to which jurisdictions are already compliant, as well as identify the NIMS requirements that have not been met. The Public Agency and its principals are required to report NIMS compliance to the Washington Military Department via the online form available on the Washington Military Department's homepage <http://www.emd.wa.gov>.
9. **Subcommittee Participation.** The Public Agency agrees to participate in Puget Sound Tactical Subcommittee activities including monthly planning meetings sponsored by the U.S. Coast Guard and WSP, in addition to exercises and training directly related to tactical operations at port and ferry facilities. These activities will not be reimbursed under this Agreement. If funding becomes available for these activities reimbursement will be governed by a separate interagency agreement,

Exhibit B

APPROVED EQUIPMENT LIST

	Cost/unit	Units	Total
Marine Patrol Boat	\$163,450.00	1	\$163,450.00
Subtotal:			163,450.00
Tax (included in price quote)			Price includes tax
Total			\$163,450.00
Gig Harbor PD Cash Match Requirement			\$ 40,863.00
Grant Funded			\$122,587.00

**PORT SECURITY GRANT PROGRAM
PROGRESS REPORT**

Jurisdiction:
WSP Contract Number:
Name of Person Completing Report:
Email Address:

Progress Reporting Period: ___ Start of contract to December 31, 2007
 ___ January 1, 2008 – June 30, 2008
 ___ July 1, 2008 – December 31, 2008
 ___ Final Closeout Report

Progress Made to Date:

Activities Remaining to Complete Project:

Amount expended to date (grant): \$ _____
Amount expended to date (local match): \$ _____
Amount billed to WSP to date: \$ _____

Challenges encountered:

Are there any reasons why this project will not be completed by the end of the contract period?



Subject: Resolution declaring L3Com as the sole source provider for an in car video wireless transfer system

Dept. Origin: Police Department

Prepared by: Chief Mike Davis

For Agenda of: April 14, 2008

Exhibits: Report attached

Proposed Council Action: Approve the attached resolution declaring L3Com as the sole source for a in car video wireless transfer system

Initial & Date

Concurred by Mayor:

Approved by City Administrator: PK 4/9/08

Approved as to form by City Atty: AK 4/9/08

Approved by Finance Director: AK 4/9/08

Approved by Department Head: MD 4/9/08

Expenditure	Amount	Appropriation
Required \$18,333.68	Budgeted \$12,500.00	Required 0

INFORMATION/BACKGROUND

One of our 2008 Capital projects under Police Operations # 4 is to purchase a wireless video transfer system that will automatically capture and catalog video images captured by our in car video systems. We have purchased L3Com in car video systems for all our patrol vehicles. L3Com has developed proprietary software that allows the wireless transfer of video images into a case management system that can store these files. The software interface is proprietary thus making it the only software that will work with our L3Com in car video systems.

FISCAL CONSIDERATIONS

The cost of the wireless transfer system is \$5,833.68 more than estimated. Our budget will cover this additional cost.

RECOMMENDATION

I recommend the Council approve the attached resolution designating L3Com as the sole source for our in car video wireless transfer system.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DECLARING THE PURCHASE OF A WIRELESS VIDEO TRANSFER SYSTEM UTILIZING PROPRIETARY SOFTWARE MANUFACTURED BY L3 COMMUNICATIONS TO BE LIMITED TO A SOLE SOURCE, AND WAIVING COMPETITIVE NEGOTIATION REQUIREMENTS FOR SUCH PURCHASE.

WHEREAS, the City has purchased during the last three (3) years 13 Flashback in car digital video systems which have been installed in 13 patrol vehicles; and

WHEREAS, City staff has confirmed that L3 Communications is the sole supplier of the in car video system known as the Flashback digital video system; and

WHEREAS, the City intends to implement a wireless video transfer system utilizing proprietary software manufactured by L3 Communications; and

WHEREAS, the City has confirmed with other in-car video manufacturers, including Decatur Electronics, Watchguard and ICOP Digital that their systems will not interface with L-3 Communication's system to allow wireless transfer of video data to a central repository. The software interface used by L-3 Communication is proprietary and will only work with their Flashback Digital in-car video system; and

WHEREAS, City staff has confirmed with L3 Communications that the estimated cost of the wireless video transfer system is \$18,333.68; and

WHEREAS, the City Council may waive the requirements of advertisement, proposal evaluation, and competitive negotiation of wireless video transfer systems pursuant to RCW 39.04.280 if the Council declares that the proposed purchase is clearly and legitimately limited to a single source or supply, and recites why this situation exists; NOW, THEREFORE,

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

Section 1. For the reasons stated above, the City Council declares that the purchase of a wireless video transfer system utilizing L3 Com proprietary DEP application software is clearly and legitimately limited to a single source or supply. Therefore, the City Council waives all competitive negotiation requirements for this sole source purchase.

RESOLVED this 14th day of April, 2008.

APPROVED:

MAYOR CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

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



Subject: Replacement of a staff vehicle

Proposed Council Action: Approve the purchase of a 2008 Impala on State Bid for the amount \$17,835.23.

Dept. Origin: Police Department

Prepared by: Chief Mike Davis *MD*

For Agenda of: April 14, 2008

Exhibits:

Initial & Date

Concurred by Mayor:

Approved by City Administrator: *ROK 4/9/08*

Approved as to form by City Atty: _____

Approved by Finance Director:

Approved by Department Head: *MD 4/8/08*

Expenditure	Amount	Appropriation
Required \$17,835.23	Budgeted \$0	Required \$17,835.23

INFORMATION / BACKGROUND

One of our Detective vehicles, a 1997 Chevy Lumina w/70,000+ miles sustained a damaged engine due to a faulty oil pump. City Mechanic John Winden evaluated the engine and determined it needed a complete overhaul. John checked with a local Chevy dealership and received an estimate of \$6,500 to replace the motor. Bluebook on the vehicle in excellent shape is \$4,200.

My recommendations are we surplus the 1997 Lumina and purchase a 2008 Impala on State Bid as a replacement. The state bidding closed on 2008 Impalas last Friday. We learned there is one available for \$17,835.23.

FISCAL CONSIDERATION

We will forgo a budget amendment to cover this unbudgeted cost until later in the year. There is a good chance our budget will be able to cover the additional cost of the 2008 Impala.

RECOMMENDATION / MOTION

Move to: Approve purchase of the vehicle in the amount of \$17,835.23



Business of the City Council
City of Gig Harbor, WA

Subject: General Facility Charge Analysis and Rate Study – Consultant Services Contract Extension

Proposed Council Action: Authorize the Mayor to approve an increase in the not-to-exceed amount in the original contract from \$13,700 to \$15,600

Dept. Origin: Finance

Prepared by: David Rodenbach, Finance Director

For Agenda of: April 14, 2008

Exhibits: Peninsula Financial Consulting scope change letter and original contract

Initial & Date

Concurred by Mayor:

Approved by City Administrator: *PRK 4/9/08*

Approved as to form by City Atty:

Approved by Finance Director: *DR 4/9/08*

Approved by Department Head: _____

Expenditure Required	\$15,505	Amount Budgeted	\$50,000	Appropriation Required	0
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INFORMATION / BACKGROUND

Peninsula Financial Consulting (PFC) was hired in July 2007 to determine appropriate levels for water, sewer and storm general facility charges and monthly rates. The general facility charge (GFC) portion of the work is complete and we are now working on the monthly rates.

The general facility charges necessitated some work by PFC that was not included in the original scope. This extra work increased the GFC portion of the work by \$1,805; therefore, we are requesting this amount in order to finish the monthly rate calculations.

FISCAL CONSIDERATION

This contract amendment falls well within the \$50,000 budgeted for this project.

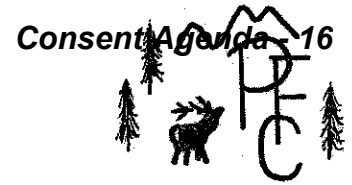
BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize the Mayor to increase the not-to-exceed amount of this contract from \$13,700 to \$15,505.

Peninsula Financial Consulting
3601 24th Ave W #104
Seattle, WA 98199
206-285-4624



March 5, 2008

Mr. Steve Misiurak, P.E.
City Engineer
City of Gig Harbor, 98335

SUBJECT: SCOPE CHANGE

Dear Mr. Misiurak:

As requested I am submitting this letter to request additional funds for work completed on the GFC analysis that was not covered in the original scope of work. The work entailed three additional meetings with members of the building community plus a meeting with one City Councilman. The work also included writing responses to questions posed by the building community. The sum of this work totals 19 hours and at my rate of \$95.00 per hour results in a total budget increase of \$1,805.

I have not included as extra the time needed to revise the GFCs or the GFC report since it is normal practice for these elements of a study to change.

Please call if you any questions.

Sincerely,

Ashley Emery

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
PENINSULA FINANCIAL CONSULTING**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Peninsula Financial Consulting, a sole proprietorship organized under the laws of the State of Washington, located and doing business at 3601 24th Avenue West, #104, Seattle, Washington 98199 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the General Facility Charge Analysis and Rate Study Project 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 13, 2007 including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, 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 Thirteen Thousand Seven Hundred dollars and no cents (\$13,700.00) 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 December 31, 2007; 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 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 a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible 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
Ashley Emery
Peninsula Financial Consulting
3601 24th Ave. West, #104
Seattle, Washington 98199
(206) 285-4624

Stephen Misiurak, P.E.
City Engineer
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.

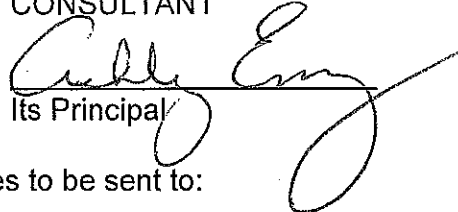
XVIII. Modification

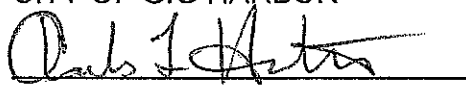
No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

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 23 day of July, 2007.

CONSULTANT
By: 
Its Principal


CITY OF GIG HARBOR
By: 
Mayor

Notices to be sent to:

CONSULTANT:
Ashley Emery
Peninsula Financial Consulting
3601 24th Ave. West, #104
Seattle, Washington 98199
(206) 285-4624


Stephen Misiurak, P.E.
City Engineer
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 _____)

I certify that I know or have satisfactory evidence that EMERY ASHLEY MATTHEW 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 President of Peninsula Financial Consulting to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 18, 2007

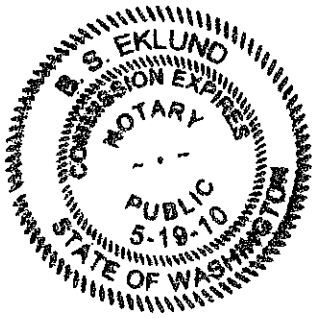
[Signature]

B.S. EKLUND

(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at: SEATTLE, WA, KING CO.

My Commission expires: 05/19/2010



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/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: 7-23-07

Molly M. Towstec

Molly M. Towstec
(print or type name)

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

Gig Harbor

My Commission expires: 12/2/07



Exhibit A Scope of Work

City of Gig Harbor General Facility Charge Analysis & Rate Study

Introduction

This scope of work includes calculation of general facility charges (GFCs) and monthly rate recommendations for the City's water, sewer, and stormwater utilities. Unless specifically identified, all tasks described herein refer to all three utilities. The cost estimate for this work (see attached Exhibit A) is \$13,700.

Note: per discussions with City staff, the City will provide an inventory of existing facilities and original costs segregated by components. For example, the cost of all 8" water pipe, 10" water pipe, and treatment plant facilities will be identified.

Overview

General facility charges, or GFCs, are charges paid by a new customer connection to a utility system. There are many different terms used when discussing connection charges; however, a connection charge can include three components. The first, call a site facility charge is for the cost of physically connecting a customer to a system. The second component, called a local facility charge, is for the cost of the local facilities to serve a specific area such as a main running down the street in front of a property. These charges are sometimes assessed as a front footage fee based on the length of the property abutting the street being served. A third component, called a general facility charge (GFC) is for facilities that provide a regional benefit, such as a treatment plant. Agencies frequently combine local and general facility charges because, for example, the minimum water pipe size may be based on providing fire flow. Since fire flow is often considered a general benefit, all water pipe is also considered of general benefit and there is no need to segregate water pipe between piping providing local and general benefit.

A GFC includes a pro-rate share of the cost of existing facilities (existing facility component) and a pro-rata share of planned facilities (future facilities component). The existing facility component offsets the historical contributions from existing customers used to acquire existing assets of benefit to a new customer. The future facility component contributes towards capital improvement cost needed to serve customers in the future and is intended to minimize the impact to existing customers to fund the construction of facilities that may only be required due to growth.

The approach used in this analysis to determine GFCs is to compute the maximum amount a City may charge that is supportable by Washington State law and case law associated with GFCs. The City may then elect to adopt water, sewer, and stormwater GFCs, up to these maximum amounts that are consistent with City policies and goals.

This study also includes providing the City with a five year schedule of recommended monthly service rates necessary to fund operations, construct required capital improvements, and fund reserve balances.

TASK 1 - GENERAL FACILITY CHARGE ANALYSIS

The following activities will be performed as part of the determination of general facility charges for the water, sewer, and stormwater utilities. Note that as discussed, recommended GFCs will be stated in terms of a dollar per ERU (equivalent residential unit) and a single, Citywide GFC will be determined for each utility. Each GFC will also identify a local pipe component (\$/ERU) that can be used by the City to offset connection charges paid by new customers connecting within a ULID area or in an area with a latecomer's agreement.

Task 1A - Gather Customer & System Data

The following is a preliminary list of data that is required to calculate a GFC:

- Utility revenues and expenses for the last 4 calendar years
- Number and type of utility customers
- Copies of all outstanding debt schedules and bond ordinances
- List of capital improvement projects (segregated between developer and City funded projects)
- Growth projections
- Inventory and costs for all major infrastructure (net plant in service)
- Annual water consumption and wastewater flows
- System and facility design capacities (e.g. average and maximum day wastewater flow, well pumping rates, reservoir storage, etc.)
- Annual depreciation
- Current water & sewer utility reserves
- Identification of fiscal policies (e.g. percentage of depreciation to be collected from rates, debt coverage factors, etc.)
- Copies of current GFC and rate ordinances

Note that much of the preceding data is already available in planning documents currently being written by Gray & Osborne. This will reduce the amount of data to be provided by the City.

Task 1B - Review Planned Capital Improvements

Each planned improvements will be reviewed to identify the benefit to existing and future customers. Projects that will be developer funded are excluded from the GFC since growth is already paying for these improvements. We will identify the total number of existing and future customers (ERUs) benefiting from each capital improvement based on a review of design capacities and capacities available to provide benefit to future customers.

Task 1C - Calculation of Single-system Wide Water GFC

Per discussions with City staff, a single GFC for each utility will be calculated. GFCs will be stated in terms of a dollar per ERU. Recommended GFCs will also include a sub amount for local pipe facilities that can be used to offset connection charges paid by customers connecting within a ULID area or an area with latecomer's agreements. This will allow the City, if they so elect, to adjust certain connections charges paid by customers in a ULID area or that are required to pay a latecomers charge.

TASK 2 – RATE INCREASE RECOMMENDATIONSTask 2A – Gather Financial Data

This task supplants financial data already gathered to calculate GFCs in Task 1A. The financial data listed below will be used to develop a budget forecast to be used in defining revenue requirements. The following is a preliminary list of data that is required to provide rate recommendations:

- Utility revenues and expenses for the last 4 calendar years
- Number and type of utility customers
- Annual depreciation
- Identification of fiscal policies (e.g. percentage of depreciation to be collected from rates, debt coverage factors, etc.)
- Copies of current rate ordinances
- Copies of all interlocal agreements or contracts for providing utility service
- Customer water flows for wholesale customers

Task 2B – Financial Model Development

A custom budget forecast model will be developed to guide discussions and planning with City staff. The budget forecast model utilizes visual basic programming within EXCEL to enable clients to interact with the model using only a mouse. The model allows users to change a multitude of planning and financial variables to identify a comprehensive plan to financially operate the water, sewer, and stormwater utilities for the next 5 years. The model allows users to change numerous variables including rates and connection charges, growth, capital improvement timing and funding sources, inflation, etc. The model is part of the work product and will be turned over to the client as part of the completion of the study.

Once the model has been developed, it will be used in interactive meetings with City staff (engineering, planning, administration) to define revenue requirements

Task 2C – Defining Revenue Requirements

The revenue requirements of a utility define the amount and timing of revenue to be generated from monthly rates. Using the budget model, we will meet with City staff in a workshop setting to analyze and set projected operating costs, the timing and cost of capital improvements, and capital funding sources (e.g. debt funding). The model will

then be used to change these variables to assess the resulting rate revenue required to be generated from both existing and new customers due to growth (revenue requirements).

Task 2D – Rate Recommendations

Once revenue requirements have been defined, percentage increases to existing rates will be identified that will provide the necessary revenue. The intent of this study is not to undertake a cost of service rate analysis but rather to modify the magnitude of existing rates within the current rate structure to improve rate equity among customers and to generate needed revenues. Recommended rate modifications might include non-uniformly increasing the magnitude of water base charges and volume rates, or increasing commercial sewer base charges greater than residential base charges. We will provide City staff rate alternatives that meet revenue requirements, promote City policies and goals (e.g. conservation) and promote rate equity.

The City also provides water and sewer service through wholesale agreements to several customers. This scope of work includes a review of all wholesale agreements and recommendations for any wholesale rate increases that are consistent with planned rate increases for retail customers. At this time this scope of work does not entail a cost of service analysis for wholesale rates, however, if a more rigorous approach is required by contract or circumstances then an addendum to this scope will be provided to address the additional work.

TASK 3 MEETINGS

I anticipate four meetings with staff in order to develop GFCs and rate recommendations and review findings prior to public dissemination.

TASK 4 DOCUMENTATION

A report will be prepared that completely documents the data, process, and calculations utilized in determining the recommended GFCs and rate increases.

TASK 5 PRESENTATIONS

It is expected that two public meeting will be necessary to inform the public and review finding with the City Council. A summary PowerPoint presentation will be created and used to guide public discussions.

EXHIBIT B

FINANCIAL CONSULTING SERVICES
SCOPE AND ESTIMATED COST

Project Title: 2007 Utility GFC & Rate Study

TASKS		Hours	Cost
1.	General Facility Charges		
A	Gather data	8	\$ 760
B	Review planned capital improvements	12	\$ 1,140
C	Calculate system wide GFCs for water, sewer, and stormwater	24	\$ 2,280
2.	Recommended Rate Increases		
A	Gather financial data	8	\$ 760
B	Financial budget modeling	16	\$ 1,520
C	Define revenue requirements	24	\$ 2,280
D	Rate recommendations	12	\$ 1,140
3.	Staff meetings (4)	10	\$ 950
4.	Documentation/Report (6 copies)	16	\$ 1,520
5.	Public presentations (2) and presentation material	12	\$ 1,140
Total		142	\$ 13,490
Hourly Rate:		\$ 95.00	
Total Labor Cost		\$ 13,490	
Mileage & Expenses (Mileage @ \$0.485/mile)		\$ 150	
Printing		\$ 75	
TOTAL ESTIMATED COST:		\$ 13,700	

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 4/03/08

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20080731

	LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1	MILLIGAN, MICHAEL HALL	THE GREAT AUSTRALIAN BITE 4107 HARBOR VIEW DR GIG HARBOR WA 98332 1080	402061	GROCERY STORE - BEER/WINE
2	MAD ANTHONY'S INCORPORATED	ANTHONY'S AT GIG HARBOR 8827 N HARBORVIEW DR GIG HARBOR WA 98335 0000	351502	SPIRITS/BR/WN REST LOUNGE + OFF PREMISES-PRIVATE LABEL WINE
3	Z A A L LLC	OLYMPIC 76 GAS STATION AND FOOD MART 5555 SOUNDVIEW DR NW GIG HARBOR WA 98335 0000	071544	GROCERY STORE - BEER/WINE
4	G.T. ENTERPRISES LLC	KELLY'S CAFE AND ESPRESSO 7806 PIONEER WAY GIG HARBOR WA 98335 1133	400599	BEER/WINE REST - BEER/WINE OFF PREMISES
5	HINDQUARTER II, INC.	TANGLEWOOD GRILL 3222 56TH ST GIG HARBOR WA 98335 1359	082991	SPIRITS/BR/WN REST LOUNGE -
6	JAPANESE CREATIVE CUISINE, INC	BISTRO SATSUMA 5315 PT FOSDICK NW GIG HARBOR WA 98335 1720	077012	BEER/WINE REST - BEER/WINE



Notice to Local Authorities Regarding Procedure for Objecting to Liquor License Renewal

The attached list of liquor-licensed premises in your jurisdiction will expire in approximately 90 days. The procedure for objecting to a license renewal is as follows:

- Fax or mail a letter detailing the reason(s) for your objection. **This letter must be received at least 30 days before the liquor license expires.**
- When your objection is received, our licensing staff will prepare a report for review by the Board. This report will include your letter of objection, a report from the Liquor Control Agent who covers the licensed premises, and a record of any past liquor violations. The board will then decide to either renew the liquor license, or to proceed with non-renewal.
- If the Board decides not to renew a license, we will notify the licensee in writing, stating the reason for this decision. The non-renewal of a liquor license may be contested under the provision of the Administrative Procedure Act (as provided by RCW 66.08.150 and RCW 35.05). Accordingly, the licensee may request a hearing before an administrative law judge. If a hearing is requested, you will be notified and required to present evidence at the hearing to support your recommendation. The Administrative Law Judge will consider the evidence, and issue an Initial Order for the Board's review. The Board has final authority to renew the liquor license, and will subsequently enter a Final Order announcing its decision.
- If the Board decides to renew the license over your objection, you may also request a hearing, following the aforementioned procedure.
- You or the licensee may appeal the Final Order of the Board to the superior court for judicial review (under RCW 34.05).
- During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the liquor license until a final decision is made.

Please call (360) 664-1600 if you have any questions on this process. Thank you.

Sincerely,

Alan E Rathbun, Director
Licensing and Regulation Division

Attachment

WASHINGTON STATE LIQUOR CONTROL BOARD-License Services
 3000 Pacific Ave SE - P O Box 43075
 Olympia WA 98504-3075

TO: MAYOR OF GIG HARBOR

April 3, 2008

SPECIAL OCCASION # 092801

PRISON PET PARTNERSHIP PROGRAM
 9601 BUJAUCH RD
 GIG HARBOR, WA 98335

DATE: MAY 31, 2008

TIME: 3 PM TO 10 PM

PLACE: BEST WESTERN WESLEY INN, 6575 KIMBALL DR, GIG HARBOR

CONTACT: KAY HAYES

253-851-5671

SPECIAL OCCASION LICENSES

- * License to sell beer on a specified date for consumption at specific place.
- * License to sell wine on a specific date for consumption at a specific place.
- * Beer/Wine in unopened bottle or package in limited quantity for off premises consumption.
- * Spirituous liquor by the individual glass for consumption at a specific place.

If return of this notice is not received in this office within 20 days from the above date, we will assume you have no objection to the issuance of the license. If additional time is required please advise.

1. Do you approve of applicant? YES__ NO__
2. Do you approve of location? YES__ NO__
3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? YES__ NO__

<u>OPTIONAL CHECK LIST</u>	<u>EXPLANATION</u>	
LAW ENFORCEMENT	_____	YES__ NO__
HEALTH & SANITATION	_____	YES__ NO__
FIRE, BUILDING, ZONING	_____	YES__ NO__
OTHER:	_____	YES__ NO__

If you have indicated disapproval of the applicant, location or both, please submit a statement of all facts upon which such objections are based.

DATE SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



Business of the City Council
City of Gig Harbor, WA

Old Business - 2

Subject: Junk Vehicles Ordinance – Third Reading

Proposed Council Action: Adopt the proposed ordinance defining "Junk Vehicles" and prohibiting the retention of such vehicles on property within the city limits of Gig Harbor.

Dept. Origin: Administration

Prepared by: Rob Karlinsey

For Agenda of: April 14, 2008

Exhibits: Proposed Ordinance

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

Handwritten initials and dates: ROK 4/4/08, CA 4/7/08, N/A, TD 4/7/08

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and dollar amounts (\$0).

INFORMATION / BACKGROUND

This ordinance seeks to further enhance public health and safety. The current ordinance entitled "Junk Yards", Chapter 8.08 GHMC is out of date and therefore no longer consistent with state law. This new ordinance has been reviewed by the Planning/Building Committee several times and is now forwarded to City Council for consideration. It provides definitions, exemptions, regulations and abatement processes concerning "Junk Vehicles".

At the first reading of this proposed ordinance, the Mayor and City Council discussed setting a limit on the number of covered vehicles as described in 8.08.030(C). The discussion included varying the limit with the size of the lot. The Mayor recommends a limit of two covered vehicles regardless of lot size, and it appeared at the second reading that a consensus of the Council agreed with the Mayor's recommendation.

The attached proposed ordinance is the same ordinance presented at the first reading (March 10), and subsequent proposed changes to that ordinance are underlined and highlighted in yellow. These proposed changes are as follows:

- Two new WHEREAS clauses are added, stating that exemptions for personal vehicle restoration are reasonable and that "no exemption is available for vehicle restoration on vacant property, as such activity is either not associated with any primary use of the

property, or in those zones where vehicle restoration is allowed, the necessary facilities must also be available for restoration to take place”.

- Under the Exemptions subparagraph A (8.08.030), a line is added at the end that says, “Temporary tarp garages and carports ~~and storage sheds~~ do not satisfy this exemption.” At the second reading of the ordinance on March 24, 2008, Councilmember Payne suggested deleting “storage sheds” from this line, and it appeared that the consensus of Council agreed with Councilmember Payne’s suggestion.
- Under the Exemptions subparagraph C (8.08.030), the following two sentences were added to the end of the subparagraph: “This exemption will apply to only two vehicles per legal lot. Vehicles stored on vacant or undeveloped land are not exempted by this subsection C.” At the second reading it appeared that a consensus of the Council desired to keep these two sentences in the ordinance.

FISCAL CONSIDERATION

None

RECOMMENDATION / MOTION

Move to: Adopt the proposed “Junk Vehicle” Ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO REMOVAL OF JUNK VEHICLES FROM PRIVATE PROPERTY, DECLARING JUNK VEHICLES TO BE NUISANCES AND UNLAWFUL, DEFINING JUNK VEHICLES, DESCRIBING THE PROCEDURE FOR ISSUANCE OF NOTICES OF VIOLATION TO THE PROPERTY OWNER AND OWNER OF THE VEHICLE, HEARING, ABATEMENT, IMPOSITION OF CIVIL PENALTIES AND COLLECTION OF PENALTIES, REPEALING CHAPTER 8.08 GHMC AND ADDING A NEW CHAPTER 8.08.

WHEREAS, the presence of public nuisances has a detrimental affect on the health safety and welfare of the community; and

WHEREAS, the presence of junk or inoperable vehicles on either public or private property within the City present inherent safety and health concerns; and

WHEREAS, an exemption from the application of this ordinance for an individual's personal vehicle restoration of up to two vehicles on property is appropriate because such use is reasonably associated with the primary use of property; and

WHEREAS, no exemption is available for vehicle restoration on vacant property, as such activity is either not associated with any primary use of the property, or in those zones where vehicle restoration is allowed, the necessary facilities must also be available for restoration to take place; and

WHEREAS, the legislature of the State of Washington allows cities to abate abandoned or junk vehicles as nuisances, in accordance with RCW 46.55.240;

WHEREAS, the City's existing chapter 8.08 regulating Junk Vehicles is outdated and does not fulfill new statutory requirement;

WHEREAS, RCW 46.55.240 requires that the City include certain statutory provisions in any local ordinance; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Chapter 8.08 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new Chapter 8.08 is hereby added to the Gig Harbor

Municipal Code, which shall read as follows:

**Chapter 8.08
JUNK VEHICLES**

Sections:

8.08.010	Purpose.
8.08.020	Definitions
8.08.030	Exemption
8.08.040	Nuisance declared, violations
8.08.050	Enforcement
8.08.060	Investigation and notice of violation
8.08.070	Time to comply
8.08.080	Hearing
8.08.090	Municipal Court Order
8.08.100	Removal and Disposal - Costs
8.08.110	Civil penalties
8.08.120	Additional relief

8.08.010 Purpose.

The purpose of this ordinance is to provide for the abatement and removal of junk vehicles on private property as provided for in RCW 46.55.240. Abatement is necessary to preserve and enhance the aesthetic character of the City's neighborhoods, protect property values and rights and to reduce environmental health, and safety problems associated with junk vehicles.

8.08.020 Definitions.

For the purposes of this chapter, the following definitions apply:

A. "Junk Vehicle" is any vehicle which meets at least three of the following criteria:

1. Is three years old or older;
2. Is extensively damaged, such damage including, but not limited to the following examples:
 - a. broken window or windshield
 - b. flat tires
 - c. missing tires, motor or transmission

- d. rusted exterior;
- e. leaking oil or gasoline;

3. Is apparently inoperable, meaning that a vehicle does not appear to comply with requirements for vehicles used on public streets with regard to brakes, lights, tires, safety glass or other safety equipment;

4. Has expired license tabs;

5. Has an approximate fair market value equal only to the approximate value of the scrap in it;

6. A vehicle illegally parked in the required front or side yard;

B. Enforcement Officer means the City Administrator, his or her designee, representative or a City of Gig Harbor law enforcement official.

C. Vehicle shall include, but not be limited to, automobiles, motorcycles, trucks, buses, motorized recreational vehicles, campers, travel trailers, boat trailers, utility trailers, or other similar devices capable of moving or being moved on the public right-of-way, and shall also include parts of Vehicles, but shall not include devices moved by human or animal power, or used exclusively upon stationary rails or tracks.

8.08.030 Exemptions.

The provisions of this ordinance shall not apply to:

A. A vehicle or part thereof that is completely enclosed within a building in a lawful manner, or otherwise parked legally on the property so as not to be visible from adjacent or nearby public property. Temporary tarp garages and carports and storage sheds do not satisfy this exemption;

B. A vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dismantler or licensed vehicle dealer and is fenced in accordance with the provisions of RCW 46.80.130.

C. A vehicle enclosed in an opaque auto cover specifically designed to completely shield the vehicle from view as long as the vehicle is parked in a lawful manner on private property. The cover must be in good condition and must be replaced if it is torn, weather-beaten, or acquires any other defects. Tarps and makeshift covers do not meet the requirement. This exemption will apply to only two vehicles per legal lot. Vehicles stored on vacant or undeveloped land are not exempted by this subsection C.

8.08.040 Nuisance declared, violations.

A. The storage or retention of junk vehicles on private property is declared a public nuisance which is subject to the enforcement, removal and abatement procedures in this chapter.

B. It shall be unlawful for any person, firm or corporation to retain, place or store junk vehicles on private property, in conflict with or in violation of any of the provisions of this code.

C. Additional Violations. In addition to the above, it is a violation of this chapter to:

1. Remove or deface any sign, notice, complaint or order required by or posted in accordance with this chapter;
2. Fail to comply with any of the requirements of this title, including any requirement of the city's codes and state codes adopted by reference herein.

8.08.050 Enforcement.

A. The Enforcement Officer shall have the authority to enforce this chapter. The Enforcement Officer may call upon the building, fire, planning and community development or other appropriate city departments to assist in enforcement.

B. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

C. It is the intent of this chapter to place the obligation of complying with its requirements upon the property owner, occupier of the property, owner of the junk vehicle or other person responsible for the storage or retention of junk vehicles within the scope of this title.

D. No provision of or any term used in this chapter is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

8.08.060 Investigation and notice of violation.

A. Investigation. The Enforcement Officer shall investigate the premises which he/she reasonably believes does not comply with the standards and requirements of this title.

B. Notice of Violation. If, after investigation, the Enforcement Officer determines that the standards or requirements of this title have been violated, the Enforcement Officer shall serve a notice of violation upon the property owner, tenant, vehicle owner, or other person responsible for the condition. The notice of violation shall contain the following information:

1. Name and address of the person(s) to whom the citation is issued;
2. The location of the subject property by address or other description sufficient for identification of the subject property;
3. A description of the vehicle and its location;
4. A separate statement of each standard, code provision or requirement violated, and the reasons for which the City deems the junk vehicle(s) to be a public nuisance in violation of this chapter;
5. What corrective action, if any, is necessary to comply with the standards, code provisions or requirements;
6. A reasonable time for compliance;
7. A statement that if the person(s) to whom the notice of violation is issued fails to complete the corrective action by the date required, the City or its designee shall remove, impound and dispose of the vehicle, and will assess all costs of administration and removal against the owner of the property upon which the vehicle is located or otherwise attempt to collect such costs against the owner of the vehicle;
8. A statement that the owner of the land on which the vehicle is located may appear in person at the hearing and present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the junk vehicle on the land, with his/her reasons for denial.

C. Service. The notice shall be served on the owner, tenant, vehicle owner or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person(s) is unknown or service cannot be accomplished and the Enforcement Officer makes an affidavit to that effect, then service of the notice upon such person(s) may be made by:

1. Publishing the notice once each week for two consecutive weeks in the city's official newspaper; and

2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address as shown on the official Pierce County assessor's parcel data, or if unknown, to the address of the property involved in the proceedings.

D. Posting. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

E. Amendment. A notice or order may be amended at any time in order to:

1. Correct clerical errors; or
2. Cite additional authority for a stated violation.

F. Withdrawal. The city may choose to withdraw a notice of violation at any time, without prejudice to the city's ability to reissue it, if a certificate of compliance has not been obtained for the specific violations.

8.08.070 Time to comply.

A. Determination of Time. When calculating a reasonable time for compliance, the Enforcement Officer shall consider the following criteria:

1. The type and degree of violation cited in the notice;
2. The stated intent, if any, of a responsible party to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action;
4. The complexity of the corrective action, including seasonal considerations, and
5. Any other circumstances beyond the control of the responsible party.

B. A copy of the notice may be recorded against the property with the Pierce County auditor. The Enforcement Officer may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

8.08.080 Hearing.

A. The property owner, tenant, vehicle owner or other person responsible for the violation may appeal the notice of violation by requesting such appeal of the notice within 15 calendar days after service of the notice. When the last day of

the period so computed is a Saturday, Sunday, or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The request shall be in writing, and upon receipt of the appeal request, the Enforcement Officer shall forward the request to the municipal court judge.

B. If a request for a hearing is received, a notice giving the time, location and date of the hearing shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the County Assessor records and the legal owner of the vehicle, unless the vehicle condition is such that identification numbers are not available.

C. The owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement for consideration, and deny responsibility for the presence of the vehicle, with the reasons for denial. If it is determined that the vehicle was placed on the property without the consent of the landowner and that the landowner has not acquiesced in its presence, then the cost of removal shall not be assessed against the landowner.

D. At or after the appeal hearing, the municipal court judge may:

1. Sustain the notice of violation and require that the vehicle be removed at the request of the Enforcement Officer after a dated certain, and that the junk vehicle be disposed of by a licensed vehicle wrecker or tow truck operator, with notice to the Washington State Patrol and the department of licensing that the vehicle has been wrecked;
2. Withdraw the notice of violation;
3. Continue the review to a date certain for receipt of additional information;
4. Modify the notice of violation, which may include an extension of the compliance date, and/or determine that the owner of the property is not responsible for the costs of removal, pursuant to subsection C above.

8.08.090 Municipal Court Order.

A. Unless mutually agreed to by the appellant and the Court, the order of the Court shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to such person at his/her last known address as determined the Enforcement Officer within 15 calendar days following the conclusion of testimony and hearings and the closing of the record.

B. Proof of service shall be made by a written declaration by the person effecting the service, declaring the time and date of service and the manner by which service was made.

C. The Municipal Court, in affirming the Enforcement Officer's Notice of Violation and Abatement, may assess administrative costs or costs related to the abatement of the violators' vehicle. The Court may also order the refund of hearings fees to parties deemed not responsible for the violation.

D. If it is determined at the hearing that the Vehicle was placed on the land without the consent of the Landowner and that he or she has not subsequently acquiesced in its presence, then the Municipal Court's order shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the Landowner.

8.08.100 Removal and Disposal - Costs.

A. Commencing 45 calendar days after service of the Notice of Violation and Abatement, if no appeal had been filed, or 15 calendar days after the issuance of an Order from the municipal court resulting in authority to remove, the Enforcement Officer shall supervise the removal and disposal of the Vehicle or part thereof. The Enforcement Officer will provide notice to the Washington State Patrol and the Washington State Department of Licensing that the vehicle has been processed in accordance with the laws of the State of Washington.

B. The City's costs related to the removal of the junk vehicle may be collected from the registered owner of the vehicle(s) if the identify of the owner can be determined, unless the owner, in the transfer of ownership, has complied with RCW 46.12.101. Alternatively, the cost may be collected from the owner of the property on which the vehicle has been stored.

8.08.110 Civil Penalties.

A. In addition to any other sanction or remedial procedure which may be available, any person, firm or corporation violating or failing to comply with any of the provisions of this chapter shall be subject to a cumulative civil penalty in the amount of \$100.00 per day for each violation from the date set for compliance until compliance with the order is achieved.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the city. The Enforcement Officer shall notify the city attorney in writing of the name of any person subject to the penalty, and the city attorney shall, with the assistance of the Enforcement Officer, take appropriate action to collect the penalty.

8.08.120 Additional relief.

The Enforcement Officer may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this title when civil penalties are inadequate to effect compliance.

Section 3. Severability. If any portion of this ordinance or its application to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remainder of the ordinance or the application of the remainder to other persons or circumstances.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this ____ day of _____, 200__.

CITY OF GIG HARBOR

CHUCK HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

By: _____

CAROL A. MORRIS

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NO. _____



Subject: Design of Street, Utility, & Pedestrian Improvements on Harborview Drive and Judson/Stanich/Uddenberg Streets.

Dept. Origin: Public Works
Prepared by: Rob Karlinsey
For Agenda of: April 14, 2008
Exhibits: Contract with CTS

Proposed Council Action:

Authorize the Mayor to sign a consultant services contract with CTS Engineers for design and engineering of street, utility, and pedestrian improvements on Harborview Drive and Judson/Stanich/Uddenberg Streets.

Initial & Date

Concurred by Mayor: _____

Approved by City Administrator: PK 4/7/08

Approved as to form by City Atty: CAM 4/9/08

Approved by Finance Director: QR 4/9/08

Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required \$399,841	Budgeted \$1.15 million in '08	Required: \$0

INFORMATION / BACKGROUND

As outlined in the adopted 2008 budget, funds are appropriated for design of road rehabilitation and pedestrian improvements on Harborview Drive and Judson/Stanich/Uddenberg streets. The proposed scope of the design work is summarized as follows:

- Conceptual design plans for pedestrian and street improvements for Harborview from Soundview to Austin; and also all of Judson/Stanich/Uddenberg streets.
- Full 100% plans, specifications, and cost estimate (PS&E) for construction of Harborview Drive sidewalk and street improvements from Soundview to Novak Street; Judson/Stanich/Uddenberg streets; and pedestrian improvements at the southwest side of the intersection of Harborview and North Harborview (in front of Beach Basket, La Bistro, etc.).
- Full 100% PS&E for water and sewer main replacements on Harborview Drive from Soundview to Novak Street (except for short portions where new water main has already been installed—at the Pioneer and Harborview intersection, for example).

The scope of work includes full design for road rehabilitation on Harborview Drive from approximately Pioneer to Novak, as well as all of Judson/Stanich/Uddenberg streets. Sidewalk widening on the waterside of Harborview Drive is also part of this project. Also included in the above scope of work will be full surveying and mapping of the entire project, analysis of existing conditions (pavement and subgrade, example), community involvement (community and stakeholder meetings, council meetings, etc.), and of course design, engineering, and construction documents.

Staff administered a thorough consultant selection process, producing a widely published request for qualifications and interviewing eight engineering firms. We are recommending CTS Engineers for design of the Harborview Drive and Judson/Stanich/Uddenberg street improvements. Of the firms we interviewed, CTS and their sub-consultant, Cascade Design Collaborative, came out on top in terms of community outreach philosophy and overall understanding of this project. Cascade in particular has a lot of experience working with historical downtowns, and we believe their principal, Eric Schmidt, will be a good fit with our community. Cascade and CTS have developed a plan for community outreach as described in the following paragraph.

Looking at the schedule, it would be preferable to be under construction in the first half of 2009 before summer months. In order to do so, we need to begin both the design and the public outreach very soon after Council approves this proposed contract. Cascade would like to do a series of community meetings, the first and last of which would be open house format. At least two community meetings in the middle would be cherrette format and also publicized and open to the public of course. Cascade also recommends forming an informal work group of affected citizens and business owners as a sounding board throughout the process. I would like to get a representative from each of our commissions to be part of this work group, as well as a downtown resident or two, a commercial property owner, and a mainstreet and chamber representative.

CTS and Cascade would like to get going on both community outreach and design as soon as this contract is approved. They would like the first stakeholders work group meeting at the end of April (probably the 29th), and the first community meeting/open house would be in mid May. All meetings will be advertised. Throughout this process, we plan on checking in with Council at least twice and have final Council approval on the design in early September in order to go out for bid in December.

FISCAL CONSIDERATION

This contract meets objectives 8 and 10 in the 2008 Street Capital Budget (pages 160 and 161) of the published budget).

In the capital improvement plan presented during the budget process in the fall of last year, \$2.6 million is allocated for pedestrian and street improvements over two years--2008 and 2009 (both Harborview and Judson combined). Water main and sewer main upgrades on Harborview between Soundview and Novak will cost an additional \$1,010,000 (\$600,000 for sewer and \$410,000 for water), bringing the total project cost to \$3.61 million over two years (water and sewer main upgrades will be funded out of the two respective utilities).

For 2008 only, the City Council has appropriated \$300,000 in design for Harborview Drive and \$850,000 in design and construction for Judson/Stanich/Uddenberg. (\$1.15 million total).

The proposed contract with CTS Engineers is \$399,841, or about 11.1% of the total two-year budget.

BOARD OR COMMITTEE RECOMMENDATION

This project was discussed in the fall budget workshops and adopted in the 2008 budget.

RECOMMENDATION / MOTION

Move to: Authorize the Mayor to sign a consultant services contract with CTS Engineers for design and engineering of street, utility, and pedestrian improvements on Harborview Drive and Judson/Stanich/Uddenberg Streets.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
CTS ENGINEERS**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and CTS Engineers, a corporation organized under the laws of the State of Washington, located and doing business at 1412 112th Avenue NE, Ste. 102, Bellevue, Washington 98004 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City would like to begin and complete conceptual streetscape design for Harborview Drive from Soundview Drive to Austin Street; as well as Judson Street, Uddenberg Lane and Stanich Street. WHEREAS, the City desires to have construction plans, specifications, and estimates completed for Harborview Drive between Soundview Drive and Novak Street, as well as, the southwest side of Harborview Drive and North Harborview Drive intersection; and Judson Street, Uddenberg Lane and Stanich Street.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated April 7, 2008 including any addenda thereto as of the effective date of this agreement, which are attached hereto as Exhibit A – Scope of Work, and are incorporated by ti

NOW, THEREFORE, in con
agreed by and between the parties

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mises set forth herein, it is

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 Three Hundred Ninety-Nine Thousand Eight Hundred Forty-One Dollars and Zero Cents (\$399,841.00) 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 December 31, 2008; 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.

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

VI. Discrimination

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

VII. Indemnification

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

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

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

INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

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

VIII. Insurance

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

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

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

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

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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
Barry Knight, P.E., President & CEO
CTS Engineers
1412 112th Ave. NE, Ste. 102
Bellevue, Washington 98004
(425) 455-7622

Stephen Misiurak, P.E.
City Engineer
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__.

CONSULTANT
By: Barry S. Knight
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
CONSULTANT
Barry Knight, P.E., President & CEO
CTS Engineers
1412 112th Avenue NE, Ste. 102
Bellevue, Washington 98004
(425) 455-7622

Stephen Misiurak, P.E.
City Engineer
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 _____)

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

Dated: _____

(print or type name)

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

My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF 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/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)

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

My Commission expires: _____

EXHIBIT A

SCOPE OF WORK

HARBORVIEW DRIVE AND JUDSON STREET IMPROVEMENTS GIG HARBOR, WA

BACKGROUND

The City of Gig Harbor (CITY) proposes to make street improvements along Harborview Drive, from Soundview Drive to the south and Austin Street to the north, including the Austin Street/North Harborview Drive loop around Donkey Creek Park. The CITY also plans to make improvements to Judson Street, Uddenberg Lane and Stanich Street. There are two components to this project:

1. Conceptual pedestrian and street design for the entire project
2. Preparation of Plans, Specifications and Estimate (PS&E) for Phase 1 construction, which includes the following segments:
 - a. Judson Street, Uddenberg Lane and Stanich Street
 - b. Harborview Drive between Soundview Drive and Novak Street
 - c. Frontage improvements along the southwest side of Harborview Drive to the south of the North Harborview Drive intersection.

The proposed schedule calls for Phase 1 construction to take place between February and mid-May of 2009.

The CITY has selected the design team of CTS Engineers in association with Cascade Design Collaborative, Inc. (CONSULTANT) to perform the necessary street master planning, design and engineering work for this project.

APPLICABLE STANDARDS AND REQUIREMENTS

All work shall be prepared in accordance with the corresponding procedures and requirements of the CITY. The plans will generally be developed to WSDOT standards, and the graphic appearance will meet CITY requirements.

RESPONSIBILITIES OF THE CITY

The CITY will be responsible for the following:

1. Environmental documentation and permitting
2. Obtaining Right-of-Way easements, as necessary
3. Providing the CONSULTANT with available traffic data
4. Providing the CONSULTANT with rights-of-entry for surveying purposes
5. Providing the CONSULTANT with available as-built utility information.
6. Coordinating members of the Technical Advisory Committee, including various utility company representatives and other relevant non-CITY agencies.

7. Identifying and communicating with members of the Stakeholders Committee.
8. Coordinating and making arrangements for public meetings, including providing meeting notice, a room, refreshments, and other logistics.

SCOPE OF WORK

CONSULTANT will serve as an adjunct of CITY staff in the development of the Project.

The following task index covers the scope of work to be performed by the CONSULTANT:

1.0 PROJECT MANAGEMENT

- 1.1 Develop & Monitor CPM Schedule
- 1.2 Monthly Progress Reports & Billings
- 1.3 Coordination Meetings with CITY
- 1.4 Ongoing Project Management
- 1.5 Quality Assurance

2.0 SURVEYING & MAPPING

- 2.1 Topographical Survey
- 2.2 Prepare Base Maps

3.0 CONCRETE PAVEMENT EVALUATION

- 3.1 FWD Testing & Core Borings
- 3.2 Measure Pavement Structure
- 3.3 Analysis & Report

4.0 CONCEPTUAL PEDESTRIAN & STREET DESIGN & COMMUNITY INVOLVEMENT

- 4.1 Data Collection & Review
- 4.2 Initial CITY Briefing & Site Reconnaissance
- 4.3 Existing Conditions Analysis
- 4.4 Technical Advisory Committee (TAC) Meeting #1
- 4.5 Stakeholders Committee Meeting #1
- 4.6 Community Workshop #1
- 4.7 Preliminary Conceptual Pedestrian & Street Design
- 4.8 City Council and Staff Review of Conceptual Pedestrian & Street Design
- 4.9 Technical Advisory Committee Meeting #2 – Review of Conceptual Pedestrian & Street Design
- 4.10 Stakeholders Committee Meeting #2 – Review of Conceptual Pedestrian & Street Design
- 4.11 Design Review Board Meeting #1 – Review of Conceptual Pedestrian & Street Design
- 4.12 Community Workshop #2
- 4.13 Revised Conceptual Pedestrian & Street Design

- 4.14 Technical Advisory Committee Meeting #3 – Review of Revised Conceptual Pedestrian & Street Design
- 4.15 Stakeholders Committee Meeting #3 – Review of Revised Conceptual Pedestrian & Street Design
- 4.16 Design Review Board Meeting #2 – Review of Revised Conceptual Pedestrian & Street Design
- 4.17 City Council Presentation and Review
- 4.18 Final Conceptual Pedestrian & Street Design
- 4.19 Conceptual Pedestrian & Street Design Documentation

5.0 PRELIMINARY PEDESTRIAN & STREET DESIGN (10%)

- 5.1 Preliminary Roadway and Sidewalk Layout
- 5.2 Preliminary Pedestrian & Street Design and Details
- 5.3 Order-of-Magnitude Cost Estimate
- 5.4 Preliminary Pedestrian & Street Design Approval Process

6.0 PRELIMINARY DESIGN & ENGINEERING (30%)

- 6.1 Pedestrian & Street Design & Details
- 6.2 Typical Roadway Sections
- 6.3 Plans, Profiles & Sections for Pavement Rehabilitation/Replacement
- 6.4 Drainage Layout Plans
- 6.5 Watermain Replacement Plans & Details
- 6.6 Dry Sewer Line Plans & Profiles
- 6.7 Coordinate Undergrounding of Overhead Utilities with Peninsula Light
- 6.8 Preliminary Quantity Calculations & Cost Estimate
- 6.9 Assemble & Submit Preliminary Engineering Plans to CITY
- 6.10 CITY Review of Preliminary Engineering Plans

7.0 FINAL DESIGN AND PS&E

- 7.1 Demolition Plans
- 7.2 Typical Roadway Sections & Details
- 7.3 Plans, Profiles & Sections for Pavement Rehabilitation/Replacement
- 7.4 Drainage Plans, Profiles & Details
- 7.5 Watermain Replacement Plans, Profiles & Details
- 7.6 Dry Sewer Line Plans, Profiles & Details
- 7.7 Signing & Striping Plans
- 7.8 Illumination Plans & Details
- 7.9 Pedestrian & Street Design & Details
- 7.10 Landscape Design Plans & Details
- 7.11 Temporary Erosion Control Plans
- 7.12 Traffic Control Plans
- 7.13 Miscellaneous Plans
- 7.14 Special Provisions
- 7.15 Quantity Calculations & Cost Estimate
- 7.16 Assemble & Submit Draft PS&E (90%) to CITY

- 7.17 Respond to CITY 90% Review Comments
7.18 Assemble & Submit Final PS&E (100%)

TASK DESCRIPTIONS

1.0 PROJECT MANAGEMENT

- 1.1 *Develop & Monitor CPM Schedule:*** In coordination with CITY, CONSULTANT will develop a detailed project schedule for their work using Microsoft Project. The schedule will reflect timing of the major work elements, review periods, meetings, and submittal of deliverables. CONSULTANT will update the schedule as necessary throughout the life of the agreement, and provide CITY with updated versions as they are developed.

Product: Original Project Schedule and Electronic Copies of Updates

- 1.2 *Monthly Progress Reports & Billings:*** CONSULTANT will prepare and submit progress reports and billings in a format approved by CITY, noting significant activities and percent complete by task and subtask. The report will include notation of any unresolved issues, information needs, anticipated schedule variations, and rate of expenditure of the budget.

Product: Original of Progress Reports and Billings on a monthly basis

- 1.3 *Coordination Meetings with CITY:*** CONSULTANT will attend Coordination Meetings with CITY on an as-needed basis. For budgeting purposes, it has been assumed that up to three (3) Coordination Meetings will be held, attended by two CONSULTANT staff members per meeting.
- 1.4 *Ongoing Project Management:*** Work under this task includes ongoing project management activities for the duration of the project. This includes subconsultant coordination, and scheduling internal team meetings on a regular basis to review the work scope, progress and related issues.
- 1.5 *Quality Assurance:*** CONSULTANT will implement quality assurance procedures for the duration of the project. This will include an independent review of all project deliverables prior to submittal to CITY.

2.0 SURVEYING & MAPPING

- 2.1 *Topographical Survey:*** CONSULTANT will undertake a field survey along the streets to be improved collecting all necessary topographic and planimetric data to enable the preparation of Base Maps to a 1" = 20-ft scale. The data to be collected will include details of existing underground and overhead utilities, as well adjacent property boundaries and property details, including driveways. The main route of the survey will be along Harborview Drive, from the intersection of Soundview Drive to the intersection of Austin Street, which is approximately 1.1 miles in length. CONSULTANT will also map the triangle

portion of the north end of the project along Austin Street and North Harborview Drive, and portions of Judson Street, Uddenberg Lane, Stanich Street and Pioneer Way. CONSULTANT will also map 100-foot up intersecting streets on Harborview Drive.

2.2 Prepare Base Maps: CONSULTANT will prepare all necessary Base Maps, including the following:

- 1" = 50-ft scale Base Maps for the Conceptual Pedestrian & Street Design
- 1" = 20-ft scale Base Maps for the preparation of PS&E for Phase 1 construction.

Product: Base Mapping in electronic format:
1" = 50' scale for Conceptual Pedestrian & Street Design
1" = 20' scale for Phase 1 Construction work

3.0 CONCRETE PAVEMENT EVALUATION

Shannon & Wilson, Inc. will be responsible for this task as a subconsultant to CTS Engineers. The purpose of this task will be to evaluate the existing pavement and underlying subgrade material on Harborview Drive from Pioneer Way to north of Dorotich Street. The existing pavement has an underlying 12"-thick concrete slab which has been overlaid with asphalt that has suffered from reflective cracking over the years.

3.1 FWD Testing & Core Borings: A non-destructive Falling Weight Deflectometer (FWD) will be used to help determine the condition of the subgrade material below the concrete slab, which is believed to be old fill material. The FWD testing will be performed by Pavement Engineers of Mill Creek as a subcontractor to Shannon & Wilson. For this project, the FWD equipment would be configured to apply two impact loads of approximately 9,000, and 12,000 pounds. These loads are intended to simulate heavy truck and bus loads. Measurements will be taken at 100 foot intervals at both the center of the concrete panels and the outer corner to the panels identified by the reflective cracking. This approach will provide a means of determining the amount of load transfer across the joints and the existence of voids below the joints. Traffic control will be required during the FWD testing, and it is assumed that this traffic control can be provided by the CITY.

3.2 Measure Pavement Structure: Four (4) core borings will be taken to measure asphalt and concrete pavement thicknesses. Two soil samples will be taken from the underlying subgrade material for soil classification and index testing at each core location.

3.3 Analysis and Report: Resilient modulus values of the individual pavement layers and subgrade will be determined from the deflections and pavement structure information as evaluated by FWD testing and core-boring findings. This analysis and a report will be presented in the form of charts and graphs

that will profile the deflections, back-calculated layer thicknesses, back-calculated layer moduli and void-load transfer plot. Several rehabilitation strategies will be considered including: Grind and Overlay; Rubbilizing and Overlay; Crack, Seat and Overlay; and Reconstruction.

If the existing concrete pavement needs to be broken up in place, the geotechnical memorandum will recommend that a pre-construction survey be made of existing building walls, ceilings, and footing walls along the constructed pavement segment, and that vibration monitoring be conducted during construction. Both the building survey and vibration monitoring will be included in the construction services contract after the final design has been completed.

<p>Product: Pavement Design Technical Memorandum</p>

4.0 CONCEPTUAL PEDESTRIAN & STREET DESIGN & COMMUNITY INVOLVEMENT

The CONSULTANT will prepare a Conceptual Pedestrian & Street Design Plan that addresses the following streets and their immediate surroundings:

- Harborview Drive from Soundview Drive to Austin Street, including the Austin Street/ North Harborview Drive loop around Donkey Creek Park.
- Judson Street from Pioneer Way to Soundview Drive
- Pioneer Way from Judson Street to Uddenberg Lane
- Uddenberg Lane from Pioneer Way to Stanich Street
- Stanich Street from Judson Street to Uddenberg Lane

4.1 Data Collection and Review: The CONSULTANT will review all information made available by the CITY. This will include review of previous physical plans, transportation and traffic plans, open space, recreation or trails plans, utility plans, technical data, existing and proposed land uses fronting the right of way, and any development plans within the project area and immediate surroundings. This task will also including a review of survey features such as right of way extents, existing planting, lighting and street furnishings, transit stops, existing paving, and curb-cut locations.

4.2 Initial CITY Briefing and Site Reconnaissance: The CONSULTANT will attend a briefing session with members of the CITY group, including the CITY's project manager, the Engineer, and others as appropriate. Following or concurrent with the initial briefing session, the CONSULTANT will conduct a reconnaissance of the project site and surrounding area with available members of the same group of participants.

4.3 Existing Conditions Analysis: The CONSULTANT will conduct an analysis of existing site conditions in the project area. Issues to be considered include the following:

- Plans and Planned Projects.
- Transportation, Traffic and Pedestrian Circulation and Parking.
- Urban Design Character.
- Landscape, Topography, and Views
- Existing City Policies, Plans, and Standards

4.4 *Technical Advisory Committee (TAC) Meeting #1:* The CONSULTANT will attend a meeting with the Technical Advisory Committee, which could include representatives from the Public Works Department, the Fire Department, Peninsula Light and Pierce Transit. TAC meetings will be held prior to Stakeholder Committee meetings, preferably on the same day. (Tentative date for meeting: 4/29/08).

4.5 *Stakeholders Committee Meeting #1:* An initial meeting will be held with the Stakeholders Committee to review the Existing Conditions Analysis, discuss key issues and areas of concern, and discuss design opportunities for the streets in the project area. The Stakeholders Committee could include one or more representatives from groups, such as the Planning Commission, Design Review Board, Arts Commission, Historic Waterfront Association, and downtown residents. (Tentative date for meeting: 4/29/08).

4.6 *Community Workshop #1:* An initial workshop will be held with the Community to review the Existing Conditions Analysis and brainstorm design opportunities for the streets in the project area. (Tentative date for meeting: 5/13/08).

4.7 *Preliminary Conceptual Pedestrian & Street Design:* Based on the input received from the initial Stakeholder Committee meeting and the Community Workshop, the CONSULTANT will prepare a Conceptual Pedestrian & Street Design Plan that illustrates the overall design concept for the streets within the project area and shows their relationship to adjacent streets and parcels in the downtown and along the waterfront. The Consultant will prepare up to two (2) different alternative Pedestrian & Street concepts, should distinctly different concepts evolve from the Initial Community Workshop. The Conceptual Pedestrian & Street Design intersection treatment, transit stops, driveways, marked crosswalks, sidewalk or street plazas, and connections to adjacent parks, open space, and trails. The Conceptual Pedestrian & Street Design Plan will document preliminary design options

Plan will show sidewalks, street configuration (travel lanes and parking), intersection treatment, transit stops, driveways, marked crosswalks, sidewalk or street plazas, and connections to adjacent parks, open space, and trails. The Conceptual Pedestrian & Street Design Plan will document preliminary design options for features including planting, street furnishings, lighting, paving, and public art. The Conceptual Pedestrian & Street Design Plan will also show the proposed phasing of the improvements. The preliminary pedestrian & street concepts will address the following issues:

- Landscaping.
 - Proposed street light locations using City standard fixtures.
 - Location, size and appearance of street furnishings, including benches, trash receptacles and bike racks.
 - Preliminary schedule of materials, textures, colors and shapes for all surfaces and street furniture.
 - Opportunities for public art, considering locations such as sidewalks, benches, trash receptacles, banners, and small plazas along each street.
 - Potential opportunities to integrate innovative stormwater treatment concepts into the design.
 - Preliminary parking supply study.
- 4.8 City Council & Staff Review of Conceptual Pedestrian & Street Design:** The CONSULTANT will review the Conceptual Pedestrian & Street Design alternatives with the City Public Works Department and the City Council.
- 4.9 Technical Advisory Committee Meeting #2 - Review of Conceptual Pedestrian & Street Design:** The TAC will review and comment on the Conceptual Pedestrian & Street Design Alternatives. (Tentative date for meeting: 5/27/08).
- 4.10 Stakeholders Committee Meeting #2 - Review of Conceptual Pedestrian & Street Design:** The Stakeholders Committee will review and comment on the Conceptual Pedestrian & Street Design Alternatives. (Tentative date for meeting: 5/27/08).
- 4.11 Design Review Board Meeting #1 – Review of Conceptual Pedestrian & Street Design:** The Design Review Board will review and comment on the Conceptual Pedestrian & Street Design Alternatives. (Tentative date for meeting: 6/3/08).
- 4.12 Community Workshop #2:** A Community workshop will be held to review and comment on the Conceptual Pedestrian & Street Design Alternatives. (Tentative date for meeting: 6/10/08).
- 4.13 Revised Conceptual Pedestrian & Street Design:** Based on the input received from the CITY, the Stakeholders Committee, and the Community, the CONSULTANT will prepare a single Conceptual Design Alternative for each of the streets within the project area.
- 4.14 Technical Advisory Committee Meeting #3 - Review of Revised Conceptual Pedestrian & Street Design:** The TAC will review and comment on the Revised Conceptual Pedestrian & Street Design. (Tentative date for meeting: 7/15/08).
- 4.15 Stakeholders Committee Meeting #3 - Review of Revised Conceptual Pedestrian & Street Design:** The Stakeholders will review and comment on the Revised Conceptual Pedestrian & Street Design. (Tentative date for meeting: 7/15/08).

- 4.16 Design Review Board Meeting #2 - Review of Revised Conceptual Pedestrian & Street Design:** The Design Review Board will review and comment on the Revised Conceptual Pedestrian & Street Design. (Tentative date for meeting: 7/22/08).
- 4.17 City Council Presentation & Review:** The CONSULTANT will present the Revised Conceptual Pedestrian & Street Design to City Council for review. The CONSULTANT will revise the design as necessary to incorporate any final comments from the City Council.
- 4.18 Final Conceptual Pedestrian & Street Design:** Based on the input received from the CITY, the Stakeholders Committee, and the Community, the CONSULTANT will prepare a Final Conceptual Pedestrian & Street Design that illustrates the overall design concept for the streets within the project area.
- 4.19 Conceptual Pedestrian & Street Design Documentation:** The CONSULTANT will prepare a Summary Report documenting the Final Conceptual Pedestrian & Street Design.

Products:

- Conceptual Streetscape Plan illustrating all of the streets within the project area.
- Conceptual cross-sections illustrating the design for each street within the Project Area.
- Images showing comparable design features.
- Images of materials, colors and textures for sidewalk and plaza paving.
- Images and/or cutsheets of street furnishings.
- Images or conceptual sketches showing planting concepts and Low Impact Development features.
- PowerPoint presentation to assist in presenting the information.
- Summary Report documenting Final Conceptual Streetscape Design.

5.0 PRELIMINARY PEDESTRIAN & STREET DESIGN (10%)

Preliminary Pedestrian & Street Design (10%) will be done for all of the streets within the project area.

- 5.1 Preliminary Roadway and Sidewalk Layout:** Based on the Conceptual Pedestrian & Street Design, the CONSULTANT will prepare a preliminary layout showing the proposed widths and location of travel lanes, parking stalls, curbs, gutters and sidewalks. Sidewalk and street connections to adjacent parcels, parks, open space, and trails will also be shown.
- 5.2 Preliminary Pedestrian & Street Design and Details:** Preliminary pedestrian & street design and details will address features including planting, paving, lighting, street furnishings, intersection treatment, transit stops, ADA improvements, crosswalks, and sidewalk or street plazas. The CONSULTANT

will also work with artists selected by the Arts Commission to integrate art into the project.

5.3 Order-of-Magnitude Cost Estimate: The CONSULTANT will develop an Order-of-Magnitude Cost Estimate for all of the streets in the Scope of Work. This cost estimate will be divided into separate streets and proposed phases.

5.4 Preliminary Pedestrian & Street Design Approval Process: Prior to continuing with the preparation of Plans, Specifications and Estimates (PS&E) for Phase 1 construction, the CONSULTANT will present the Preliminary Pedestrian & Street Design and the Order-of-Magnitude Cost Estimate to the City Council for approval. The CONSULTANT will revise the design as necessary to incorporate any final comments from the City Council, Neighborhood, Stakeholders Committee, or City Staff.

Products:

- 10% Road and Sidewalk Layout Plans
- 10% Streetscape Design and Details at various scales
- Order-of-Magnitude Cost Estimate

6.0 PRELIMINARY DESIGN & ENGINEERING (30%)

Due to the aggressive project schedule, work on the Preliminary Design for Phase 1 construction will begin as soon as the Base Maps have been prepared, and will, to the extent possible, be done concurrently with Task 4 (Conceptual Pedestrian & Street Design). It is anticipated that Phase 1 construction will include the following:

- Judson Street, Uddenberg Lane and Stanich Street: Pedestrian, landscaping, street lighting, roadway and drainage improvements.
- Harborview Drive between Soundview Drive and Novak Street:
 - Sidewalk and landscaping enhancements.
 - Roadway rehabilitation/replacement between Pioneer Way and Dorotich Street.
 - 8" dia. watermain replacement from Soundview Drive to Pioneer Way, and from Rosedale Street to Novak Street.
 - Install a dry sanitary sewer line from Pioneer Way to Novak Street.
 - Drainage revisions and improvements.
- Frontage improvements along the southwest side of Harborview Drive to the south of the North Harborview Drive intersection.
- Coordination with PSE for undergrounding existing overhead utilities.

6.1 Pedestrian & Street Design and Details: The Preliminary Pedestrian & Street Design and Details from Task 5 will be developed to 30% for the Phase 1 street segments.

- 6.2 Typical Roadway Sections:** Typical roadway sections and details will be prepared for each of the roadway segments listed above. These will show the available right-of-way and the proposed widths of travel lanes, parking, curbs, gutters and sidewalks.
- 6.3 Plans, Profiles & Sections for Pavement Rehabilitation/Replacement:** Based on the results of the concrete pavement evaluation (Task 3), plans and profiles will be prepared to show how it is proposed to rehabilitate or replace the existing concrete pavement on Harborview Drive between Pioneer Way and Dorotich Street.
- 6.4 Drainage Layout Plans:** Drainage layout plans will be prepared wherever necessary to show revised catch basin locations &/or revisions or additions to the stormwater conveyance system.
- 6.5 Watermain Replacement Plans & Details:** It is proposed to replace the existing 8" dia. watermain from Soundview Drive to Pioneer Way, and from approximately Rosedale Street to Novak Street. Plans and details will be provided to show how this will be accomplished, including all necessary service connections to fire hydrants and adjacent properties.
- 6.6 Dry Sewer Line Plans & Profiles:** It is proposed to install a dry sanitary sewer line under Harborview Drive between Soundview Drive and Novak Street. This will eventually be connected to the new sewer line and lift station currently being constructed on North Harborview Drive. Plans and profiles will be prepared to show this proposed new sanitary sewer line.
- 6.7 Coordinate Undergrounding of Overhead Utilities with Peninsula Light:** The CITY and CONSULTANT will endeavor to coordinate the undergrounding of Peninsula Light's existing overhead power lines and other ancillary overhead utilities (such as telephone & cable) within the existing right-of-way, or in a utility easement outside the right-of-way.
- 6.8 Preliminary Quantity Calculations & Cost Estimate:** CONSULTANT will prepare quantity calculations and cost estimates for all work associated with the Phase 1 construction. The unit costs will be based on recent WSDOT, Pierce County and CITY cost records for similar work in Western Washington.
- Product:** Two (2) copies of Preliminary Engineering (30%) Package
- 6.9 Assemble & Submit Preliminary Engineering Plans to CITY:** CONSULTANT will assemble and submit the preliminary design package (30%) to the CITY for review and comment.
- 6.10 CITY Review of Preliminary Engineering Plans:** The Preliminary Engineering plans and cost estimate will be reviewed by the CITY. All comments will be provided to the CONSULTANT in writing, who will proceed to address each comment and make all necessary revisions to the plans.

7.0 FINAL DESIGN & PS&E

The Final Design and PS&E will begin after the Preliminary Engineering Plans (Task 5) have been reviewed and approved, and the Conceptual Pedestrian & Street Design (Task 4) has also been approved by the CITY.

- 7.1 **Demolition Plans:** A set of demolition plans will be prepared to show all removals, including pavement, sidewalks, curbs, gutters, street lights, signs and pavement markings.
- 7.2 **Typical Roadway Sections & Details:** The typical roadway sections and details, commenced under Task 5.1, will be completed to reflect the approved conceptual pedestrian and street details.
- 7.3 **Plans, Profiles and Sections for Pavement Rehabilitation/Replacement:** The plans, profiles and sections for rehabilitating or replacing the concrete pavement between Pioneer Way and Dorotich Street will be completed.
- 7.4 **Drainage Plans, Profiles & Details:** The drainage plans, profiles and details will be completed to reflect the approved conceptual pedestrian & street details.
- 7.5 **Watermain Replacement Plans, Profiles & Details:** The 8" dia. watermain replacement plans, profiles and details will be completed to include all necessary anchors, valves, meters, service connections, etc.
- 7.6 **Dry Sewer Line Plans, Profiles & Details:** The dry sewer line plans, profiles and details will be completed to incorporate CITY comments resulting from the preliminary engineering review.
- 7.7 **Signing & Striping Plans:** Plans will be prepared to show all new signing and striping details, including parking designations, intersection approach channelization, pedestrian crosswalks, new directional signage, etc.
- 7.8 **Illumination Plans & Details:** Illuminations plans and details will be prepared to show all proposed revisions to the existing street lighting, including wiring diagrams, and power source information. The decorative luminaires used throughout the City will be incorporated as necessary.
- 7.9 **Sidewalk & Pedestrian & Street Design and Details:** The sidewalk and pedestrian and street design and details will be developed following those developed under the Conceptual and Preliminary Pedestrian & Street Design (Tasks 4 and 5). They could include improvements for ADA compliance, intersection treatment, transit stops, driveways, marked crosswalks, sidewalk or street plazas, and connections to adjacent parks, open space, and trails. They could also include street furnishings, decorative paving, and public art.
- 7.10 **Landscape Design Plans & Details:** The landscape design plans and details will be prepared by Cascade Design Collaborative (CDC) to show all proposed landscaping and irrigation details.

- 7.11 Temporary Erosion Control Plans:** Temporary erosion control plans will be prepared in accordance with the requirements of the Washington State Department of Ecology's "*Stormwater Management Manual for Western Washington*" (February 2005 edition), and the "*Pierce County Stormwater Management Plan*."
- 7.12 Traffic Control Plans:** Temporary traffic control plans and accompanying special provisions will be prepared to show how traffic flow will be maintained during the construction period. All temporary signing, striping, traffic barriers, cones, flagging and other traffic-control devices will be specified in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), as will temporary lane closures, detour routes, access crossings, etc.
- 7.13 Miscellaneous Plans:** Miscellaneous plans will include a cover sheet showing a location plan, index of drawings and general notes; a sheet for a legend and abbreviations; and a survey control sheet.
- 7.14 Special Provisions:** A set of Special Provisions will be prepared to supplement the Standard Specifications for Road, Bridge, and Municipal Construction (2008).
- 7.15 Quantity Calculations & Cost Estimate:** CONSULTANT will prepare a detailed set of quantity calculations based on WSDOT's standard bid item list, and will apply the latest available unit bid prices to determine the Engineer's Estimate.
- 7.16 Assemble & Submit Draft PS&E (90%) to CITY:** CONSULTANT will assemble and submit a draft PS&E package (90%) to CITY for review and comment.

Product: Two (2) copies of Draft Final PS&E (90%) Package
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- 7.17 Respond to CITY 90% Review Comments:** CONSULTANT will prepare a written response to all CITY review comments, and revise the plans and special provisions accordingly.

Product: Written response to review comments in tabular format.
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- 7.18 Assemble & Submit Final PS&E (100%):** After incorporating CITY review comments in the plans and special provisions, CONSULTANT will perform a final QA/QC check, and assemble and submit the final PS&E package.

Product: One Original and One Electronic copy of Final PS&E (100%) Package

SCHEDULE

CONSULTANT will proceed with the work immediately after execution of the Consultant Agreement with the CITY. A tentative outline schedule for CONSULTANT's work is provided as follows:

- Notice to Proceed April 15, 2008
- Survey & Base Map Completion May 7, 2008
- Concrete Pavement Evaluation Completion May 30, 2008
- Conceptual Pedestrian & Street Design September 1, 2008
- Preliminary Pedestrian & Street Design (10%) September 15, 2008
- Preliminary Design (30%) Submittal September 15, 2008
- Draft PS&E (90%) Submittal November 17, 2008
- Final PS&E (100%) Submittal December 23, 2008
- Project Bid Advertisement January 2, 2009
- Start Construction February 18, 2009

EXHIBIT B

**CTS Engineers
Harborview Drive & Judson Street Improvements
Gig Harbor, WA**

A. SUMMARY ESTIMATED PERSON-HOUR COSTS

	Person-Hours		Rate	=	Raw Labor Cost
Project Manager	270	@	\$61.38	=	\$16,573
QA/QC Manager	48	@	\$57.88	=	\$2,778
Sr. Civil Engineer	440	@	\$45.00	=	\$19,800
Sr. Civil Designer	560	@	\$26.00	=	\$14,560
Survey Manager	44	@	\$44.73	=	\$1,968
Senior Party Chief	210	@	\$29.00	=	\$6,090
Instrument Operator	210	@	\$18.25	=	\$3,833
Senior CAD Tech.	688	@	\$26.00	=	\$17,888
Admin. Assistant	48	@	\$14.75	=	\$708
RAW LABOR COST	2,518			=	\$84,197

B. PAYROLL, FRINGE BENEFIT COSTS & OVERHEAD

Total Raw Labor Cost	x	Approved Rate	=	
\$84,197		182.62%	=	\$153,761

C. NET FEE

Total Raw Labor & Overhead		NET FEE	=	
\$237,959	x	10.00%	=	\$23,796

D. OUT-OF-POCKET EXPENSE SUMMARY

			Unit Cost	=	Estimated Expense
Use of Personal Vehicle	800	@	\$0.485	=	\$388
Outside Printing				=	\$1,200
Communications				=	\$200
TOTAL ESTIMATED EXPENSE					\$1,788

E. SUBCONSULTANTS

Cascade Design Collaborative, Inc.	**	=	\$122,054.82
Shannon & Wilson, Inc.	**	=	\$14,243

TOTAL	=	\$399,841
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** See attached Subconsultant's Summary

Cascade Design Collaborative (CDC)
Harborview Drive & Judson Street Improvements
Gig Harbor, WA

New Business - 1

A. SUMMARY ESTIMATED PERSON-HOUR COSTS

	Person-Hours	Rate	=	Raw Labor Cost
Principal	233	@ \$48.38	=	\$11,273
Senior Urban Designer	466	@ \$32.54	=	\$15,164
Designer	410	@ \$28.50	=	\$11,685
RAW LABOR COST	1,109		=	\$38,121

B. PAYROLL, FRINGE BENEFIT COSTS & OVERHEAD

Total Raw Labor Cost	x	Approved Rate	=	
\$38,121		188.72%		\$71,942

C. NET FEE

Total Raw Labor & Overhead	x	NET FEE	=	
\$110,063		10.00%		\$11,006

D. OUT-OF-POCKET EXPENSE SUMMARY

	Unit Cost	=	Estimated Expense
Use of Personal Vehicle	1,000 @ \$0.485	=	\$485.00
Outside Printing		=	\$500.00
TOTAL ESTIMATED EXPENSE		=	\$985.00

TOTAL	=	\$122,054.82
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**Harborview Drive & Judson Street Improvements
Gig Harbor, WA**

A. SUMMARY ESTIMATED PERSON-HOUR COSTS

	Person-Hours		Rate	=	Raw Labor Cost
Principal-in-Charge	6	@	\$75.30	=	\$452
Principal Professional	40	@	\$34.50	=	\$1,380
Professional Class III/IV	16	@	\$26.28	=	\$420
Admin.	8	@	\$29.21	=	\$234
Clerical	4	@	\$23.75	=	\$95
RAW LABOR COST	74			=	\$2,581

B. PAYROLL, FRINGE BENEFIT COSTS & OVERHEAD

Total Raw Labor Cost	x	Approved Rate		=	
\$2,581		193.00%		=	\$4,981

C. NET FEE

Total Raw Labor & Overhead		NET FEE		=	
\$7,562	x	10.00%		=	\$756

D. OUT-OF-POCKET EXPENSE SUMMARY

			Unit Cost	=	Estimated Expense
FWD Subcontractor				=	\$5,724
Use of Personal Vehicle	200	@	\$0.505	=	\$101
Reproduction				=	\$100
TOTAL ESTIMATED EXPENSE				=	\$5,925

TOTAL	=	\$14,243
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Subject: Support for Sand Volleyball Courts

Proposed Council Action: Council to consider placement of Sand Volleyball Courts in a portion of the City's BMX Park.

Dept. Origin: Public Works - Operations

Marco Malich
Prepared by: Marco Malich
Interim Director of Operations

For Agenda of: April 14, 2008

Exhibits: Staff Report

Initial & Date

Concurred by Mayor: _____
Approved by City Administrator: PK 4/7/08
Approved as to form by City Atty: N/A
Approved by Finance Director: N/A
Approved by Department Head: MM

Expenditure Required	\$0	Amount Budgeted	\$0	Appropriation Required	\$0
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INFORMATION / BACKGROUND

An interest group appeared before the Parks Commission over a period of three months for consideration of placement of Sand Volleyball Courts in a City Park. They suggested some possible locations and described how the project would be accomplished. Their most desired location was on a portion of the current BMX Park.

FISCAL CONSIDERATION

To be funded by interest group through a PenMet grant, donations and volunteer labor.

BOARD OR COMMITTEE RECOMMENDATION

Parks Commission endorsed the proposal on March 5, 2008.

Operations and Public Project Committee recommended forwarding to full Council on March 20, 2008.

RECOMMENDATION / MOTION

Move to: Council to consider placement of Sand Volleyball Courts in a portion of the City's BMX Park.



Proposal to City Council of Gig Harbor: Outdoor Sand Volleyball Courts

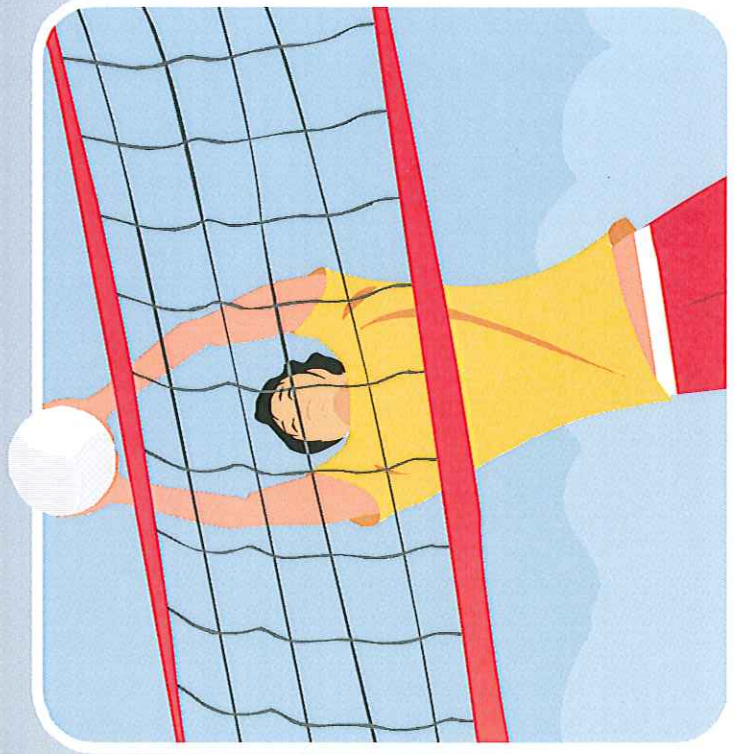
Gregg Vermillion

Dave Hays

George Lee

Chris Nelson

Eric Guenther



Topics

- Why sand volleyball courts?
- What we're proposing
- We'll do the work
- But we need a good site...
- Projected Costs
- Financing
- Seeking Your Approval

Why sand volleyball courts?

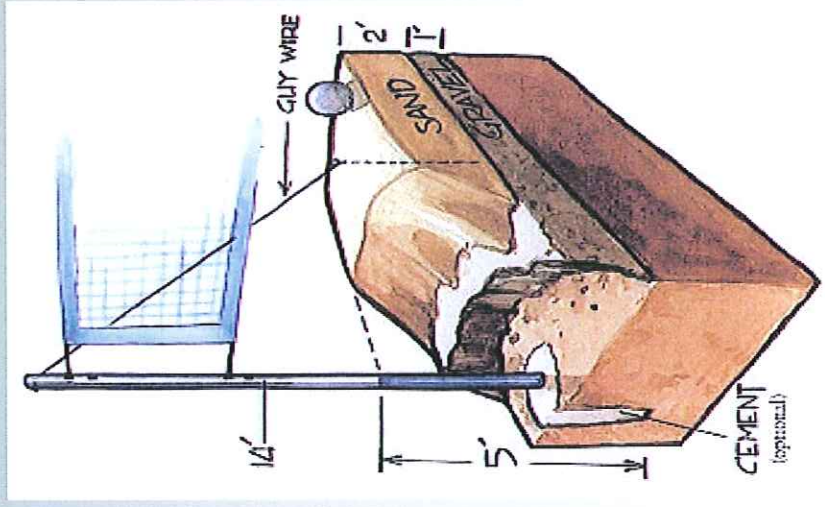
- 2001 Parks & Open Space study:

Chap 5 Land and facility demand: “Gig Harbor does not currently provide any volleyball facilities... Consequently, the existing supply should be increased at Gig Harbor North Park, West Park, City Park at Crescent Creek, and the Civic Center.”

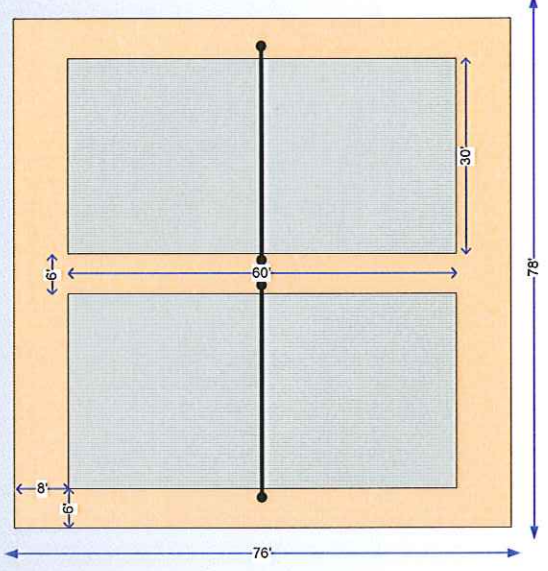
- Courts will be enjoyed by a large local population of players
 - Over seventy men & women play PAA indoor leagues
 - Grass pick-up games all summer with annual end of summer tourney
 - Gig Harbor and Tacoma YMCAs are packed at volleyball times
 - Students play on club, middle school, and high school teams
 - Great group activity for families and groups
- When properly constructed, sand volleyball courts are an attractive park addition and require little maintenance
 - Nice courts will draw players from Tacoma and the Peninsula...benefits to local businesses

What we're proposing

Construct two sand volleyball courts on a local Gig Harbor site



Construction methods are well understood and documented on the web



We'll do the work

- **Planning**
 - Cost Estimating
 - Scheduling
- **Fund Raising**
 - Money and services from local individuals, businesses, and organizations (PAA)
 - Matching grant from PenMet Parks
- **Construction**
 - Material Procurement
 - Volunteer labor
 - In-kind service from local businesses
- **Maintenance**
 - Raking and yearly tilling

Local volleyball enthusiasts are prepared to bring this plan to fruition

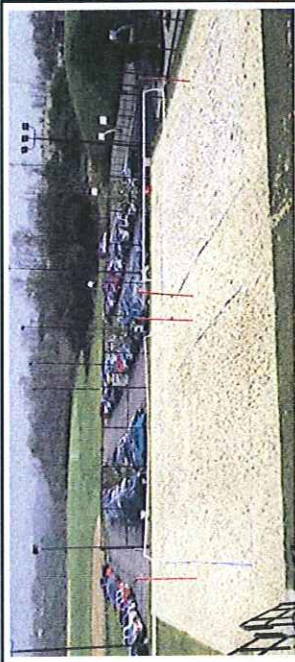
We'll do the work

In less than a week, over 80 people signed a petition supporting construction of the courts and volunteering to help

Survey Supporting Sand Volleyball Courts in Gig Harbor

Local volleyball advocates are petitioning the City of Gig Harbor and PeaMet Parks to construct two sand-pit volleyball courts in Gig Harbor. Obtaining a city park site location and PeaMet Parks matching grant money depends upon your community support. Please signal your support by signing below.

Imagine something like this in our community!



Printed Name	Signature	City	Email Address	Donate labor or \$?
Tom ROSENBAUM	<i>Tom Rosenbaum</i>	Tacoma	356V56@pac.com	L
Dave Harris	<i>Dave Harris</i>	Gig Harbor	rosenbaum2@comcast.net	L
Andrew Harris	<i>Andrew Harris</i>	"	dashase@hotmail.com	L
Jason Valera	<i>Jason Valera</i>	Port Orchard	tomhodt@hotmail.com	L
Robert Scott	<i>Robert Scott</i>	Gr. R	bobscott@comcast.net	L
Ann Hansen	<i>Ann Hansen</i>	Gr. H	hansen@uw.washington.edu	L
Benji Hansen	<i>Benji Hansen</i>	Gr. H	ROFinnest@aol.com	L
Grant Johnson	<i>Grant Johnson</i>	Tukwila	john@bethel.edu	L
James Johnson	<i>James Johnson</i>	Tacoma	hansen110@yahoo.com	L
Kelli Johnson	<i>Kelli Johnson</i>	Tacoma	lorenzjohnson@integrity.com	L
Leah Harris	<i>Leah Harris</i>	Gr. H	harris110@up.edu	L
Be Small	<i>Be Small</i>	Tacoma	besmall@integrity.com	L

But we need a good site...

- Criteria for selecting a sand-pit volleyball site
 - Fits existing or planned site use
 - Location/Accessibility/Parking
 - Size: space for two courts
 - Optimally 90 ft by 100 ft rectangle
 - Minimally 78 ft by 76 ft rectangle
 - Topography: level & dry
 - Sunny (few nearby trees to remove)
 - Trees with needles are problematic
 - Near other Recreational facilities
 - Drinking water and Restrooms
 - Grass fields and playgrounds

Blue items were used to rank potential sites

Fit, Loc, and Size get double the weight by rating from 1-10 vs. 1-5 for Topo, Sun, and Rec

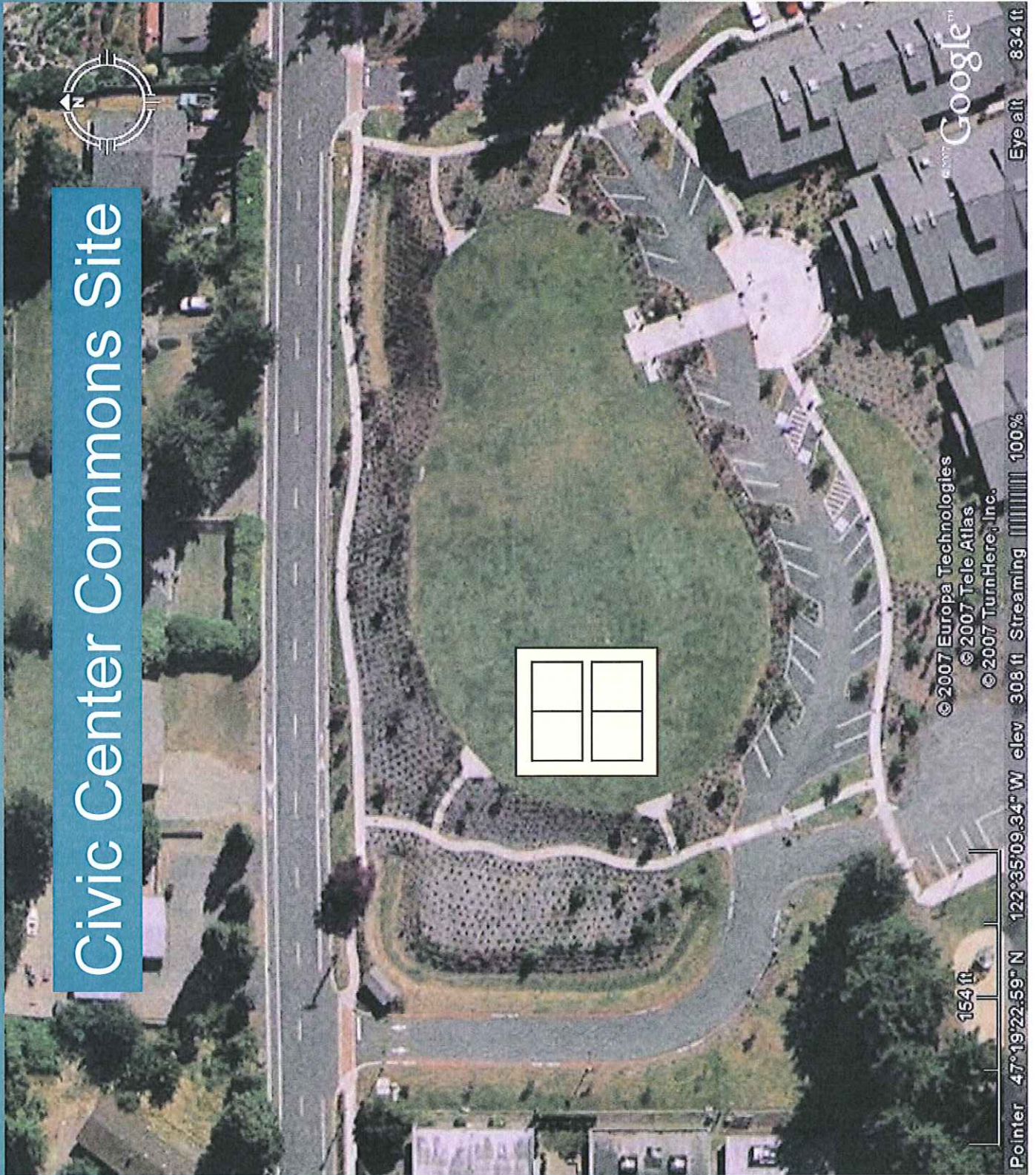
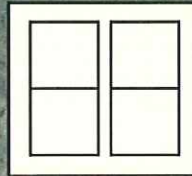
But we need a good site...

Site	Owned By	Criteria Rating						Total
		Fit	Loc	Size	Topo	Sun	Rec	
BMX Bike Park	Gig Harbor	8	10	10	5	5	5	43
Civic Center Green	Gig Harbor	4	10	10	5	5	5	39
Homestead Park	PenMet	10	8	4	5	4	5	36
Kopachuck Heights/Voyager Park	PenMet	4	10	10	4	0	5	33
Donkey Creek Park	Gig Harbor	6	8	8	5	2	3	32
Wilkinson Farm	Gig Harbor	0	10	10	5	5	2	32
Skansie Brothers Park	Gig Harbor	0	10	10	3	2	4	29
Grandview Forest Park	Gig Harbor	0	10	10	4	0	5	29
Westside Park	Gig Harbor	4	10	2	1	4	5	26
Rosedale Park	Gig Harbor	0	10	4	3	4	5	26
Crescent Creek/City Park	PenMet	0	10	0	5	5	5	25
McCormick Forest Park	PenMet	0	10	10	5	0	0	25
Lighthouse Beach	Coast Guard	0	0	8	5	5	5	23
Peninsula Joint Recreation Park	County	0	10	4	1	2	5	22

Top Three Candidate Sites

1. The corner of Vernhardson Street and Crescent Valley drive at the southeast corner of the BMX bike park.
 - Requires vacating only a small, underutilized portion of BMX site...remainder of BMX park is not affected
 - Probably requires expansion of parking lot
2. West end of Gig Harbor Civic Center Commons
 - Some City hesitance to alter field
3. Homestead Park
 - Unlikely that there's space for two courts

Civic Center Commons Site



154 ft

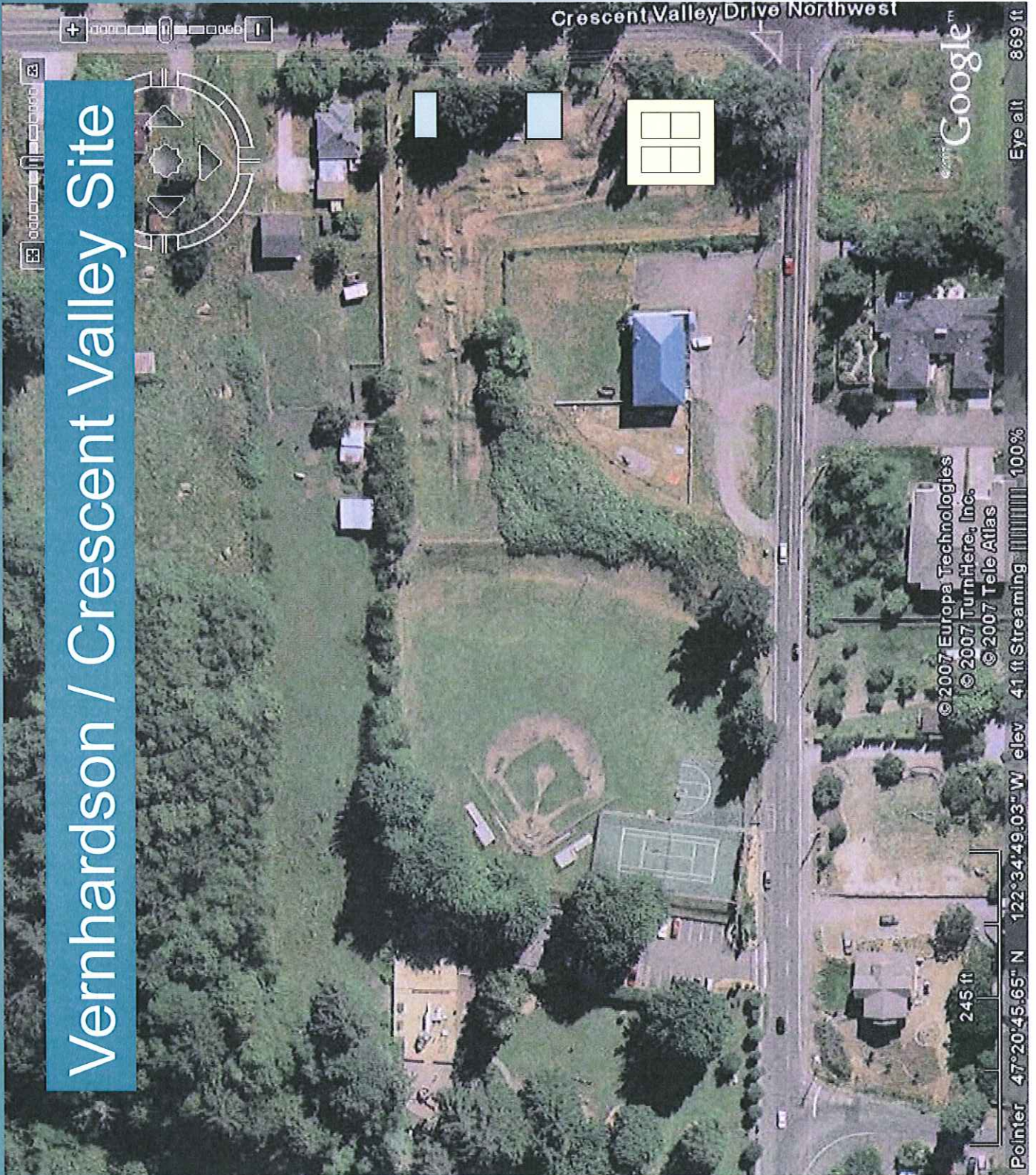
Pointer 47°19'22.59" N 122°35'09.34" W elev 308 ft Streaming 100%

© 2007 Europa Technologies
© 2007 Tele Atlas
© 2007 TurnHere, Inc.

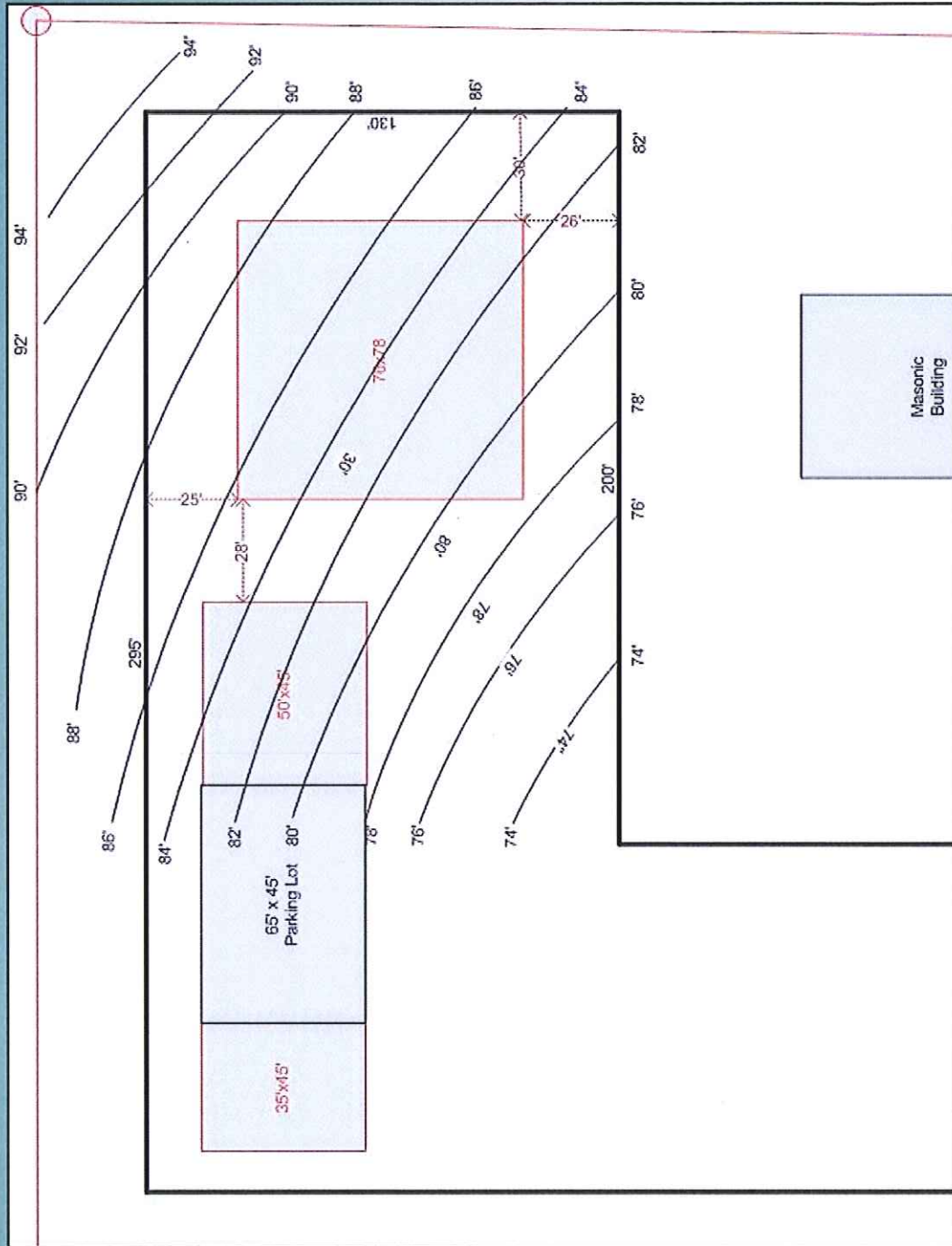
Google™

Eye alt 834 ft

Vernhardson / Crescent Valley Site



Preliminary Site Plan



A civil engineer determined that the plan is feasible

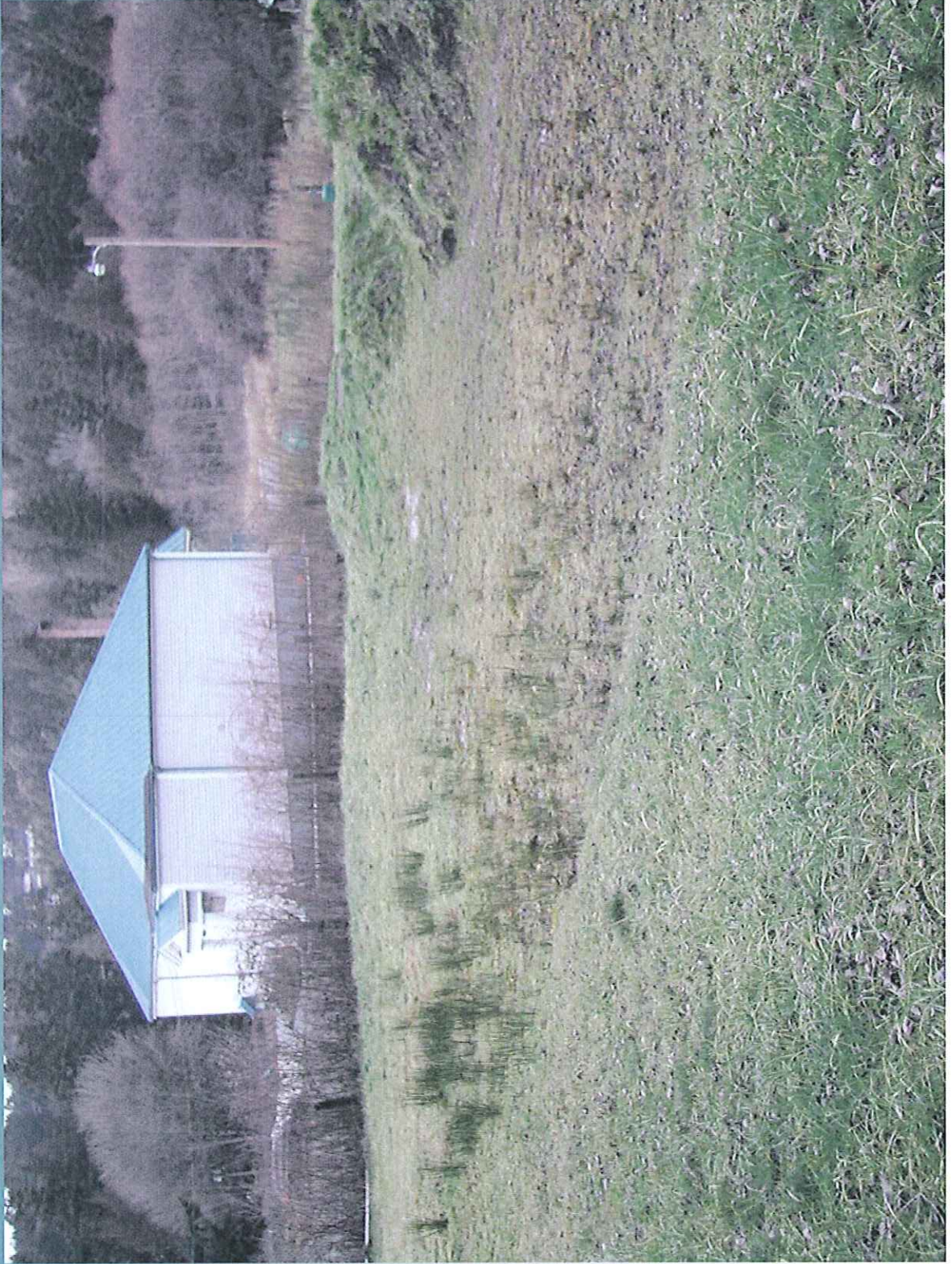
Impact to BMX Park

- Should be small impact
 - Use mostly area outside BMX track
 - Will need to move starting mounds to the north
 - Room to expand parking lot if necessary
- Many attempts to contact BMX people
 - Email to Scott (see Gateway article)
 - Contacted Old Town Bicycle
 - Old city meeting records – names, but no contact info
 - Met Matt Orlando at site to discuss impact and talk about moving hills

BMX Park Photos



BMX Park Photos



BMX Park Photos



BMX Park Photos



Projected Costs

(1) Description of Item	(2) Quantity	(6) Total Cost (4) + (5)
Grading and gravel spread	1	\$ 2,472
4" Perf PVC + fittings + fabric	1	\$ 1,539
Infil Drain Rock (delivered)	2'x2'x90"	\$ 325
Crushed gravel over PVC	125 yds	\$ 3,391
Sand (delivered)	497 yds	\$ 18,102
Infil Install & Final Grade	1	\$ 1,474
Enlarge parking (2 loads gravel)	1	\$ 650
Grading and Infil Design	1	\$ 1,000
Net standards (poles)	2 sets	\$ 1,034
Net Track (net height adjust)	2	\$ 390
Nets	2	\$ 401
Court Lines	2	\$ 115
Pole Installation (labor)	12.0	\$ 216
PVC Installation (labor)	12.0	\$ 216
Gravel Install/Rake (labor)	24.0	\$ 433
Fabric Installation (labor)	16.0	\$ 289
Sand Install/Rake (labor)	36.0	\$ 649
Net/Court Installation (labor)	8.0	\$ 144
Parking Gravel Raking (labor)	12.0	\$ 216
Perimeter Grounds Raking (labor)	20.0	\$ 361
Perimeter Netting	200'	\$ -
Drinking Fountain and Wash		\$ -
TOTALS:		\$ 33,420

Financing

- Cash donations
 - PAA: \$5000 allocated
 - Individual: estimated at \$500
- In-kind service donations
 - Approx \$7500 of discounts have been offered
- Volunteer labor
 - Estimated at approximately \$2500 value
- PenMet Parks [matching grant program](#)
 - Match 50% of all cash, in-kind service, and volunteer labor donations
 - Requires approved site

Seeking Approvals

- March 5th: Parks Commission approved project and recommended meeting with City Operations subcommittee
- March 20th: Operations subcommittee approved project for presentation to City Council
- April 14th: Seeking approval from City Council to work with Planning and Engineering staff to make this a reality

Questions?



**Business of the City Council
City of Gig Harbor, WA**

Old Business - 1

**Subject: Second Reading of Ordinance Authorizing
City Participation in the Local Option
Capital Asset Lending Program (LOCAL)**

Dept. Origin: Finance

Prepared by: David Rodenbach

For Agenda of: April 14, 2008

Exhibits: Ordinance and related attachments

Proposed Council Action:

Adopt the ordinance authorizing execution of a financing contract and related documentation

Initial & Date

Concurred by Mayor:

Approved by City Administrator: DRR 4/9/08

Approved as to form by City Atty: CP 4/9/08

Approved by Finance Director: CP 4/9/08

Approved by Department Head: _____

Expenditure	\$17,000 (first and last year)	Amount	Appropriation
Required	\$35,000/yr (4 years)	Budgeted \$17,000	Required \$0

INFORMATION / BACKGROUND

The LOCAL program is an expanded version of the successful state agency lease/purchase program and is managed by the State Treasurer. The major benefits of LOCAL are (1) simplicity and (2) low cost financing. The city will benefit from the current program credit rating of Moody's **Aa2** and low issuance fees and expenses.

The latest notes issued under this program were March 14, 2008 with an interest rate of 4.27%.

FISCAL CONSIDERATION

The vehicles are nearly ready for use. The cost for the fully equipped vehicles is about \$42,500 per unit. This financing arrangement will reimburse the city for the funds required to put these vehicles in service.

The 2008 budget allows for a debt service payment of \$17,000 for the police vehicles. Due to the timing of the financing arrangement (funding is expected in mid-June), the estimated payment that will be due in December is \$17,000. The annual payments due in years 2009 through 2012 are about \$35,000, with a final payment of \$17,000 expected in June 2013.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Pass ordinance authorizing a financing contract with the State Treasurer and related documentation.

ORDINANCE NO. _____

AUTHORIZATION FOR THE ACQUISITION OF
PERSONAL PROPERTY AND EXECUTION OF A
FINANCING CONTRACT AND RELATED
DOCUMENTATION RELATING TO THE ACQUISITION OF
SAID PERSONAL PROPERTY.

WHEREAS, the City of GIG HARBOR (the "Local Agency") has executed a Notice of Intent to the Office of State Treasurer, in the form attached hereto as Annex 1 (the "NOI"), in relation to the acquisition of and the financing of the acquisition of the Property, as defined below, under the provisions of RCW ch 39.94; and

WHEREAS, it is deemed necessary and advisable by the City Council of the Local Agency that the Local Agency acquire the equipment and/or personal property identified on Annex 1 attached hereto ("Property"); and

WHEREAS, it is deemed necessary and advisable by the City Council of the Local Agency that the Local Agency enter into a Local Agency Financing Contract with the Office of the State Treasurer, in the form attached hereto as Annex 2 (the "Local Agency Financing Contract"), in an amount not to exceed \$170,000, in order to acquire the property and finance the acquisition of the property and related financing costs;

WHEREAS, the Local Agency will undertake to acquire or to reimburse itself for the acquisition of the property on behalf of and as agent of the Washington Finance Officers Association (the "Corporation") pursuant to the terms of the Local Agency Financing Contract, and in accordance with all applicable purchasing statutes and regulations applicable to the Local Agency; and

WHEREAS, the Local Agency desires to appoint the individual set forth in Annex 3 as the representative of the Local Agency in connection with the acquisition of the Property and execution of the Local Agency Financing Contract (the "Authorized Agency Representative");

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

Section 1. The individual holding the office or position set forth in Annex 3 is hereby appointed as representative of the Local Agency in connection with the acquisition of or reimbursement for the acquisition of the Property and execution of the Local Agency Financing Contract and all other related documents. One Authorized Agency Representative shall be required to execute any one document in order for it to be considered duly executed on behalf of the Local Agency.

Section 2. The form of the Local Agency Financing Contract attached hereto as Annex 2 is hereby approved and the Authorized Agency Representative is hereby authorized and directed to execute and deliver the Local Agency Financing Contract, in

an amount not to exceed \$270,000 and in substantially the form attached hereto with such changes as may be approved by the Authorized Representative for the acquisition of or the reimbursement for the acquisition of the Property and financing of the acquisition of the property and related financing costs.

Section 3. The Local Agency hereby authorizes the acquisition of or the reimbursement for the acquisition of the property as agent of the Corporation in accordance with the terms and provisions of the Local Agency Financing Contract.

Section 4. The Authorized Representative is hereby authorized to execute and deliver to the Office of State Treasurer all other documents, agreements and certificates, and to take all other action, which they deem necessary or appropriate in connection with the financing of the property, including, but not limited to, any amendment to the NOI and agreements relating to initial and ongoing disclosure in connection with the offering of securities related to the financing.

Section 5. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ____ day of _____, 2007.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

CERTIFICATE OF AUTHORIZING ORDINANCE

I, the undersigned, Clerk of the City of Gig Harbor (the "Local Agency"), DO
HEREBY CERTIFY:

1. That the attached Ordinance No. _____ (herein called the "Ordinance") is a true and correct copy of a Ordinance of the Local Agency passed at a regular meeting of the City Council held on the _____ day of _____, 2007, and duly recorded in my office;

2. That said meeting was duly convened and held in all respects in accordance with law; and to the extent required by law, due and proper notice of such meeting was given; that a quorum of the City Council was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the passage of the Ordinance;

3. That all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed;

4. That the Ordinance remains in full force and effect and has not been amended, repealed or superseded; and

5. That I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand as of this ____ day of _____, 2007.

City Clerk

Notice of Intent

State of Washington LOCAL(Local Option Capital Asset Lending)

Local Government Information

County: Pierce

Legal Name: City of Gig Harbor

MCAG No.: 0587

Contact Person: David Rodenbach

Title: Finance Director

Address: 3510 Grandview Street, Gig Harbor, WA

Zip: 98335

Phone: 253.853.7610

Fax: 253.851.8563

E-mail: rodenbachd@cityofgigharbor.net

Would you prefer to receive financing documents (check one): Already have financing documents

MS Word 6.0 by e-mail 3.5" disk -- Word 97 by U.S. mail Hard copy by U.S. mail

Property (Real Estate or Equipment)

Property description (include quantity, if applicable): Purchase four (4) police vehicles

Total cost: \$170,000 Maximum amount to finance: \$170,000

Finance term: five (5) years Useful life: six (6) years Desired financing date: March 2008

Purpose of property (Please be specific and include dept. of use): Provide police services

If real estate, the Real Estate Worksheet: Is attached Will be provided by (date) _ _

If equipment, will the property purchase price be paid with: program proceeds or general funds to be reimbursed from program proceeds? If general funds are to be used, include a copy of the local agency's reimbursement resolution with the financing documents.

Security Pledge

Voted general obligation of local government. Non-voted general obligation of local government

Other Information

Approximate population: 6,780 (not required for cities and counties).

If any of the following apply, please provide a complete discussion on a separate page:

Yes No Does the local government use registered warrants, interfund loans or other cash flow borrowing?

Yes No Is the local government a party to significant litigation?

Yes No Is this a reimbursement? If yes, date funds spent _ _

We are not required to submit the Credit Form because _ _

Has local government received a bond rating in the last two years? Yes No Bond rating(s): _ _
(attach rating agency letter)

By executing this Notice of Intent, the local agency acknowledges, agrees to and accepts its designation and appointment as the agent of the nominal lessor in connection with the acquisition of the project. By executing this Notice of Intent, the local agency further acknowledges and agrees that certificate counsel and any other special counsel to the state in connection with the authorization, issuance and delivery of the certificates and the related financing documents shall not be acting, and shall not be deemed to act, as counsel to the local agency, nor shall any attorney-client relationship exist or be deemed to exist between such counsel and any participating local agency in connection with such matters.

Submitted by: David Rodenbach

Title: Finance Director

Signature: [Handwritten Signature]

Date: December 5, 2007

Transaction No. _____

Annex 2 to Authorizing Ordinance (Equipment)

**LOCAL AGENCY FINANCING CONTRACT, SERIES 2008
(Equipment)**

This Local Agency Financing Contract, Series 200__ (the "Agency Financing Contract") is entered into by and between the state of Washington (the "State"), acting by and through the State Treasurer (the "State Treasurer"), and the City of Gig Harbor, a City of the State (the "Local Agency").

RECITALS

WHEREAS, certain State agencies (as defined in Appendix I hereto, "State Agencies") are authorized to acquire real and personal property used or needed by such State Agencies through Agency Financing Contracts entered into pursuant to Chapter 356, Laws of Washington, 1989, codified as Chapter 39.94 of the Revised Code of Washington (the "RCW"), as supplemented and amended (the "Act"); and

WHEREAS, Chapter 291, Laws of Washington, 1998 supplemented and amended the Act to authorize the State to enter into Agency Financing Contracts on behalf of certain local agencies (as described therein, "Local Agencies"), including the Local Agency, to finance the acquisition of real and personal property by such Local Agencies; and

WHEREAS, the State Treasurer has established a consolidated program providing for the execution and delivery of certificates of participation in such Agency Financing Contracts, or in Master Financing Contracts with respect thereto, in series from time to time in order to provide financing or refinancing for the costs of acquisition of real and personal property by State Agencies and Local Agencies; and

WHEREAS, simultaneously with the execution and delivery hereof, the State is entering into a Master Financing Contract, Series 200__, dated as of the Dated Date (the "Master Financing Contract") with the Washington Finance Officers Association, a nonprofit corporation duly organized and existing under and by virtue of the laws of the state of Washington (the "Corporation"), to provide financing for the costs of acquisition of certain items of personal property by certain State Agencies and Local Agencies, including the Local Agency, under the terms set forth therein; and

WHEREAS, the State Treasurer and the Local Agency have determined that it is necessary and desirable to enter into this Agency Financing Contract to provide financing or refinancing for the costs of acquisition of certain items of personal property, described in Exhibit B hereto (the "Property"), by the Local Agency; and

WHEREAS, the State Finance Committee has authorized the execution and delivery of this Agency Financing Contract pursuant to Resolution No. 987 adopted on October 7, 2003; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Agency Financing Contract do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute, deliver and perform their respective obligations under this Agency Financing Contract;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other valuable consideration, the Parties hereto mutually agree as follows:

Section 1.1 Defined Terms. Capitalized terms used but not otherwise defined in this Agency Financing Contract shall have the respective meanings given such terms in Appendix I hereto.

Section 1.2 Notice of Intent; Personal Property Certificate; Certificate Designating Authorized Local Agency Representative. The Local Agency has delivered a Notice of Intent to the State Treasurer in the form of Exhibit A attached hereto and incorporated herein by this reference. In order to evidence its acceptance of the Property financed and acquired pursuant hereto, the Local Agency has executed and delivered herewith, or will execute and deliver within 60 days from the Dated Date to the State Treasurer, a Personal Property Certificate in the form of Exhibit B attached hereto and incorporated herein by this reference. The Local Agency has delivered a Certificate Designating Authorized Agency Representatives to the State Treasurer in the form of Exhibit C attached hereto and incorporated herein by this reference. Said Certificate is currently in force and has not been amended, withdrawn or superseded, and the signatures shown thereon are true and correct originals of the signatures of the persons who hold the titles shown opposite their names. The signature of any one of the individuals shown on said Certificate is sufficient to bind the Local Agency under this Agency Financing Contract with respect to any of the undertakings contemplated herein. The terms and provisions set forth in Appendix II hereto are incorporated herein and made a part hereof by this reference.

Section 1.3 Installment Sale and Purchase of Property. The State hereby agrees to sell, assign and convey, and does hereby sell, assign and convey to the Local Agency, and the Local Agency hereby agrees to purchase, acquire and assume, and does hereby purchase, acquire and assume, from the State, all of the State's right, title and interest in and to the Property and all proceeds and profits thereof and therefrom, subject to the security interest created pursuant to Section 2.5 of Appendix II hereof, and the Local Agency agrees to pay in consideration thereof the Purchase Price therefor and interest thereon and the Additional Costs in accordance with Section 1.4 hereof, and all other amounts required to be paid by the Local Agency hereunder, all in accordance with the provisions of this Agency Financing Contract.

Section 1.4 Agency Installment Payments. In consideration of the sale of the Property and the covenants and agreements of the State in this Agency Financing Contract, the Local Agency hereby promises to pay to the State the following amounts at the following times: (a) On each Agency Installment Payment Date, the Agency Installment Payment set forth in Exhibit D hereto, consisting of a Principal Component and/or an Interest Component as set forth in such Exhibit; and (b) All Additional Costs incurred by the State in connection with the sale of the Property to the Local Agency, the execution and delivery of the Certificates, and the observance and performance of the Series 200__ Agreements, within thirty (30) days following receipt of an invoice from the State with respect thereto which includes (i) a brief description of each such Additional Cost, (ii) the party to whom payment is due, (iii) the amount thereof, and (iv) such additional information as the Local Agency may reasonably request.

Section 1.5 Term. The term of this Local Agency Financing Contract shall commence on the Dated Date and shall terminate on the date on which all amounts due hereunder shall have been paid or the payment thereof duly provided for pursuant to Section 4.3 of Appendix II hereof.

STATE OF WASHINGTON
OFFICE OF THE STATE TREASURER

CITY OF GIG HARBOR
as Local Agency

By _____
Designated Treasurer Representative

By _____
Authorized Agency Representative

By _____
Authorized Agency Representative

Notice of Intent

State of Washington LOCAL(Local Option Capital Asset Lending)

Local Government Information

County: Pierce

Legal Name: City of Gig Harbor

MCAG No.: 0587

Contact Person: David Rodenbach

Title: Finance Director

Address: 3510 Grandview Street, Gig Harbor, WA

Zip: 98335

Phone: 253.853.7610

Fax: 253.851.8563

E-mail: rodenbachd@cityofgigharbor.net

Would you prefer to receive financing documents (check one):

Already have financing documents

MS Word 6.0 by e-mail

3.5" disk - Word 97 by U.S. mail

Hard copy by U.S. mail

Property (Real Estate or Equipment)

Property description (include quantity, if applicable): Purchase four (4) police vehicles

Total cost: \$170,000 Maximum amount to finance: \$170,000

Finance term: five (5) years Useful life: six (6) years Desired financing date: March 2008

Purpose of property (Please be specific and include dept. of use): Provide police services

If real estate, the Real Estate Worksheet: Is attached

Will be provided by (date) _ _

If equipment, will the property purchase price be paid with: program proceeds or general funds to be reimbursed from program proceeds? If general funds are to be used, include a copy of the local agency's reimbursement resolution with the financing documents.

Security Pledge

Voted general obligation of local government.

Non-voted general obligation of local government

Other Information

Approximate population: 6,780 (not required for cities and counties).

If any of the following apply, please provide a complete discussion on a separate page:

Yes No Does the local government use registered warrants, interfund loans or other cash flow borrowing?

Yes No Is the local government a party to significant litigation?

Yes No Is this a reimbursement? If yes, date funds spent _ _

We are not required to submit the Credit Form because _ _

Has local government received a bond rating in the last two years? Yes No

Bond rating(s): _ _
(attach rating agency letter)

By executing this Notice of Intent, the local agency acknowledges, agrees to and accepts its designation and appointment as the agent of the nominal lessor in connection with the acquisition of the project. By executing this Notice of Intent, the local agency further acknowledges and agrees that certificate counsel and any other special counsel to the state in connection with the authorization, issuance and delivery of the certificates and the related financing documents shall not be acting, and shall not be deemed to act, as counsel to the local agency, nor shall any attorney-client relationship exist or be deemed to exist between such counsel and any participating local agency in connection with such matters.

Submitted by: David Rodenbach

Title: Finance Director

Signature: 

Date: December 5, 2007

Personal Property Certificate

Name of Local Agency:	City of Gig Harbor
Address:	3510 Grandview Street
	Gig Harbor, WA 98335-51

All capitalized terms not defined herein shall have the meanings assigned to such terms in the Local Agency Financing Contract that this Exhibit B is attached to. The undersigned **David Rodenbach** does hereby certify, that he is an Authorized Agency Representative of the **City of Gig Harbor** (the "Local Agency") pursuant to the terms of the Local Agency Financing Contract.

The undersigned, confirms that the Property described below will be placed in use at the location listed below. The undersigned confirms that the Property described below has been delivered to and received by the Local Agency. All installation or other work necessary prior to the use thereof has been completed. The Property has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the Local Agency and complies with all terms of the Master Financing Contract and the Local Agency Financing Contract.

Notwithstanding the foregoing, the undersigned does not waive or limit, by execution of this certificate, any claim against the vendor or any other seller, installer, contractor or other provider of property or services related to the purchase, shipment, delivery, installation or maintenance of the Property.

The Local Agency further confirms that the Property will be used to fulfill an essential governmental function which the Local Agency has the authority to provide in the State.

PROPERTY INFORMATION

Description: _____ Name of Vendor: _____
 _____ Address: _____

Serial No.: _____

Tag No.: _____

Location of Property
 Acquired: Gig Harbor Police Department

INSTRUCTIONS TO STATE TREASURER FOR PAYMENT:

Disburse to: Vendor City County Treasurer Other

Entity Name: City of Gig Harbor

Disbursement Amount: \$ 170,000

Method of Payment: ACH Wire Check

ACH/Wire Instructions: _____

Attached hereto are:

1. A vendor's invoice for the Property approved by the Local Agency.
2. A Certificate of Insurance, demonstrating liability insurance coverage and stating that insurance will be renewed annually automatically, unless said office notifies the State Treasurer of any discontinuation of coverage.

In connection with the Local Agency's acquisition of the Property as agent of the Washington Finance Officers Association, you are hereby requested to make a disbursement as indicated above.

 Authorized Agency Representative
 Date: _____

Countersigned and
 Approved for Payment: _____
 Designated State Treasurer Representative
 Date: _____

"Exhibit C to Local Agency Financing Contract"

CERTIFICATE DESIGNATING AUTHORIZED AGENCY REPRESENTATIVE

I, Charles L. Hunter, Mayor of the City of Gig Harbor (the "Local Agency"), hereby certify that, as of the date hereof, pursuant to Ordinance No. _____, the following individual is an "Authorized Agency Representative," as indicated by the title appended to his signature, that the following individual is duly authorized to execute and deliver the Local Agency Financing Agreement to which this Certificate is attached as Exhibit C, and all documentation in connection therewith, including but not limited to the Personal Property Certificate(s) attached thereto as Exhibit B, that the signature set forth below is the true and genuine signature of said Authorized Agency Representative and that pursuant to such Ordinance, the following signature is required on each of the aforementioned documents in order to consider such documents executed on behalf of the Local Agency:

_____ David Rodenbach, Finance Director
(signature)

Dated this ____ day of _____, 2008.

Mayor, City of Gig Harbor

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2008.

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

Printed Name: _____

My Commission Expires: _____



Business of the City Council
City of Gig Harbor, WA

Staff Report - 1

Subject: Gig Harbor Police MARCH 2008
Council Report

Proposed Council Action: Review

Dept. Origin: Police Department

Prepared by: Chief Mike Davis *(M)*

For Agenda of: APRIL 14, 2008

Exhibits: Report attached

Initial & Date

Concurred by Mayor:

CLM 4/10/08

Approved by City Administrator:

MK 4/10/08

Approved as to form by City Atty: _____

Approved by Finance Director:

Approved by Department Head:

(M) 4/10/08

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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POLICE

TO: MAYOR CHUCK HUNTER AND CITY COUNCIL
 FROM: CHIEF OF POLICE MIKE DAVIS
 SUBJECT: GHPD MONTHLY REPORT FOR MARCH 2008
 DATE: APRIL 14, 2008

DEPARTMENTAL ACTIVITIES

- 2008 YTD **calls for service** when compared to 2007 YTD **calls for service** show an increase of 460 dispatched calls. This is a trend that seems to be accelerating compared to past years.
- In 2008 so far, we have seen thirteen more **reports written** by our officers than in 2007 YTD.
- **DUI arrests** for 2008 YTD are up by 16 compared to 2007 YTD! Our nightshift is continuing to do a very great job focusing on impaired driving enforcement.
- Our **traffic infractions** are up 64 so far this year; and our **criminal traffic citations** are up by 60. Statistics show our 2008 YTD **traffic accidents** have increased by two accidents when compared to 2007 YTD.
- 2008 YTD statistics show our **misdemeanor** arrests are up by 41 and our **felony arrests** are down by four when compared to 2007.

Category	March 2008					
	March 2007	March 2008	Change	YTD 2007	YTD 2008	Change
Calls for Service	444	655	211	1229	1689	460
General Reports	156	162	6	429	442	13
Criminal Traffic	11	17	6	33	79	46
Infractions	108	104	-4	264	324	60
Criminal Citations	23	7	-16	44	57	13
Warrant Arrests	17	6	-11	27	22	-5
Traffic Reports	15	10	-5	45	47	2
DUI Arrests	3	5	2	7	23	16
Misdemeanor Arrests	30	26	-4	76	117	41
Felony Arrests	8	7	-1	24	20	-4
FIR's	2	0	-2	0	12	12

The Reserve Unit provided a total of 40 hours of support to our regular officers in March. Our newest reserve, Grant Boere continues to excel at the Reserve Academy. Grant's graduation from the academy is set for May.

Cops program volunteer Ken McCray worked 24 hours in March.

During the month of March the Marine Services Unit (MSU) accounted for the following hours and activity:

- 3/15/08, Detective Douglas attended the annual Gig Harbor Health & Safety Expo @ PCFD Dist. 5 Headquarters with the patrol boat and boater's education books. Attendance was estimated @ 500 people. Total Hours - 8

CSO Lynn Mock continues to be very busy with presentations in our local schools on drugs and internet safety.

TRAFFIC ACCIDENTS FOR MARCH 2008					
DATE	TIME	LOCATION	TYPE	CASE#	AGE
3/3/2008	7:48	Stinson Ave. & Foster St.	Non	GH080268	44
3/3/2008	12:00	10550 Harbor Hill Dr.	H&R P-Lot	GH080270	N/A
3/3/2008	14:46	Olympic Dr. & HWY 16 Overpass	Non	GH080271	67
3/3/2008	22:36	5500 Olympic Dr.	P-Lot	GH080274	19
3/5/2008	14:48	Olympic Dr. & Hollycroft	Non	GH080281	59
3/10/2008	10:00	4415 Harbor Country Dr. Bld E	P-Lot	GH080302	19
3/11/2008	15:50	5100 Borgen Blvd.	Non	GH080306	41
3/15/2008	15:51	5200 Olympic Dr.	Non	GH080321	21
3/16/2008	16:52	Wollochet & Hunt	Non	GH080325	20
3/19/2008	21:00	4831 Point Fosdick Dr.	H&R - P-Lot	GH080337	N/A
3/22/2008	14:19	Borgen Blvd. & Burnham Dr.	R/A - Non	GH080351	34
3/22/2008	10:45	7721 Pioneer Way	H&R P-Lot	GH080352	N/A
3/26/2008	13:11	Olympic Dr & W/B On Ramp @ SR16	INJ	GH080360	29
3/26/2008	21:29	6808 Kimball Dr.	H&R	GH080363	N/A
3/28/2008	20:40	Olympic Dr. & SR 16	INJ	GH080372	24
3/31/2008	19:40	5508 Pt. Fosdick Dr.	Non	GH080385	18

During the 2008 Budget process we identified our average response time in minutes to all calls for service as a performance measure. We will be tracking our response times throughout the year. In February our average response time was 7.00 minutes (this is a reduction from January's average response time of 7.46 minutes). In March our average response time was 6.06 which is getting closer to our performance goal of 6.00 minutes.

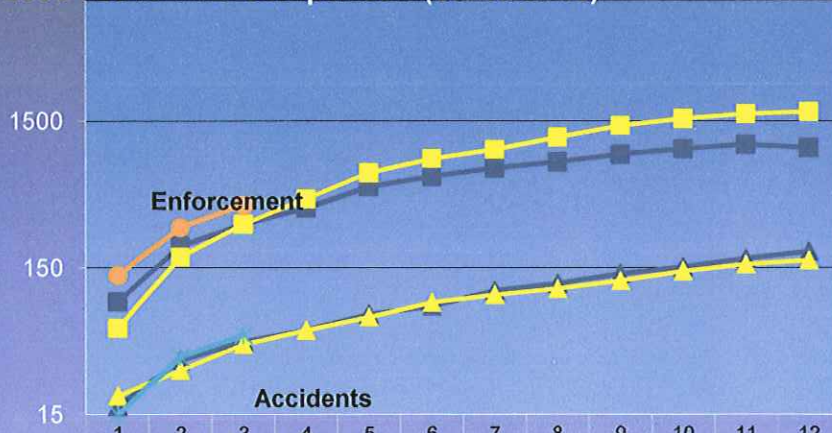
2008

	P1	P2	P3
January	4.5	7.7	10.2
February	4.6	7.3	9.1
March	3	7.2	8
April	0	0	0
May	0	0	0
June	0	0	0
July	0	0	0
August	0	0	0
September	0	0	0
October	0	0	0
November	0	0	0
December	0	0	0
Totals	12.1	22.2	27.3
Minutes	4.03	7.40	9.10

YTD

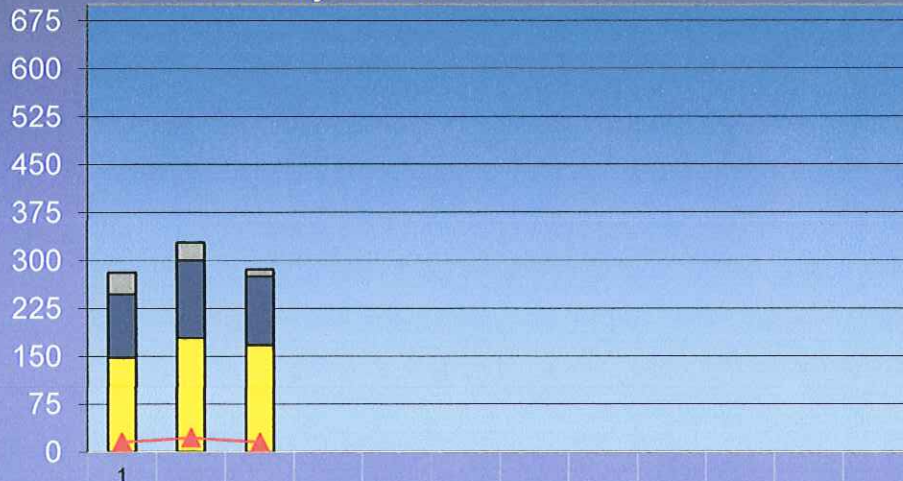
Attached you will find several graphs that track 2008 monthly statistics. I have left data from the last two years on several graphs to provide a baseline with which to compare our current activity levels as we progress through 2008 (remember some of the graphs contain cumulative numbers).

Trends: Traffic Enforcements vs. Accidents
2006 - 2010 YTD Comparison (cumulative)



2006 Infractions + Citations	88	211	297	382	536	628	717	788	888	970	1038	985
2007 Infractions + Citations	58	178	297	442	665	833	961	1164	1396	1563	1682	1738
2008 Infractions + Citations	133	282	400									
2009 Infractions + Citations												
2010 Infractions + Citations												
2006 reportable accidents	17	35	47	56	72	82	105	117	136	152	173	194
2007 reportable accidents	20	30	45	56	69	87	98	108	122	142	158	169
2008 reportable accidents	15	37	52									
2009 reportable accidents												
2010 reportable accidents												

Annual
Traffic Enforcement vs. Accidents Comparison
Monthly Totals



Criminal Traffic Citations	34	28	11
Infractions	99	121	107
Verbal Warnings	148	179	168
Accidents	15	22	15



Date: April 9, 2008

To: Mayor and City Council

From: Rob Karlinsey, City Administrator

A handwritten signature in black ink, appearing to read "Rob", is written over the name "Rob Karlinsey" in the "From:" line.

Subject: Boys and Girls Club Agreement

Attached is a DRAFT proposed agreement between the City and the Boys & Girls Club. This agreement commits the City to \$150,000 per year for five years. In return, the City receives the following:

1. Dedicated space for a senior center
2. Recreation services for Gig Harbor youth

Please review the agreement and let me know if you have any questions or suggestions. I would like to present this draft to the Boys & Girls Club sometime during the week of April 14, 2008, and I anticipate that I will bring this contract forward for your consideration either on April 28 or May 12.

Thank you.

DRAFT

**AGREEMENT
BETWEEN THE CITY OF GIG HARBOR AND
BOYS & GIRLS CLUBS OF SOUTH PUGET SOUND**

THIS AGREEMENT is entered into this ____ day of _____ 2008, by and between the City of Gig Harbor, Washington, an optional code municipal corporation organized under the laws of the state of Washington, hereinafter referred to as the "City" and Boys & Girls Clubs of South Puget Sound, a _____, (the B&GC needs to identify what type of organization they are in the blank) organized under the laws of the state of Washington. hereinafter referred to as the "Agency".

WHEREAS, on April 12, 2004, the Gig Harbor City Council passed Resolution 623 supporting the development of a community center that includes facilities for supporting the social and recreational health and welfare of seniors, adults, and youth; and

WHEREAS, on April 10, 2003, Pierce County and the Boys & Girls Club of South Puget Sound entered into a lease agreement where Pierce County agreed to lease approximately _____ acres of land to the Boys & Girls Club for 50 years at \$10 per year in return for constructing and operating a youth facility and a Senior Center; and

WHEREAS, the Agency has committed to build a Community Center for Boys and Girls Club as well as Senior Center programs and activities, a project committed to uniting the Gig Harbor community and improving the quality of life of its citizens by providing quality services, education and advocacy for youth and senior citizens; and

WHEREAS, the Agency has expressed willingness to provide the Youth Recreation and Senior Center Services to the citizens of Gig Harbor at no cost to the City or the citizens of Gig Harbor for five years; and

WHEREAS, the City Council recognizes that the Agency's vision of the community center is consistent with the ideals of the City; and

NOW THEREFORE, IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

TERMS

1. Purpose of the Agreement. In the execution of this Agreement, the City and Agency seek to:

A. Describe the conditions precedent which must occur in order for the City to provide the monetary support identified herein for operation and maintenance of the Community Center, to be constructed by the Agency, which support would be provided for a period of five years after the anniversary date of this Agreement;

B. Clarify that the City's support (by means of an annual monetary contribution) is temporary, in order to assist the Agency in the initial start-up and development of their facility and programs, and shall not extend beyond this five-year Agreement;

B. Describe the effective and efficient use of the Community Center facilities and grounds for the benefit of Gig Harbor citizens;

C. Describe the programs that will be implemented by the Agency for the benefit of at-risk youth, which shall serve as consideration for this Agreement;

D. Identify and describe the space in the Community Center to be leased exclusively to the City for use as a senior center and specify that the funding provided by the City under this Agreement will cover the rent for such space for a period of five years;

E. Describe the procedures under which the Agency shall request monetary contributions from the City, and the manner in which the City shall respond;

F. Describe the procedures to be used by the Agency in order to report the outcomes of the programs and use of the Community Center to the City.

2. General Provisions of the Agreement. The City and the Agency acknowledge that:

A. The facilities and grounds uses and programs authorized and/or funded by this Agreement are municipal, educational and community purposes.

B. The ultimate responsibility for the operations and maintenance of the Community Center will remain with the Agency, and this Agreement is intended to provide a specific amount of funding necessary to cover these costs as they relate to the programs provided to Gig Harbor citizens.

C. This Agreement is not intended to amend any of the existing leases and/or other agreements between the parties or between the parties and any other third parties.

3. Construction of Facility. The Agency agrees that it shall construct a Community Center for Boys and Girls Clubs as well as Senior Center programs and activities, under the following schedule:

- The Agency shall obtain a building permit for the Community Center by January 1, 2009; and
- The Agency shall complete the construction of the Community Center and receive a certificate of occupancy by January 1, 2010.

The parties agree that if the above activities are not complete by the identified date, this Agreement shall be null and void, and neither party shall have any obligation to perform any of the responsibilities set forth in this Agreement.

4. Funding by Pierce County. The parties acknowledge that Pierce County has agreed to lease the land for the Community Center to the Boys & Girls Club, and provide a one-time lump sum payment of \$160,000 for construction costs. The parcel of land for the Community Center is specifically described in Exhibit B of this agreement. The parties agree that if the County fails to either lease the land and/or make the \$160,000 payment to the Agency by the time of issuance of the Community Center's certificate of occupancy on January 1, 2010, this Agreement shall be deemed null and void, and neither party shall have any obligation to perform any of the responsibilities set forth in this Agreement.

5. Scope of Services to be Performed by Agency.

A. *Youth and Recreation Programs.* The Agency shall operate and make available to City of Gig Harbor enrolled in the youth recreation programs for a period of five years under conditions as described in Exhibit A, attached hereto and incorporated herein by this reference, generally known by the project title of "Youth Recreation Services." All costs relating to the provision of this program for citizens of Gig Harbor shall be paid by the Agency.

B. *Lease of Space in Community Center for Senior Center Operated by the City/Assignee.* The Agency shall provide at least 1,500 square feet of interior building space in the Community Center at no cost to the City, for the exclusive purpose of a Gig Harbor Senior Center where senior citizens can congregate, attend classes, dine, and otherwise participate in senior recreational programs. The Agency shall lease this space to the City for a period of five years under the terms and conditions generally set forth in the lease agreement attached hereto as Exhibit C. As set forth in the attached lease, the City shall have the right to sublease this space or assign the lease to any group or entity to operate and run senior programs. The City and/or its sublessee/assignee shall also have scheduled access to other portions of the Community Center, including but not limited to the common area, meeting rooms, gymnasium(s), computer room(s), and the commercial kitchen. Scheduling of the other portions of the Community Center shall be as set forth in Section 7 herein. The City and/or its sublessee/assignee shall be guaranteed access to the kitchen for the preparation and clean-up of at least one lunchtime meal period per week for the purpose of the senior meals program. The City and/or its sublessee/assignee shall have access to the senior center 24 hour a day, seven days a week. The Agency shall pay all of the costs relating to the leased space for janitorial services, building maintenance, repairs, utilities, taxes, insurance, and capital improvements. The City, its

sublessee/assignee shall have the ability to construct tenant improvements in the leased space, as generally set forth in the attached lease. The Agency shall not be required to perform any repairs and/or maintenance on any tenant improvements.

6. Documentation of Costs. The Agency shall maintain records of costs associated with the provision of the services described in Section 5. The Agency shall provide the City with an annual report, which shall document the services provided based on numbers of Gig Harbor citizens, hours of utilization, costs, fees and charges, etc. The City shall use the Report to determine whether the services and programs are provided by the Agency at the levels guaranteed by the Agency in Exhibit A.

7. Naming of Community Rooms and City Use of Facilities. The parties agree that the City shall name the Community Meeting Rooms 1 and 2, at the City's discretion. The City reserves the right to co-locate City logo signage with Agency signage, both on the interior and exterior of the Community Center. In addition the City, its sublessees/assignees or users of the leased space shall be entitled to use community rooms, gymnasium(s), meeting rooms, conference rooms, restrooms, and kitchen facilities in the building for any City purposes and at no cost to the City. The parties shall coordinate a procedure for scheduling the Community Center interior and exterior. Such use by the City, its sublessees/assignees or users of the Senior Center is subordinate to Agency activities; however, once the City receives written confirmation from the Agency that the City's use has been placed on the schedule for use of the building, the Agency may not change, delay, or cancel the City's scheduled use.

8. Identified Community Support. To insure that those people who benefit from the activities and services of the Agency are aware of the City's involvement, the Agency shall include the words "*funded in part by the City of Gig Harbor*", and "*Keeping Gig Harbor's Promise*" on any and all flyers, pamphlets, brochures, advertisements or other printed information prepared by or for the Agency advertising or promoting the activities and services of the Agency pertaining to the particular program funded by the City. Such advertisements shall be filed with the City of Gig Harbor City Clerk's Office.

9. City's Contribution. In consideration for the Agency's operation of the Youth Recreation Services for Gig Harbor citizens, as well as providing the senior center space, all as required by this Agreement, the City shall provide the Agency with One Hundred Fifty Thousand Dollars (\$150,000) per year for five (5) consecutive years. The first payment will be made on the date the Agency receives its certificate of occupancy for the facility, as long as the conditions in Section 3 and 4 of this Agreement have been satisfied. The City shall not be required to pay any additional funds to the Agency, such as, but not limited to, rent, triple-net (utilities, taxes, insurance, etc.) or capital improvement expenses, for the space and services provided by the Agency and described in this Agreement.

The Agency shall provide a report to the City on or before January 31, demonstrating that for the prior calendar year, the youth recreation services are being provided at the minimum levels of service set forth in Exhibit A. The remaining City

contributions will be provided in quarterly installments of One Hundred Fifty Thousand Dollars and no cents (\$150,000), within thirty (30) days after the report has been received and substantiated by the City.

10. Agency Budget. The Agency shall apply the City funds received under this Agreement solely for the maintenance and operations of the Community Center and the programs described in Exhibit A. The reports provided by the Agency required in Section 9 shall document use of the funds for these purposes. The Agency shall not use City funds for political, religious or other purposes, or any other purposes not described in this Agreement.

11. Duration of Contract. This Contract commence on the date it is signed by the duly authorized representatives of both parties, and shall terminate five years after the Agency receives its certificate of occupancy for the Community Center, unless sooner terminated under the provisions herein.

12. Independent Contractor. The parties intend that an independent contractor-client relationship will be created by this Agreement. No agent, employee, representative or sub-consultant of the Agency 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 Agency 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 Agency. The Agency 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 Agency performs hereunder.

13. Indemnification and Defense. The Agency 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 of the reports described herein, or the City's execution of this Agreement (requiring the Agency to provide certain programs at the Community Center or any other service) 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 Agency and the City, its officers, officials, employees, agents and volunteers, the Agency's liability hereunder shall be only to the extent of the Agency's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE Agency'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 Agency's WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE Agency's EMPLOYEES DIRECTLY AGAINST THE Agency.

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

14. Insurance.

A. The Agency 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 Agency's own work including the work of the Agency's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before execution of this Agreement, and on the anniversary date of the execution of this Agreement, the Agency 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. Products/Completed Operations liability in the amount of \$100,000 per occurrence and \$2,000,000 aggregate, if any food operations, manufacturing or design activities are involved.

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

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

E. The City of Gig Harbor shall be named as an additional insured on the Agency'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 Agency's insurance policies.

F. Under this agreement, the Agency'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 Agency's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

G. The Agency 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 Agency's coverage.

15. City's Right of Inspection, Agency's Responsibility to Comply with Law.

Even though the Agency is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the performance of services must meet the general approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Agency 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 Agency's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

16. Record Keeping and Reporting.

A. The Agency shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended for the Community Center and claimed as reimbursement along with any other such records as may be deemed necessary to the City to ensure proper accounting for all funds contributed by the City for the performance of this Agreement and compliance with this Agreement. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the City.

B. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit during the performance of this Contract by the City. The City shall have the right to an annual audit of the Agency's financial statements and condition.

17. Termination.

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

C. Except in the situation where the Agency's Agreement has been terminated for public convenience, the Agency shall be liable to the City for any additional payments made by the City for which no services were rendered.

C. If the Agency's insurance coverage is canceled for any reason, the City shall have the right to terminate this Contract.

D. The parties agree that termination of this agreement will not release the Agency from its obligation to allow the City to name the Community Meeting Rooms 1 and 2.

18. Discrimination Prohibited. The Agency shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Agency to be provided under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, marital status or presence of any sensory, mental or physical handicap.

19. Assignment and Subcontract. Any assignment of this Agreement by the Agency 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.

20. Notices. Notices required by terms of this Agreement shall be sent to the other party at the following addresses, unless otherwise requested, in writing, by one of the parties hereto:

TO THE CITY:
Attn: City Administrator
City of Gig Harbor
3510 Grandview Street
Gig Harbor WA 98335

TO THE AGENCY:
Attn: Executive Director/COB
Boys & Girls Club
1501 Pacific Ave., Ste 301
Tacoma WA 98402

21. Applicable Law, Venue, Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, ~~arbitration~~ or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in Pierce County, Washington or the U.S. District Court, Western District. The prevailing party in any such action shall be entitled to its reasonable attorney's fees and costs of suit.

22. 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 Agency.

23. 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.

24. Agreement Not Enforceable by Third Parties. This Agreement is neither expressly nor impliedly intended for the benefit of any third party and is neither expressly nor impliedly enforceable by any third party.

25. Severability. If any section, sentence, clause or phrase of this Agreement is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CITY OF GIG HARBOR

**BOYS & GIRLS CLUBS OF
SOUTH PUGET SOUND**

 **DRAFT**

Charles L. Hunter, Mayor

Rick Guild, President CEO

Attest:

Ray Schuler, Board Chairman

Molly Towslee, City Clerk

Approved as to form:

Carol Morris, City Attorney

 **DRAFT**

EXHIBIT A

Youth Recreation Services

The Agency agrees to operate, maintain, and monitor the Youth Recreation Services and make those services available to Gig Harbor youth with the following minimum levels of service:

Provide at least two Educational Enhancement Programs per week serving a minimum of 20 youth per week. Examples include one-on-one tutoring, computer training, career goal setting, or other courses that improve skills in reading, writing, mathematics, science, or the social sciences.

Provide the following Health and Life Skills programs:

USDA Food Program: Serve at least 1,375 meals per quarter to Gig Harbor youth
“SMART Moves” or other program that teaches decision making skills: Serve at least 6 Gig Harbor youth per week

Provide at least two arts programs per week, serving a minimum of 6 Gig Harbor youth quarterly or 24 annually. Examples include photography, fine arts, and music.

Provide various sports and recreation programs that serve at least 60 Gig Harbor youth per week on average. Examples include basketball, volleyball, chess, pool, kick ball, and other recreation activities.

The Agency will provide monthly output reports related to the Youth Recreation Services as previously and specifically articulated in this agreement.

April 1, 2008

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EXHIBIT B

Land to be Leased by Pierce County

Legal Description needed

 **DRAFT**

EXHIBIT C

**CITY OF GIG HARBOR
AND
THE BOYS AND GIRLS CLUB OF SOUTH PUGET SOUND
LEASE AGREEMENT**

SECTION I – PARTIES TO THE LEASE AGREEMENT

The parties to this lease agreement are the City of Gig Harbor, a municipal corporation of the State of Washington, (hereinafter referred to as “Lessee”), and the Boys and Girls Club of South Puget Sound, _____, _____, WA 98____, a Washington _____ corporation (hereinafter referred to as “Lessor”).

SECTION II – PURPOSE

The purpose of this agreement is to lease a portion of the Community Center located at _____ hereinafter the “Premises,” to conduct Senior Center Program activities, as well as other activities for City citizens, upon the terms and conditions set forth herein. The Premises are legally described on the document identified as Attachment “A” attached hereto and made a part of hereof by reference.

SECTION III – LEASE AGREEMENT

1. Terms of Lease – This lease shall be for a term of five (5) years after the date this Lease is signed by both parties. Ninety days prior to the expiration date, the Lessee may furnish a written notice of intent to renew this Lease to the Lessor. If the Lessor receives a timely written notice of intent to renew this lease, the parties may enter into a new Lease for another three (3) years, the terms of which may or may not be different from the terms of this Lease. If the Lessor does not receive a timely written notice of intent to renew, this Lease shall expire.
2. Lease Payments/Considerations – Lessee shall pay Lessor Zero Dollars (\$0.00) as rent for the Premises, pursuant to the Agreement between the City of Gig Harbor and Boys & Girls Club of South Puget Sound, executed by the parties on _____, 2008.
3. Services in Addition to Lessee Payment.

The Lessor shall:

- A. Maintain entry, sidewalk and common areas on the Premises in a safe and clutter-free manner.

- B. Pay all utilities.
- C. Provide all custodial services and supplies for the Premises.
- D. Maintain exterior plantings and grounds.
- F. Immediately repair any defects in the Premises, including those for this the Lessee has provided prompt notice of defects in the _____ or any other part of the Premises to Lessor.

The Lessor shall:

- A. Maintain and repair any tenant improvements made to the Premises.
- B. Repair any damages to the Premises if the Lessor's intentional act has caused damage.

4. Condition and Use of premises –

A. By signing this Lease, the Lessee acknowledges that the Premises are safe, clean and in good condition.

B. Lessee shall use the leased premises only for Senior Citizen and other activities benefitting the general public. The use of the Premises by the Lessee shall not be of a religious or partisan political nature. Such use shall be made in a responsible and prudent manner continuously during the terms of the lease. Lessee shall not use or permit the Premises, or any part thereof, to be used for any purposes other than those set forth herein. Lessee shall neither permit on the Premises any act or storage that may be prohibited under standard forms or fire insurance policies, nor use the Premises for any such purpose.

C. Lessee shall not permit any waste, damage or injury to the Premises, use the Premises for anything that will increase the rate of insurance, maintain anything on the Premises that may be hazardous to life or limb, overload the floors, permit any objectionable odor or noise to escape or to be emitted from the Premises, permit anything to be done on the Premises or use the Premises in any way tend to create a public or private nuisance, or use or permit the Premises to be used for lodging or sleeping purposes.

5. Signs – All signs or symbols placed by Lessee upon any exterior part of the building shall be subject to Lessor's prior written approval. All signs must comply with applicable sign ordinances and be placed in accordance with required permits.

6. Permits – The responsibility for obtaining all federal, state and local permits required for the improvement and use of the lease Premises shall reside with the Lessee.
7. Compliance with Applicable Laws – The Lessee agrees to comply with all applicable laws, rules regulations, and, ordinances of every governmental agency or body whose authority extends to the control of the use of the leased Premises and/or the business to be conducted on the leased Premises.
8. Maintenance and Management of Leased Premises – Lessee shall, at all times during the lease and at its own cost and expense, repair and maintain in a good, safe and substantial condition, and shall use all reasonable precautions to prevent waste, damage, or injury to the premises by Lessee or any third parties. The Lessee will return the premises to the Lessor in good condition; ordinary wear and tear excepted, and maintain the Premises in a good, safe, and substantial condition.
9. Alterations – After prior written consent of Lessor, Lessee may make alterations, additions and improvements in said premises, at its sole cost and expense. In the performance of such work, Lessee agrees to comply with all laws, ordinances, rules and regulations of any proper public authority, and to save Lessor harmless from damage, loss or expense. After notice of termination of this lease and upon Lessor's request or Lessor's approval, Lessee shall remove such improvements and restore the Premises to its original condition not later than the termination date, at Lessee's sole cost and expense. Any improvements not so removed may be removed by the Lessor at Lessee's expense.
10. Inspection by Lessor – The Lessor may enter upon the leased premises at any reasonable time during normal business hours or after hours with reasonable notice for the purpose of inspecting the same for compliance with the terms of this Lease.
11. Contractor's Bonds and Liens –

Lessee shall not suffer or permit any lien to be filed against the leased Premises or any part thereof or the Lessee's leasehold interest, by reason of work labor, services or materials performed or supplied to Lessee or anyone holding the Premises or any part thereof under the Lessee. If any such lien is filed against the leased Premises or Lessee's' leasehold interest, Lessee shall hold the Lessor harmless from any loss by reason of the lien and

shall cause the same to be discharged of record within thirty days after the date of filing of same.

12. Indemnification and Waiver – Lessee agrees to defend, indemnify and hold harmless the Lessor, its officials, officers, employees and volunteers from any and all claims, injuries, damages, losses or suits, including costs and attorneys' fees, which are caused by or arise out of any condition of the Premises arising after execution of this Lease. In addition to the above, Lessee shall provide a waiver of right of subrogation releasing and relieving the Lessor from responsibility and waiving the entire claim or right of recovery for any loss or damages to the Premises, any of Lessee's improvements placed on the Premises, any personal property located anywhere on the Premises, or any other loss sustained by the Lessee, including earlier termination of this Lease by destruction of the Premises through natural causes or reasons not the fault of Lessor, and whether any such loss is insured or not and irrespective of the cause of such loss.
13. Insurance -- The Lessor has and will maintain insurance against claims for injuries to persons or damages to property, including the leased Premises. In the event of any casualty or loss, the Lessor shall be entitled to the proceeds of its insurance. Insurance for personal property and other improvements placed upon the Premises, and to cover the Lessee's obligations under this Lease shall be the responsibility of the Lessee.
14. Fire and Other Casualty -- In the event that the Premises are destroyed or damaged by fire, earthquake or other casualty not the fault of the Lessor, and any damage is to such an extent as to render the Premises untenable by the Lessee in whole or substantial party, Lessor shall have the option to terminate this Lease immediately without any further liability or obligation to Lessee. The decision whether the Premises are untenable shall be made by Lessor, after discussion with Lessee on the feasibility of repair. However, if the Lessee is not able to occupy the Premises for whatever reason, the parties shall immediately re-negotiate the Agreement Between the City of Gig Harbor and Boys and Girls Club of South Puget Sound, and the funding provided by the City under that Agreement.
15. Assumption of Risk – The placement and storage of personal property or other improvements on the Premises by Lessee shall be the Lessee's responsibility, and at the sole risk of the Lessee.
16. Leasehold Taxes – Lessor shall pay promptly, and before they become delinquent, all taxes on this Lease, merchandise, personal property or improvements on the Premises, whether existing on the Premises at the time of execution of this Lease or at any time during the term of this Lease.

17. Termination – Lessor shall not be in breach of any obligation to perform under this Lease unless Lessor fails to perform an obligation within a reasonable time, which time shall not extend more than thirty (30) days after notice by the Lessee to Lessor specifying the particular obligation that Lessor has failed to perform; PROVIDED, HOWEVER, that if the nature of the Lessor's obligation is such that more than 30 days are required for performance, then Lessor shall not be in breach if the Lessor commences performance within the 30 day period, and thereafter diligently prosecutes the same to completion. However, if the Lessee is not able to occupy the Premises or this Lease is terminated prior to the five year term for whatever reason, the parties shall immediately re-negotiate the Agreement Between the City of Gig Harbor and Boys and Girls Club of South Puget Sound, and the funding provided by the City under that Agreement.

18. Notices – All notices required or desired to be given under this lease shall be personally served or given by mail. If mailed, they may be sent by certified mail to the following respective address:

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

To the Lessee:

19. Assignment and/or Subletting – Lessee may assign or sublet this Lease at the Lessee's discretion, without the Lessor's prior written agreement to such assignment or subletting.

20. Employees and/or Agents – The employees or agents of the Lessee shall not be considered employees or agents of the Lessor.

21. Entire Agreement – This document contains the entire and integrated agreement of the parties and may not be modified except in writing signed and acknowledged by both parties.

22. Dispute Resolution, Legal Fees and Costs – Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Lease which cannot be resolved between the parties within a reasonable period of time, 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 party's expenses and reasonable attorney's fees.

- 23. Discrimination Prohibited – The Lessee agrees not to discriminate based upon race, color, religion, creed, national origin, sex, age, handicap, membership in a class (such as unmarried mothers or recipients of public assistance), in all activities relating to the Lessee's use of the Premises.
- 24. No Relationship -- In no event shall the Lessor be construed or held to have become in any way or for any purpose a partner, associate, or joint venturer of Lessee or any party associated with Lessee in the conduct of Lessee's business or otherwise. This Lease does not make Lessor the agent or representative of the Lessee City for any purpose whatsoever.
- 25. Non-Waiver of Breach. The failure of either party to insist on 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.
- 25. Severability. If any section or provision of this Lease shall be held by a court of competent jurisdiction to be unenforceable, this Lease shall be construed as though such section or provision had not been included in it, and the remainder of the Lease shall be enforced as the expression of the parties' intentions. If any section or provision of this Lease is found to be subject to two constructions, one of which would render such section or provision invalid and one of which would render such section or provision valid, then the latter construction shall prevail.

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

DATED this _____ day of _____, 2006.

LESSEE:
City of Gig Harbor

LESSOR:

April 1, 2008

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Charles L. Hunter, Mayor

ATTEST:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

State of Washington)
) ss.
 County of Pierce)

On this ____ day of _____, 2005, before me, the undersigned a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Charles L. Hunter, to me known to be the Mayor of the City of Gig Harbor, a Washington municipality, that he executed the foregoing instrument, and acknowledged that the said instrument to be the free and voluntary act and deed of said municipality, for the uses and purpose therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand an official seal hereto affixed the day and year first above written.

(print name)
 NOTARY PUBLIC for the State of
 Washington, residing at ____

My commission expires: _____

State of Washington)
) ss.
 County of Pierce)

On this ____ day of _____, 2005, before me, the undersigned a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____, that he executed the foregoing instrument, and acknowledge that the said instrument to be the free and voluntary act and deed of said organization, for the uses and purpose therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand an official seal hereto affixed the day and year first above written.

April 1, 2008

Staff Report - 3

(print name)
NOTARY PUBLIC for the State of
Washington, residing at __

My commission expires: _____

April 1, 2008

Staff Report - 3

**ATTACHMENT 'A'
LEGAL DESCRIPTION**



Date: April 9, 2008
To: Mayor and City Council *Rob*
From: Rob Karlinsey, City Administrator
Subject: Citizen Survey

As approved in the City's 2008 adopted budget (Administration Objective #17), we will be utilizing the National Research Center (NCR) to conduct a citizen survey this year. Attached is the survey instrument, known as the National Citizen Survey, that will be sent out to a random sampling of citizens in the city.

Please note that toward the end of the survey, question 18 a-d, we can add several questions unique to Gig Harbor. Please let me know if there are any specific questions that you would like to be asked in this section of the survey.

The NCR will begin administering the survey towards the end of this month, and it will take several months to complete the process and compile and report the data.

Thank you.

The XYZ of ABC 2008 Citizen Survey

Please complete this questionnaire if you are the adult (age 18 or older) in the household who most recently had a birthday. The adult's year of birth does not matter. Please select the response (by circling the number or checking the box) that most closely represents your opinion for each question. Your responses are anonymous and will be reported in group form only.

1. Please rate each of the following aspects of quality of life in ABC:

	Excellent	Good	Fair	Poor	Don't know
ABC as a place to live	1	2	3	4	5
Your neighborhood as a place to live.....	1	2	3	4	5
ABC as a place to raise children.....	1	2	3	4	5
ABC as a place to work.....	1	2	3	4	5
ABC as a place to retire.....	1	2	3	4	5
The overall quality of life in ABC.....	1	2	3	4	5

2. Please rate each of the following characteristics as they relate to ABC as a whole:

	Excellent	Good	Fair	Poor	Don't know
Sense of community.....	1	2	3	4	5
Openness and acceptance of the community towards people of diverse backgrounds.....	1	2	3	4	5
Overall appearance of ABC.....	1	2	3	4	5
Cleanliness of ABC.....	1	2	3	4	5
Overall quality of new development in ABC.....	1	2	3	4	5
Variety of housing options.....	1	2	3	4	5
Overall quality of business and service establishments in ABC.....	1	2	3	4	5
Shopping opportunities.....	1	2	3	4	5
Opportunities to attend cultural activities.....	1	2	3	4	5
Recreational opportunities.....	1	2	3	4	5
Employment opportunities.....	1	2	3	4	5
Educational opportunities.....	1	2	3	4	5
Opportunities to participate in social events and activities.....	1	2	3	4	5
Opportunities to participate in religious or spiritual events and activities.....	1	2	3	4	5
Opportunities to volunteer.....	1	2	3	4	5
Opportunities to participate in community matters.....	1	2	3	4	5
Ease of car travel in ABC.....	1	2	3	4	5
Ease of bus travel in ABC.....	1	2	3	4	5
Ease of rail or subway travel in ABC.....	1	2	3	4	5
Ease of bicycle travel in ABC.....	1	2	3	4	5
Ease of walking in ABC.....	1	2	3	4	5
Availability of paths and walking trails.....	1	2	3	4	5
Traffic flow on major streets.....	1	2	3	4	5
Amount of public parking.....	1	2	3	4	5
Availability of affordable quality housing.....	1	2	3	4	5
Availability of affordable quality child care.....	1	2	3	4	5
Availability of affordable quality health care.....	1	2	3	4	5
Availability of affordable quality food.....	1	2	3	4	5
Availability of preventive health services.....	1	2	3	4	5
Air quality.....	1	2	3	4	5
Quality of overall natural environment in ABC.....	1	2	3	4	5
Overall image or reputation of ABC.....	1	2	3	4	5

3. Please rate the speed of growth in the following categories in ABC over the past 2 years:

	Much too slow	Somewhat too slow	Right amount	Somewhat too fast	Much too fast	Don't know
Population growth.....	1	2	3	4	5	6
Retail growth (stores, restaurants, etc.).....	1	2	3	4	5	6
Jobs growth.....	1	2	3	4	5	6

4. To what degree, if at all, are run down buildings, weed lots or junk vehicles a problem in ABC?
 Not a problem Minor problem Moderate problem Major problem Don't know

5. Please rate how safe or unsafe you feel from the following in ABC:

	Very safe	Somewhat safe	Neither safe nor unsafe	Somewhat unsafe	Very unsafe	Don't know
Violent crime (e.g., rape, assault, robbery)	1	2	3	4	5	6
Property crimes (e.g., burglary, theft).....	1	2	3	4	5	6
Environmental hazards, including toxic waste.....	1	2	3	4	5	6

6. Please rate how safe or unsafe you feel:

	Very safe	Somewhat safe	Neither safe nor unsafe	Somewhat unsafe	Very unsafe	Don't know
In your neighborhood during the day	1	2	3	4	5	6
In your neighborhood after dark.....	1	2	3	4	5	6
In ABC's downtown area during the day	1	2	3	4	5	6
In ABC's downtown area after dark.....	1	2	3	4	5	6

7. During the past twelve months, were you or anyone in your household the victim of any crime?
 No → Go to Question 9 Yes → Go to Question 8 Don't know → Go to Question 9

8. If yes, was this crime (these crimes) reported to the police?

No Yes Don't know

9. In the last 12 months, about how many times, if ever, have you or other household members participated in the following activities in ABC?

	Never	Once or twice	3 to 12 times	13 to 26 times	More than 26 times
Used ABC public libraries or their services	1	2	3	4	5
Used ABC recreation centers	1	2	3	4	5
Participated in a recreation program or activity	1	2	3	4	5
Visited a neighborhood park or XYZ park	1	2	3	4	5
Ridden a local bus within ABC	1	2	3	4	5
Attended a meeting of local elected officials or other local public meeting.....	1	2	3	4	5
Watched a meeting of local elected officials or other local public meeting on cable television	1	2	3	4	5
Read ABC Newsletter.....	1	2	3	4	5
Visited the XYZ of ABC Web site (at ____ .com)	1	2	3	4	5
Recycled used paper, cans or bottles from your home.....	1	2	3	4	5
Volunteered your time to some group or activity in ABC.....	1	2	3	4	5
Participated in religious or spiritual activities in ABC	1	2	3	4	5
Participated in a club or civic group in ABC.....	1	2	3	4	5
Provided help to a friend or neighbor	1	2	3	4	5

10. About how often, if at all, do you talk to or visit with your immediate neighbors (people who live in the 10 or 20 households that are closest to you)?

Just about everyday
 Several times a week
 Several times a month
 Once a month
 Several times a year
 Once a year or less
 Never

11. Please rate the quality of each of the following services in ABC:

	Excellent	Good	Fair	Poor	Don't know
Police services	1	2	3	4	5
Fire services.....	1	2	3	4	5
Ambulance or emergency medical services.....	1	2	3	4	5
Crime prevention.....	1	2	3	4	5
Fire prevention and education	1	2	3	4	5
Municipal courts	1	2	3	4	5
Traffic enforcement.....	1	2	3	4	5
Street repair	1	2	3	4	5
Street cleaning	1	2	3	4	5
Street lighting.....	1	2	3	4	5
Snow removal.....	1	2	3	4	5
Sidewalk maintenance	1	2	3	4	5
Traffic signal timing	1	2	3	4	5
Bus or transit services.....	1	2	3	4	5
Garbage collection.....	1	2	3	4	5
Recycling.....	1	2	3	4	5
Yard waste pick-up	1	2	3	4	5
Storm drainage.....	1	2	3	4	5
Drinking water.....	1	2	3	4	5
Sewer services	1	2	3	4	5
Power (electric and/or gas) utility	1	2	3	4	5
XYZ parks.....	1	2	3	4	5
Recreation programs or classes	1	2	3	4	5
Recreation centers or facilities.....	1	2	3	4	5
Land use, planning and zoning	1	2	3	4	5
Code enforcement (weeds, abandoned buildings, etc)	1	2	3	4	5
Animal control	1	2	3	4	5
Economic development	1	2	3	4	5
Health services	1	2	3	4	5
Services to seniors.....	1	2	3	4	5
Services to youth.....	1	2	3	4	5
Services to low-income people	1	2	3	4	5
Public library services.....	1	2	3	4	5
Public information services	1	2	3	4	5
Public schools.....	1	2	3	4	5
Cable television.....	1	2	3	4	5
Emergency preparedness (services that prepare the community for natural disasters or other emergency situations)	1	2	3	4	5
Preservation of natural areas such as open space, farmlands and greenbelts.....	1	2	3	4	5

12. Overall, how would you rate the quality of the services provided by each of the following?

	Excellent	Good	Fair	Poor	Don't know
The XYZ of ABC	1	2	3	4	5
The Federal Government.....	1	2	3	4	5
The State Government	1	2	3	4	5
CCC County Government.....	1	2	3	4	5

Our last questions are about you and your household. Again, all of your responses to this survey are completely anonymous and will be reported in group form only.

- D1. Are you currently employed for pay?**
 No → Go to Question D3
 Yes, full time → Go to Question D2
 Yes, part time → Go to Question D2
- D2. During a typical week, how many days do you commute to work (for the longest distance of your commute) in each of the ways listed below? (Enter the total number of days, using whole numbers.)**
 Motorized vehicle (e.g., car, truck, van, motorcycle, etc...) by myself days
 Motorized vehicle (e.g., car, truck, van, motorcycle, etc...) with other children or adults days
 Bus, Rail, Subway or other public transportation days
 Walk days
 Bicycle days
 Work at home days
 Other days
- D3. How many years have you lived in ABC?**
 Less than 2 years 11-20 years
 2-5 years More than 20 years
 6-10 years
- D4. Which best describes the building you live in?**
 One family house detached from any other houses
 House attached to one or more houses (e.g., a duplex or townhome)
 Building with two or more apartments or condominiums
 Mobile home
 Other
- D5. Is this house, apartment or mobile home...**
 Rented for cash or occupied without cash payment?
 Owned by you or someone in this house with a mortgage or free and clear?
- D6. About how much is your monthly housing cost for the place you live (including rent, mortgage payment, property tax, property insurance and homeowners' association (HOA) fees)?**
 Less than \$300 per month
 \$300 to \$599 per month
 \$600 to \$999 per month
 \$1,000 to \$1,499 per month
 \$1,500 to \$2,499 per month
 \$2,500 or more per month

- D7. Do any children 17 or under live in your household?**
 No Yes
- D8. Are you or any other members of your household aged 65 or older?**
 No Yes
- D9. How much do you anticipate your household's total income before taxes will be for the current year? (Please include in your total income money from all sources for all persons living in your household.)**
 Less than \$24,999
 \$25,000 to \$49,999
 \$50,000 to \$99,999
 \$100,000 to \$149,999
 \$150,000 or more

Please respond to both question D10 and D11:

- D10. Are you Spanish, Hispanic or Latino?**
 No, not Spanish, Hispanic or Latino
 Yes, I consider myself to be Spanish, Hispanic or Latino
- D11. What is your race? (Mark one or more races to indicate what race you consider yourself to be)**
 American Indian or Alaskan Native
 Asian, Asian Indian or Pacific Islander
 Black or African American
 White
 Other
- D12. In which category is your age?**
 18-24 years 55-64 years
 25-34 years 65-74 years
 35-44 years 75 years or older
 45-54 years
- D13. What is your sex?**
 Female
 Male
- D14. Are you registered to vote in your jurisdiction?**
 No
 Yes
 Ineligible to vote
 Don't know
- D15. Many people don't have time to vote in elections. Do you remember voting in the last general election?**
 No
 Yes
 Ineligible to vote
 Don't know

Thank you for completing this survey. Please return the completed survey in the postage paid envelope to: National Research Center, Inc., 3005 30th St., Boulder, CO 80301