

# **Gig Harbor City Council Meeting**

**July 28, 2008  
6:00 p.m.**



**AMENDED AGENDA FOR  
GIG HARBOR CITY COUNCIL MEETING  
July 28, 2008 - 6:00 p.m.**

**CALL TO ORDER:**

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

1. Approval of the Minutes of a) City Council Meeting of July 14, 2008; b) Special City Council Meeting July 17, 2008;
2. Receive and File: Police Department Monthly Report.
3. Liquor Licenses: a) Special Occasion Liquor License – Kiwanis; Renewals: b) Cigar & Wine and Gig Harbor Yacht Club.
4. Skansie Netshed Inventory Contract.
5. BB16 Interchange Project Management – Contract Amendment/Stephen B. Lovell & Associates.
6. BB16 Level III Screening Analysis – Contract Amendment – H.W. Lochner, Inc.
7. Canterwood Improvements Project – Construction Survey and Construction Support Services Contract - David Evans & Associates.
8. Canterwood Improvement Project Contract Administration Agreement - WSDOT.
9. SR-16/Burnham Drive Maintenance Agreement – WSDOT.
10. Two Parcels at Crescent Creek - Phase I Environmental Assessment.
11. North Well No. 9 & South Well No. 10 Project Contract – Carollo Engineers.
12. Point Fosdick Drive Sidewalk Project – Local Agency Standard Consultant Agreement/HDR Engineering, Inc.
13. Eddon Boatyard Restoration Project - Amendment to Contract with SHKS.
14. Wetland Property Agreement with SHDP Associates LLC/Capital Management Group, Inc.
15. Approval of Payment of Bills for July 28, 08:  
Checks #58284 through #58464 in the amount of \$1,798,364.96.

**PRESENTATIONS:**

1. Harbor Wild Watch – Bruce Holser.
2. Thunderbird / Eddon Boat Historical Interpretive Artwork – Mark Hoppen.
3. Harborview / Judson Project Update – Eric Schmidt.

**OLD BUSINESS:**

1. Second Reading of Ordinance– Water Utility Rate Increase.
2. Second Reading of Ordinance– Sewer Utility Rate Increase.
3. Second Reading of Ordinance Stormwater Utility Rate Increase.
4. Second Reading of Ordinance to Establish a Salary Commission.
5. Second Reading of Ordinance – Temporary Sewage Holding Tanks.

**NEW BUSINESS:**

1. First Reading of Ordinance – Heritage Point Rezone.
2. Planning Commission Work Program.
3. ~~Resolution for Public Hearing – Harborview Drive/WWTP Street Vacation.~~
4. ~~Resolution for Public Hearing – Woodworth Avenue Street Vacation.~~

5. ~~Resolution for Public Hearing—Prentice/Sutherland Street Vacation.~~
6. Street Rehabilitation / Resurfacing Project Additional Paving Schedule 12 – Change Order No. 1.
7. Cushman Trail Phase 2 – Interagency Agreement.
8. Cushman Trail Permit Assignment.

**STAFF REPORT:**

**PUBLIC COMMENT:**

**MAYOR’S REPORT / COUNCIL COMMENTS:**

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. Downtown Business Plan Advisory Committee – Tues. July 29<sup>th</sup> at 5:30 p.m.
2. National Night Out – Skansie Park on August 5<sup>th</sup> at 6:00 p.m.
3. City Council Joint Workstudy Session with PenMet Parks – Mon. Aug. 4<sup>th</sup> at 6:00 p.m. at PenMet Parks office.
4. City Council Meeting of August 25<sup>th</sup> CANCELLED.
5. Intergovernmental Affairs Committee – Mon. Aug. 11<sup>th</sup> at 4:30 p.m.
6. Meet with Senator Patty Murray Wed. Aug. 13<sup>th</sup> at 10:00 a.m.
7. GH North Traffic Options Committee – Wednesday, Sept. 3<sup>rd</sup> at 9:00 a.m. in Community Rooms A & B.
8. City Council Budget Retreat – Monday, Sept. 15<sup>th</sup> at 6:00 p.m. in Community Rooms A & B.

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

**ADJOURN TO COMMUNITY ROOMS A&B - WORKSTUDY SESSION:** Mainstreet Program Parking Inventory Update.

**GIG HARBOR CITY COUNCIL MEETING OF JULY 14, 2008**

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

**CALL TO ORDER:** 6:02 p.m.

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

1. Approval of the a) Minutes of City Council Meeting of June 23, 2008; b) Special City Council Meeting of June 30, 2008; and c) Joint Meeting City Council / Design Review Board June, 16, 2008.
2. Council Committee Reports: Finance / Safety Committee Minutes June, 16, 2008;
3. Receive and File: a) Historic Preservation Grant Award b) Building and Fire Safety Dept. June Report.
4. Liquor License Applications: a) Maritime Inn; b) Qdoba Mexican Restaurant; c) 7 Seas; d) SIP *withdrawn*.
5. Resolution No.758 – Surplus Equipment.
6. North Well No. 9 and South Well No. 10 Project Contract – Carollo Engineers.
7. Appointment to Design Review Board.
8. Civic Center HVAC Compressor Replacement Contract.
9. Austin Estuary Park Master Plan Amendment to Contract – Grette and Associates.
10. Tides Tavern Lease.
11. Phase II Environmental Assessment – Pinney Parcel B.
12. Approval of Payment of Bills for July 14, 2008:  
Checks #58139 through #58283 in the amount of \$517,526.07.
13. Approval of Payroll for the month of June:  
Checks #5137 through #5165 in the amount of: \$355,154.92.

Councilmember Malich asked that item number six be postponed until the meeting of July 28<sup>th</sup> as he had questions.

**MOTION:** Move to adopt the Consent Agenda as amended.  
**Franich / Young** – unanimously approved.

**PRESENTATIONS:** Crescent Valley Alliance

John McMillan, representative from Crescent Valley Alliance presented background information on this stewardship project formed in 2006 to protect and preserve Crescent Valley's riparian system by partnering with the National Wildlife Federation, Pierce County, Washington Department of Fish & Wildlife, Washington Bio-diversity Council, PenMet Parks, Friends of Pierce County, Harbor Wild Watch, and the City of Gig Harbor. Mr. McMillan acknowledged individuals that authored the plan and several funding sources. He described a riparian system and the things that threaten its



survival, and explained that Crescent Valley Alliance offers education and conservation resources so others can learn about protecting healthy habitats.

Mayor Hunter announced that the city had received a grant to pay for one-half of the re-roof project for the covered structure at The City Park at Crescent Creek.

Mayor Hunter then introduced David Fisher, newly appointed member of the Design Review Board and welcomed him to the organization.

**OLD BUSINESS:** None scheduled.

**NEW BUSINESS:**

1. First Reading of Ordinance – Water Utility Rate Increase. David Rodenbach, Finance Director, presented the information on a proposed 3% increase in the water rate that is expected to provide approximately \$73,000 in additional operating revenues for the water utility in 2009. He addressed the question of past rate increases by explaining that rates increased 10% in 2003; 5% in 2006 and 5% in 2007. This will return for a second reading at the next meeting.

2. First Reading of Ordinance – Sewer Utility Rate Increase. David Rodenbach presented the information for a 15% sewer rate in 2009. This increase is to address the 23 million in upcoming capital improvement projects.

Councilmember Franich asked for clarification on why the increase percentages remained the same after the number of growth units increased from 140 to 250 shown at the Operations Committee meeting. He asked for a copy of the original spreadsheet with the lower number of units.

The city's consultant, Ashley Emery addressed this question. He described three points that were considered with the change in rate recommendation. First is the capital cost of the outfall project had increased by one and one-half million. Second, the realization that the General Facility Charge will have been in place only been six months prior to the first rate increase. The third point is reconsideration of the debt coverage requirement for revenue bonds which will come into play in 2010. He continued to explain that it takes too long for the estimated growth to build up enough to significantly impact debt coverage. He further explained that the available bond interest rate, the bond pay-back schedule, issuance costs, and reserve requirements are all things that must be taken into consideration. He said that he thinks that this recommended 15% increase is a fair starting point, but it could come in higher the second year.

David Rodenbach stressed that if the city is able to obtain a Public Works Trust Fund Loan or other grants, the increases in subsequent years could be lower than this.

This will return for a second reading at the next meeting.

3. First Reading of Ordinance – Stormwater Utility Rate Increase. David Rodenbach introduced this ordinance for a 3% increase in stormwater rates effective January 2009 that will raise the rate from \$10.80 per month to \$11.12 per month. This will increase annual revenues by approximately \$53,000 to the storm utility, but isn't expected to do much for the storm capital requirements. This ordinance will return for a second reading at the next meeting.

4. First Reading of Ordinance - Establish a Salary Commission. Rob Karlinsey explained that the elected officials' salaries haven't been adjusted in ten years in spite of the increased workload. He recommended that the Mayor and Council look at compensation in one of two ways: to adopt a salary to be implemented upon re-election, or to establish a Salary Commission to set the compensation level that can be implemented sooner. He gave an overview of the draft ordinance to establish a Salary Commission.

Carol Morris, City Attorney addressed the referendum section of the ordinance. She explained that even though the city hasn't elected to be part of the initiative referendum procedures she recommends leaving in this language because under state law, salaries established by a commission are subject to referendum.

Councilmember Ekberg said that he doesn't favor a dramatic increase at all, and favors a more simplistic method such as an annual increase of 3%.

Councilmember Franich agreed adding that he doesn't want the job of Councilmember to become a source of second income for someone who should serve because they care about the community. He then said that with the added workload, Council is dramatically underpaid at this point. He asked if there is a way to have a larger increase in one year than another. Mr. Karlinsey responded that if a Salary Commission is established it is then up to them.

Councilmember Young said that the issue of automatic increases doesn't reflect the actual workload. He said he likes the Salary Commission because it is fair and we don't have to worry about the perception that Council is raising our own salaries.

Mayor Hunter said that he looks at this job as a volunteer position, and if setting parameters for a salary commission isn't an option then Council should make the decision. Rob Karlinsey stressed that a Salary Commission is independent.

After further discussion, Councilmembers Conan, Kadzik, and Malich voiced support for the appointment of a Salary Commission. This will return for a second reading at the next meeting.

5. First Reading of Ordinance – Temporary Sewage Storage Tanks. Rob Karlinsey presented the background on this ordinance that would allow temporary sewage holding tanks to allow projects that cannot get sewer concurrency to obtain development approval. He highlighted the requirements of this ordinance that would apply to those

denied a sewer concurrency certificate after July 1<sup>st</sup> through May 31<sup>st</sup> and only during the construction of Phase I of the Wastewater Treatment Plant.

Councilmember Ekberg asked if there are any comments from the Engineering Staff and how the city is going to coordinate with the Health Department on permits.

Mr. Karlinsey responded that a staff report was included when this went to the Operations Committee and to full Council on April 28<sup>th</sup>. He then explained that applicants must show proof of a permit from the Pierce County Health Department which is issued under limited circumstances.

Mr. Karlinsey addressed questions regarding payment of the GFCs by explaining that the fees will be paid when the applicant connects to the sewer system. There is a provision to address bonding and recording against the title of the property. Requiring payment at the time of connection addresses a potential increase in the connection fee.

Ms. Morris suggested that if the Council would like the fee paid up front a provision could be added to require payment of any difference at a later date. She then said that according to the Pierce County rules, it is highly unlikely that anyone would get a permit for a temporary sewage holding tank given the conditions for obtaining a holding tank. She then said that if a change is made to allow residential use, she cautioned that the requirement to pay the GFCs at time of hookup places the burden on the homeowner.

Councilmembers discussed amending the language to require payment up front with a clause that the difference would be paid at time of hookup to address this concern.

David Freeman, Architect practicing at 6787 Stinson Avenue. Mr. Freeman thanked everyone for getting this before Council tonight. He commented that paragraph 'A' under 13.28.105 Temporary Sewage Storage Tanks allows only commercial development to apply. He referenced mixed use development in which there are professional offices on the main level and condominiums above with only one sewer connection. He asked Council to consider allowing one title holder of the commercial building to address this. He then referred to paragraph E. (9), requesting that this be changed to the industry standard of using a vacuum truck to empty the tank to eliminate potential pump failure concerns.

Councilmember Young voiced his concern that condominiums involve multiple ownership. Mr. Freeman responded that during this phase, the commercial developer would retain ownership of the building and would be the signatory on the application. He then explained that this ordinance helps to address the SEPA checklist timeline requirement of 20 months and chances are that none of these tanks would ever get built.

Councilmember Franich voiced his concern with the amount of time being spent on this ordinance for just a few specific developers. He said that if the city is going to allow this type of system it should be for everyone with no time limits. Councilmember Young

pointed out you wouldn't want these if sewer is available. He then thanked Mr. Freeman for the clarification.

Jack Bujacich – 3607 Ross Avenue. Mr. Bujacich said he was curious where the sewage goes that is pumped out of the tanks. He said that in Pierce County there is an issue with them dumping it into the manholes.

Mr. Karlinsey responded that the sewage does not go into our system and is probably transported to Tacoma. He offered to check that out.

David Fisher – 2776 Beardsley Avenue. Mr. Fisher spoke in support of the tank idea and said that residential property should be included to allow more options and make the ordinance simpler. He said that septic systems can have a negative effect on placement of a house on a lot. He then explained that vacuuming a holding tank twice a month costs approximately \$300, and so there is incentive for homeowners to hook up to city sewer. Mr. Fisher said that there should be provisions to remove the tank, a requirement for an alarm when the tank is full, and a maintenance agreement with a pumping company as part of the application process. With a pre-paid hook-up, the applicant wouldn't be required to pay a monthly sewer fee until they are actually hooked up to the sewer.

Councilmember Ekberg asked for clarification on the request to add residential and working with Pierce County on permitting.

Jeff Langhelm, Senior Engineer said that he worked with Darrell Winans, Wastewater Treatment Plant Supervisor on the staff memo to the Operations Committee. In their experience, residential property owners do not maintain this type of a system as well as commercial property owners because of the expense and a less-vested interested. They also have a tendency to disable the alarms and attach the outflow to a stormwater system or other illegal discharge. Commercial developers may be less likely to do these things.

Councilmember Malich asked about disposition of the tank after hook-up to city sewer. Mr. Karlinsey responded that the ordinance has a provision to decommission the tank to meet the requirements of the both the city and Pierce County.

Jeff Langhelm then addressed the question about working through permits with Pierce County. He said that PCHD allows these on-site systems when existing septic systems have failed until sewer becomes available. Rob Karlinsey added that he spoke with a Health Department Official who told him that they would approve a tank for new construction in limited circumstances but there are limitations on flow. Mr. Langhelm said that the anticipated flow for a commercial site is outlined in the ordinance and based on square footage. You could serve about 1600 s.f. of commercial area.

Mayor Hunter asked if there isn't another way to allow development if the only reason to adopt this ordinance is to allow someone to get through the permitting process. Carol Morris responded that there is already an alternative concurrency process in place.

At this time Jeff Langhelm recommended that the language prohibiting vacuum type evacuation of the tanks remain because of the strong offensive odors that are produced by the tanks would be released during pumping. The internal self-contained pumps only pump liquid and so there isn't the same level of odor.

Mr. Karlinsey reviewed potential amendments that to the ordinance that were discussed and asked for Council direction. Councilmember Young said he supports the inclusion of multi-family as long as there is commercial ownership but not single-family residential. Mayor Hunter asked that reference to the Health Department C-4 and E-4 match. He also mentioned adding a maintenance agreement in case the city has to do it.

This will return for a second reading with the discussed amendments.

**STAFF REPORT:** None scheduled.

**MAYOR'S REPORT / COUNCIL COMMENTS:**

Mayor Hunter announced the one-year anniversary for the opening of the Narrows Bridge on July 16<sup>th</sup>.

**PUBLIC COMMENT:**

Kasse Smith – 1819 102<sup>nd</sup> Street Ct NW. Mr. Smith discussed his idea for an eco-friendly car wash in Gig Harbor and the zoning issue because this use is only allowed in the PCDC and/or Commercial zones. The only viable spot is in the Gig Harbor North area. He asked for advice.

Councilmembers suggested either the Gig Harbor North or the Uptown Areas and asked if he had contacted a realtor. Mr. Smith said there is no available property in either zone and asked if a change in zoning is possible.

Councilmembers responded that this requires a comp plan or text amendment and suggested he contact the Planning Department. Mr. Smith said that this process costs approximately \$1300 and asked if Council would consider taking it on. They responded that this wouldn't be allowed and wished him luck in the process.

Gretchen Wilbert – 8825 No. Harborview Drive. Former Mayor Wilbert said she heard a rumor that the city is not going to fund the Senior Center at the \$750,000 level. She spoke in favor of funding for the center and passed out a packet of information that outlines the history and the need for a Senior Center. She stressed that 2200 square feet for a Senior Center isn't big enough and a meal site serving 40-50 seniors a day

would require an approved kitchen. She added that she heard the suggestion of using the Visitor's Center as the Senior Center and said that this building is not big enough and has no kitchen. She thanked Council for their consideration of this important issue.

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. GH North Traffic Options Committee – Wednesday, July 16th, at 9:00 a.m. in Community Rooms A & B.
2. Community Meeting with Norm Dicks – Monday, July 21<sup>st</sup> at 5:00 p.m. Civic Center Green.
3. Downtown Business Plan Advisory Committee – Tues. July 15<sup>th</sup> at 5:30 p.m.
4. Harborview / Judson Stakeholders – Tues. July 15<sup>th</sup> at 7:00 p.m.
5. Parks Commission Open House at Eddon Boatyard Brick House – Thurs., July 31<sup>st</sup> from 1 p.m. – 6 p.m.
6. Joint Workstudy Session with PenMet Parks: Monday, August 4<sup>th</sup> at 6:00 p.m. at PenMet Parks Facility.

**EXECUTIVE SESSION:** For the purpose of discussing property acquisition per RCW 42.30.110(1) (c).

**MOTION:** Move to adjourn to Executive Session at 7:28 p.m. for approximately one hour for the purposes of discussing property acquisition per RCW 42.30.110(1)(c) and a personnel matter per RCW 42.30.140(4)(a).  
**Franich / Ekberg** – unanimously approved.

**MOTION:** Move to return to regular session at 8:25 p.m.  
**Kadzik / Malich** – unanimously approved.

**ADJOURN:**

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

CD recorder utilized:  
Disk #1 Tracks 1- 24  
Disk #2 Tracks 1- 4

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Charles Hunter, Mayor

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Molly Towslee, City Clerk

**GIG HARBOR CITY COUNCIL SPECIAL MEETING**  
**July 17, 2008 – 5:00 p.m.**

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

**CALL TO ORDER:** 5:07 p.m.

**ADJOURN TO EXECUTIVE SESSION:** Property Purchase - SHDP Associates/Capital Management Group.

**MOTION:** Move to adjourn to Executive Session at 5:10 p.m. for approximately 15 minutes to discuss property acquisition per RCW 42.30.110(1)(c).

**Franich / Conan** – unanimously approved.

**MOTION:** Move to return to regular session at 5:25 p.m.

**Franich / Conan** – unanimously approved.

**MOTION:** Move to authorize the Mayor to sign the attached Possession, Use, and Purchase Agreement for the Wetland Property needed for the BB16 Interim Improvements.

**Franich / Young** –

Carol Morris, City Attorney asked to make a correction to the motion. Ms. Morris recommended that the motion be amended to include the following corrections to the agreement:

Page 2 - Fill in where there are handwritten corrections "D.E.A" and "May 14, 2008" in the sixth WHEREAS.

Page 3 – Everywhere that the word "share" appears in the last paragraph, the word "Pro-rata" should be inserted before the word "share".

**AMENDMENT:** Move to include the items listed by the City Attorney.

**Franich / Young** – unanimously approved.

**AMENDED MOTION:** Move to authorize the Mayor to sign the attached Possession, Use, and Purchase Agreement for the Wetland Property needed for the BB16 Interim Improvements together with the recommendations of the two items by the City Attorney which are to add "Pro-rata" share and fill in "D.E.A." and "May 14, 2008".

**Franich / Young** – unanimously approved.

**ADJOURN:**

**MOTION:** Move to adjourn at 5:29 p.m.  
**Young / Ekberg** – unanimously approved.

CD recorder utilized:  
Disk #1 Tracks 4-5

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Charles Hunter, Mayor

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Maureen Whitaker, Asst. City Clerk





POLICE

TO: MAYOR CHUCK HUNTER AND CITY COUNCIL  
 FROM: CHIEF OF POLICE MIKE DAVIS  
 SUBJECT: GHPD MONTHLY REPORT FOR JUNE 2008  
 DATE: JULY 28, 2008

DEPARTMENTAL ACTIVITIES

- 2008 YTD **calls for service** when compared to 2007 YTD **calls for service** show an increase of 1263 dispatched calls. This is a trend that seems to be accelerating compared to past months and years (In our May report the increase was 1064).
- In 2008 so far, we have seen 105 more **reports written** by our officers than in 2007 YTD. Our demand for services has increased dramatically, which may account for the decrease in other officer initiated activity such as traffic infractions. We have also been down a position since the first of the year.
- **DUI arrests** for 2008 YTD are up by 14 compared to 2007 YTD! Our **traffic infractions** are down 126 so far this year; and our **criminal traffic citations** are up by 49. Statistics show our 2008 YTD **traffic accidents** have increased by 20 accidents when compared to 2007 YTD. Thankfully, most of the accidents are non-injury.
- 2008 YTD statistics show our **misdemeanor** arrests are up by 69 and our **felony arrests** are down by 20 when compared to 2007.

Category	June 2008					
	June 2007	June 2008	Change	YTD 2007	YTD 2008	Change
Calls for Service	538	780	242	2646	3909	1263
General Reports	167	154	-13	908	1013	105
Criminal Traffic	17	17	0	98	147	49
Infractions	151	86	-65	735	609	-126
Criminal Citations	36	12	-24	115	93	-22
Warrant Arrests	7	2	-5	50	21	-29
Traffic Reports	18	11	-7	87	107	20
DUI Arrests	4	6	2	27	41	14
Misdemeanor Arrests	29	43	14	169	238	69
Felony Arrests	16	6	-10	60	40	-20
FIR's	1	0	-1	4	12	8

**The Reserve Unit** provided a total of 50 hours of support to our regular officers in June. We are currently working on backgrounds on two potential lateral reserves

During the month of May the **Marine Services Unit (MSU)** accounted for the following hours and activity:

- Patrol Hours: 21.5 Hours
- Boat Safety Inspections: 7
- Dispatched Calls: 2
- Theft Investigations: 1
- Verbal Warnings (Wake violations) 12

COPS volunteer Ken McCray volunteered 19 hours in the month of June.

TRAFFIC ACCIDENTS FOR JUNE 2008					
DATE	TIME	LOCATION	TYPE	CASE#	AGE
6/4/2008	12:49	5800 Soundview Dr.	Non	GH080684	67
6/6/2008	22:00	Olympic Dr. @ SR16	Non	GH080695	18
6/7/2008	12:26	5120 Borgen Blvd.	Non	GH080699	66
6/7/2008	13:37	3300 Rosedale St.	H&R	GH080702	N/A
6/9/2008	14:45	Rosedale St. & Stinson Ave.	Non	GH080709	46
6/10/2008	13:00	4600 Pt. Fosdick Dr.	H&R	GH080717	N/A
6/12/2008	16:30	11400 51st Ave.	P-Lot	GH080722	18
6/14/2008	11:26	Burnham Dr. & Borgen Blvd.	R/A -Non Inj	GH080731	42
6/18/2008	6:40	Franklin Ave. & Burnham Dr.	Non	GH080744	87
6/19/2008	12:45	Wollochet & Hunt	Non	GH080749	20
6/21/2008	13:10	6808 Kimball St.	P-Lot	GH080759	67
6/23/2008	9:00	3216 Judson St.	P-Lot	GH080769	N/A
6/26/2008	9:20	4700 Pt. Fosdick Dr.	Non	GH080780	30
6/27/2008	18:50	Burnham Dr. & SR16	H&R	GH080785	N/A
6/29/2008	16:15	11400 51st Ave.	P-Lot	GH080789	24
6/30/2008	13:25	6565 Kimball Dr.	H&R	GH080792	N/A

The statistics below were taken off our Neighborhood Crime Mapping Program that is available on our website. These statistics track individual crime categories and give a more detailed look at the *types of crimes* our officers are investigating. These statistics compare 2007 and 2008 crime category totals on a per month basis and a year to date monthly basis. Year-to-date through June 2008 there were 594 incidents within Gig Harbor

Kidnap/Child Lure					
	June 2007	June 2008	Year-To-Date (through June)	Year-To-Date (through June)	Percent Change

			2007)	2008)	
<a href="#">Child Luring</a>	-	-	1	-	-100.0%
<a href="#">Kidnapping (restrain or abduct)</a>	-	-	-	-	-
<b>Kidnap/Child Lure Total:</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>-100.0%</b>
<b>Violent Crimes</b>					
	June 2007	June 2008	Year-To-Date (through June 2007)	Year-To-Date (through June 2008)	Percent Change
<a href="#">Aggravated Assault</a>	-	-	3	2	- 33.3%
<a href="#">Non Aggravated Assault</a>	2	4	14	21	50.0%
<a href="#">Homicide</a>	-	-	-	-	-
<a href="#">Robbery</a>	-	-	5	-	-100.0%
<i>Business:</i>	-	-	4	-	-100.0%
<i>Residential:</i>	-	-	-	-	-
<i>Street:</i>	-	-	1	-	-100.0%
<i>Other Robbery:</i>	-	-	-	-	-
<b>Violent Crimes Total:</b>	<b>2</b>	<b>4</b>	<b>22</b>	<b>23</b>	<b>4.5%</b>
<b>Property Crimes</b>					
	June 2007	June 2008	Year-To-Date (through June 2007)	Year-To-Date (through June 2008)	Percent Change
<a href="#">Arson</a>	-	-	1	-	-100.0%
<i>Residential Arson:</i>	-	-	-	-	-
<i>Non-Residential Arson:</i>	-	-	1	-	-100.0%
<a href="#">Motor Vehicle Theft</a>	5	1	21	10	- 52.4%
<a href="#">Theft</a>	26	21	168	131	- 22.0%
<i>Gas Station Runouts:</i>	-	-	1	4	300.0%
<i>Mail Theft:</i>	-	-	-	1	N.C.*
<i>Shoplifting:</i>	4	5	38	32	- 15.8%
<i>Theft from Vehicle:</i>	17	12	88	56	- 36.4%
<i>Other Theft:</i>	5	4	41	38	- 7.3%
<a href="#">Burglary</a>	3	2	27	16	- 40.7%
<i>Residential Burglary:</i>	1	2	13	11	- 15.4%
<i>Non-Residential Burglary:</i>	2	-	14	5	- 64.3%
<a href="#">Vandalism</a>	16	10	94	71	- 24.5%
<i>Residential Vandalism:</i>	16	10	93	67	- 28.0%
<i>Non-Residential Vandalism:</i>	-	-	1	4	300.0%
<b>Property Crimes Total:</b>	<b>50</b>	<b>34</b>	<b>311</b>	<b>228</b>	<b>- 26.7%</b>
<b>Drug Crimes</b>					
	June	June	Year-To-Date	Year-To-Date	Percent

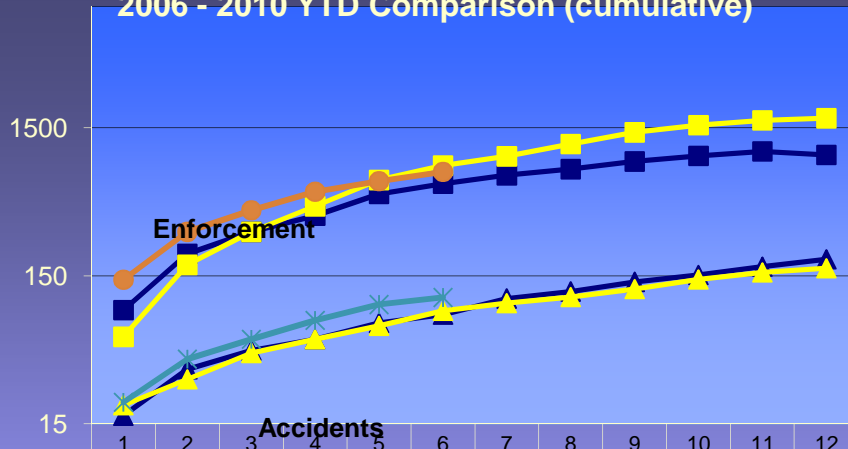
	2007	2008	(through June 2007)	(through June 2008)	Change
<a href="#">Drug Possession (Methamphetamine)</a>	1	1	5	4	- 20.0%
<a href="#">Drug Sale/Manufacture (Methamphetamine)</a>	-	-	4	1	- 75.0%
<a href="#">Drug Possession (Other)</a>	7	3	31	31	0.0%
<a href="#">Drug Sale/Manufacture (Other)</a>	-	1	6	4	- 33.3%
<b>Drug Crimes Total:</b>	<b>8</b>	<b>5</b>	<b>46</b>	<b>40</b>	<b>- 13.0%</b>
<b>Warrant Arrests, Fraud, Traffic, and Other Incidents</b>					
	June 2007	June 2008	Year-To-Date (through June 2007)	Year-To-Date (through June 2008)	Percent Change
<a href="#">Weapons Violations</a>	1	-	4	4	0.0%
<a href="#">Warrant Arrests</a>	5	1	48	28	- 41.7%
<a href="#">Fraud or Forgery</a>	6	2	48	29	- 39.6%
<a href="#">Criminal Traffic</a>	38	19	195	196	0.5%
<a href="#">Liquor Law Violations</a>	3	7	21	23	9.5%
<a href="#">Telephone Harassment</a>	4	2	6	4	- 33.3%
<a href="#">Intimidation</a>	3	3	9	9	0.0%
<a href="#">Possession of Stolen Property</a>	-	-	3	5	66.7%
<b>Warrant Arrests, Fraud, Traffic, and Other Incidents Total:</b>	<b>60</b>	<b>34</b>	<b>334</b>	<b>298</b>	<b>- 10.8%</b>
<b>Other Crimes</b>					
	June 2007	June 2008	Year-To-Date (through June 2007)	Year-To-Date (through June 2008)	Percent Change
<a href="#">All Other Crimes</a>	5	-	19	5	- 73.7%
<i>Criminal Trespass :</i>	-	-	3	4	33.3%
: <i></i>	4	-	15	-	-100.0%
<i>Failure to Register/Sex Offender :</i>	1	-	1	1	0.0%
<b>Other Crimes Total:</b>	<b>5</b>	<b>0</b>	<b>19</b>	<b>5</b>	<b>- 73.7%</b>
<b>Grand Total</b>					
	June 2007	June 2008	Year-To-Date (through June 2007)	Year-To-Date (through June 2008)	Percent Change
<b>Grand Total:</b>	<b>125</b>	<b>77</b>	<b>733</b>	<b>594</b>	<b>- 19.0%</b>

\*N.C. = Not Calculable

Attached you will find several graphs that track 2008 monthly statistics. These statistics are now recovered by electronic means and track officer activity. 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).

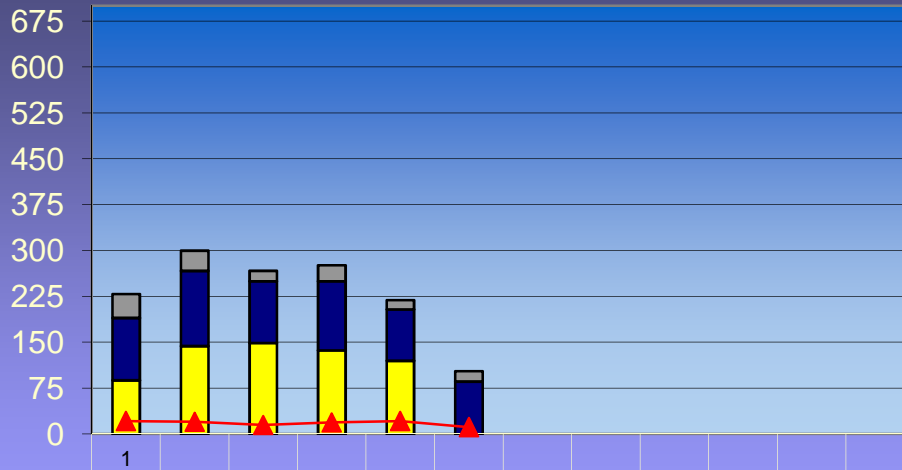


### Trends: Traffic Enforcements vs. Accidents 2006 - 2010 YTD Comparison (cumulative)



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	141	297	415	554	653	756						
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	21	41	56	75	96	107						
2009 reportable accidents												
2010 reportable accidents												

### Annual Traffic Enforcement vs. Accidents Comparison Monthly Totals



Criminal Traffic Citations	39	33	17	26	15	17						
Infractions	102	123	101	113	84	86						
Verbal Warnings	88	144	149	137	120	0						
Accidents	21	20	15	19	21	11						







WASHINGTON STATE LIQUOR CONTROL BOARD-License Services  
3000 Pacific Ave SE - P O Box 43075  
Olympia WA 98504-3075

TO: MAYOR OF GIG HARBOR

July 10, 2008

SPECIAL OCCASION # 093484

KIWANIS-GIG HARBOR  
PO BOX 149911  
GIG HARBOR, WA 98332

DATE: SEPTEMBER 27, 2008

TIME: 5 PM TO 9 PM

PLACE: EAGLES, 4425 BURNHAM DR., GIG HARBOR

CONTACT: JENI MALLORY 253-858-7541

**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

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 7/10/08

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR  
(BY ZIP CODE) FOR EXPIRATION DATE OF 20081031

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 DNP ENTERPRISES, LLC	CIGAR & WINE 1225 CENTER DR STE 120 DUPONT WA 98237 0000	088899	BEER/WINE SPECIALTY SHOP
2 THE GIG HARBOR YACHT CLUB	GIG HARBOR YACHT CLUB 8209 STINSON AVE GIG HARBOR WA 98335 0000	077100	PRIVATE CLUB - SPIRITS/BEER/WINE

**Subject:** Skansie NetShed Inventory

**Proposed Council Action:**

Authorize the Mayor on behalf of Council to execute an agreement with Mike Vlahovich of Coastal Heritage Alliance (CHA) to inventory all contents within the Skansie NetShed.

**Dept. Origin:** Planning

**Prepared by:** Tom Dolan *TD*

**For Agenda of:** July 28, 2008

**Exhibits:** CHA Contract  
CHA Exhibits

**Concurred by Mayor:**

**Approved by City Administrator:**

**Approved as to form by City Atty:**

**Approved by Finance Director:**

**Approved by Department Head:**

Initial & Date

*CHT 7/22/08*

*PAK 7/22*

*CAM 7/16/08*

*DF 7/23/08*

*TD 7/15/08*

Expenditure	Amount	Appropriation
Required \$17,500	Budgeted \$ 150,000	Required -0-

**INFORMATION / BACKGROUND**

When Skansie Brothers Park was purchased in 2002, it included not only the property and buildings (house and netshed) but also the furnishings, documents and equipment located inside those structures. The NetShed contains a large collection of objects that are considered significant to the history of Gig Harbor's most prominent industries: boatbuilding and commercial fishing. Stabilization of the Skansie NetShed will require that the contents be removed and stored. In anticipation of that work, the City received a proposal from Mike Vlahovich of the non-profit, Coastal Heritage Alliance (CHA). Since its inception in 2003, CHA has provided services to the Smithsonian Institution, Seattle Parks and Recreation, 4Culture, Washington State History Museum, National Park Service and the Chesapeake Bay Museum. The organization is well-established as an educational organization dedicated to the preservation and advancement of commercial fishing family heritage. CHA has extensive experience in curation and preservation. Vlahovich is currently managing the restoration of Harbor Museum's fishing vessel, the Shenandoah. His proposal and background information are attached.

**FISCAL CONSIDERATION**

The Parks Development Special Revenue Fund identifies Skansie work under Narrative of Objectives #18. A total of \$150,000 was budgeted for stabilization of the Skansie NetShed. Prior to any stabilization work, the contents of the netshed must be removed. The work to inventory, remove and store the objects is considered part of this budget.

**BOARD OR COMMITTEE RECOMMENDATION**

The 2008 Skansie Brothers Park Ad Hoc Committee has recommended that the NetShed be registered and stabilized. They discussed the need to inventory the netshed contents and remove them prior to construction.

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor on behalf of Council to execute an Agreement between the City of Gig Harbor and Mike Vlahovich of Coastal Heritage Alliance to perform an inventory of the Skansie NetShed.

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
Coastal Heritage Alliance**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Coastal Heritage Alliance, a corporation organized under the laws of the State of WA located and doing business at 3421 Harborview Drive, Gig Harbor, WA (local office) (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in creating an Inventory of Objects located in the Skansie Brothers Park net shed and to include tools in the basement of the Skansie home 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 April 25, 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 seventeen thousand five hundred dollars (\$17,500.00) 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 – 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 December 15, 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 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 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: Coastal Heritage Alliance  
ATTN: Michael Vlahovich  
P.O. Box 313  
St. Michaels, MD 21663  
(253) 820-7292

City of Gig Harbor  
ATTN: Lita Dawn Stanton  
Special Projects  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 853-7609

### **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.

**Consent Agenda - 4**

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: Coastal Heritage Alliance  
ATTN: Emily Vlahovich  
P.O. Box 313  
St. Michaels, MD 21663  
(253) 820-7292

City of Gig Harbor  
ATTN: Lita Dawn Stanton  
Special Projects  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 853-7609

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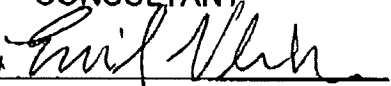
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**Consent Agenda - 4**

IN WITNESS WHEREOF, the parties have executed this Agreement on this 20<sup>th</sup> day of July, 2008.

CONSULTANT,  
By:   
Emily Vlahovich, President

CITY OF GIG HARBOR  
By: \_\_\_\_\_  
Mayor

Notices to be sent to:  
CONSULTANT: Coastal Heritage Alliance  
ATTN: Michael Vlahovich  
P.O. Box 313  
St. Michaels, MD 21663  
(253) 820-7292

City of Gig Harbor  
ATTN: Lita Dawn Stanton  
Special Projects  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 853-7609

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Consent Agenda - 4

STATE OF <sup>Maryland</sup> WASHINGTON )  
 ) ss.  
COUNTY OF Talbot )

I certify that I know or have satisfactory evidence that Emily Vlahovich 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 Coastal Heritage Alliance to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7/22/08



Megan Elisabeth Kemp

Megan Elisabeth Kemp  
(print or type name)

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

Sherwood, Md 21065

My Commission expires: 1/1/2011



## Memorandum of Agreement

**Prepared for:** City of Gig Harbor

**Prepared by:** Coastal Heritage Alliance (CHA)

### Scope of Service

To survey, catalog and relocate the objects contained within the Skansie Brothers net shed and the tools located in the basement of the Skansie home.

### Terms and Conditions

Coastal Heritage Alliance, a Washington State non-profit corporation, agrees to perform and deliver the following services and products to the City of Gig Harbor.

#### \*Service Task #1

Conduct a survey and evaluation of the objects within the net shed and the tools located in the basement of the Skansie home. Identify those objects which do not possess sufficient historic or cultural significance to warrant the application of a preservation treatment.

(Note: Recognized and acceptable preservation treatment options include: Documentation, Stabilization, Restoration, Rehabilitation and Interpretation.)

#### \*Service Task #2

List all items identified in Task #1 and deliver a written inventory to the City of Gig Harbor. Upon authorization from the City of Gig Harbor, remove these items from the shed and relocate them into a container on site for disposal.

#### \*Service Task #3

Map the location of the objects now remaining in the net shed by means of photographs, field sketches, measurements and drawings.

#### \*Service Task #4

Name, number and provide brief descriptive text for all objects mapped in Task #3. Smaller objects will be grouped together in lots as deemed appropriate by the contractor (CHA). Each lot will be addressed as a single object.

(Note: Comprehensive and detailed cataloging, such as multiple-view photos and measurements of each individual object, is beyond the scope of this service. However, the suggested approach contained in this proposal will allow documentation efforts to resume at a future date if desired.)

#### \*Service Task #5

Recommend a historic/cultural significance rating for the objects identified in Task #4. A classification of either major significance, moderate significance or minor significance will be assigned to each object.



(Note: The purpose of rating is to assist the City of Gig Harbor in calculating monetary values of objects and in the planning of any future artifact exhibitions.

In judging an object's significance and subsequent classification, some of the following criteria will be considered:

- Is the object a "one of a kind"?
- Is the object the best or one of the best examples available?
- Is the object unique to Gig Harbor commercial fishing and boat building heritage?
- Is the object a key component to interpreting the authentic story of the Skansie Brothers Park site?
- Does the object have regional significance?
- Does the object have national significance?
- What is the object's physical condition, excellent, good, fair, or poor?

Local, regional and national preservationists and heritage tradition bearers will be consulted during the phase of service.)

**\*Service Task #6**

Bag, box, crate, palletize and label all objects as may be required per contractor's discretion.

**\*Service Task #7**

Load all objects into secure containers, trailers, trucks or other receptacles positioned on site.

**\*Service Task #8**

Compile, edit and deliver all survey and evaluation results in a final Skansie Net Shed Artifact Manuscript.

The City of Gig Harbor agrees to provide the following project support and compensation to Coastal Heritage Alliance.

1. Provide the contractor unlimited access to the net shed site throughout the duration of this agreement
2. Provide 110 and 220 AC electrical power to the site.
3. Provide both a trash container and a toxic waste container on site for the collection of debris and hazardous substances; take responsibility for their disposal.
4. Provide secure storage containers on site large enough to house all objects to be preserved. (Note: some objects are 38 ft long and of considerable weight)
5. Provide vehicles and drivers as will be required to transport all containers on and off site.
6. Provide lifting equipment and operators as will be required to remove large objects such as purse seine nets, mast, boom, machinery and palletized objects.
7. Provide landscape/lawn protective coverings in order for vehicles, lifting equipment, dollies, hand trucks and carts to safely maneuver between the shed doors and the storage containers.
8. Provide Coastal Heritage Alliance compensation in the amount of \$17,500.00 for professional preservation services, stabilization and packaging materials, documentation treatments and survey deliverables.

### Payment Schedule

The total contract fee of \$17,500.00 is to be distributed to the contractor as follows:

❖ Progress payment #1 due upon completion of Tasks #1 through #3	\$4,375.00
❖ Progress payment #2 due upon completion of Task #4 and #5	\$4,375.00
❖ Progress payment #3 due upon completion of Task #6 and #7	\$4,375.00
❖ Progress payment #4 due upon completion of Task #8	\$4,375.00
TOTAL (plus taxes as may be applicable)	\$17,500.00

### TERMS

Payments due Net 7 days from date of invoice

### Project Timeline

- ❖ Contractor will begin the delivery of service (Tasks #1 through #3, which will not interfere with park activities) on or after August 15, 2008.
- ❖ Contractor will complete service Tasks #4 through #7 between September 15 and November 15, 2008 (when Gig Harbor fishermen have returned from Alaska).
- ❖ Contractor will complete service task #8, the delivery of the final survey manuscript by December 15, 2008.
- ❖ The City of Gig Harbor will provide all progress payments and required support services as specified in this contract in a timely fashion.

This Agreement is signed below by the duly authorized representatives of the parties.

City of Gig Harbor

Coastal Heritage Alliance

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(typed or printed name)

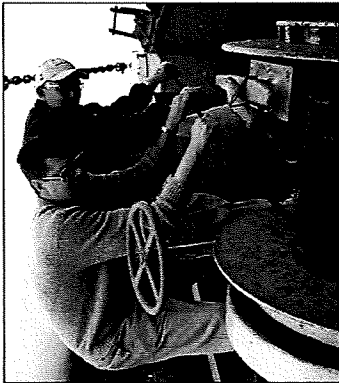
A. Michael Vlahovich  
(typed or printed name)

Title: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

Date: April 25, 2008



### VOLUNTEER WITH US IN 2006!

Coastal Heritage Alliance has a variety of volunteer opportunities for members in the coming year. Share your time, talents and resources on important CHA preservation projects. Support our efforts to:

- save historic vessels
- practice traditional skills
- educate the public
- document coastal communities

Coastal Heritage Alliance looks forward to incorporating its members into programs and activities in Washington State, Southeast Alaska and Maryland's eastern shore.

For more information contact us at [cha@coastalheritage.org](mailto:cha@coastalheritage.org).

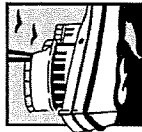
*(left) CHA board members hoisting the anchor in Southeast Alaska.*

#### Web Resources

For more information on the organizations mentioned in this issue of The Commencement, log onto the following websites.

- Chesapeake Bay Foundation: [www.cbef.org](http://www.cbef.org)
- Chesapeake Bay Maritime Museum: [www.cbmm.org](http://www.cbmm.org)
- Chesapeake Gateways Network: [www.baygateways.net](http://www.baygateways.net)
- Chesapeake Heritage Conservancy: [www.skipjackmarthalewis.org](http://www.skipjackmarthalewis.org)
- Gigg Harbor Peninsula Historical Society: [www.giphs.org](http://www.giphs.org)
- Smithsonian Institution: [www.si.edu](http://www.si.edu)

Visit us on the web at [www.coastalheritage.org](http://www.coastalheritage.org)



COASTAL HERITAGE ALLIANCE  
P.O. BOX 313  
ST. MICHAELS, MD 21663

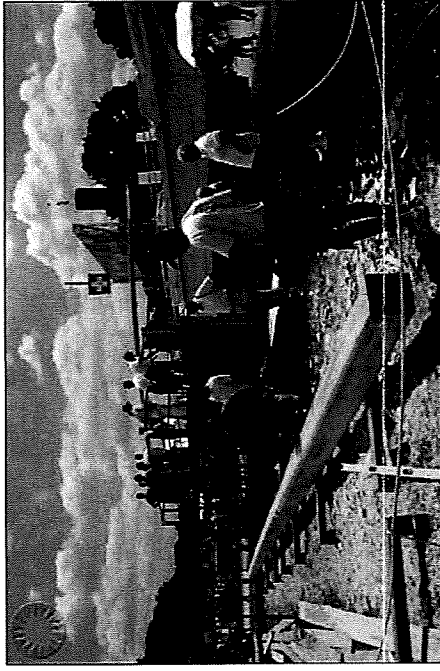


HOPPEN FAMILY  
8402 GOODMAN DR. NW  
GIG HARBOR, WA 98332

BINDING EFFORTS TO PRESERVE COMMERCIAL FISHING CULTURE

# the Commencement

First Edition



Shipwrights Mark Donahue, Karnell Hilliscan, and Bob Savage work the mast and the crowd on the National Mall. Photograph courtesy of the Smithsonian Institution.

## CHA GOES TO WASHINGTON D.C.

*Celebrating the Traditions of Mid-Atlantic Commercial Fishing Communities*

By Patrick LaChapelle

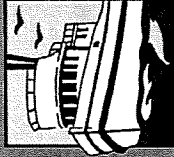
In the summer of 2004, Coastal Heritage Alliance gave visitors to the Smithsonian Folklife Festival an unforgettable experience. Given a site on the National Mall in Washington D.C., CHA had ten days to shape a loblolly pine tree into a mast and to step the mast into the skipjack Joy Parks. A devoted and inspired crew taught thousands of visitors and other Festival demonstrators the traditional uses of the kinds of tools, skills, and dedication that keep Chesapeake Bay maritime skills alive.

*Thank you!*

Thanks to the support of the Smithsonian Institution and the Chesapeake Gateways Network, Coastal Heritage Alliance assembled the following group of enthusiastic skill demonstrators and Chesapeake Bay tradition bearers: Mark Donahue, Daniel and Edvina Murphy, Richard Scovill, Karnell Hilliscan, Bob Savage, Patrick LaChapelle, Scott Todd, Don MacLeod, William B. Biss, Anne Needham, Ed Farley, Emily Vitlovitch, Teresa Vitlovitch, and Crispin Barocca.

Thank you for your participation. Without your talent and dedication this task would have been impossible to accomplish.

Consent Agenda - 4



COASTAL HERITAGE ALLIANCE

*In This Issue*

- DOCUMENTING A FISHING FAMILY
- SAVING SHENANDOAH
- OUR CHARTER MEMBERS
- VOLUNTEERING WITH CHA

## FV FRESH CATCH

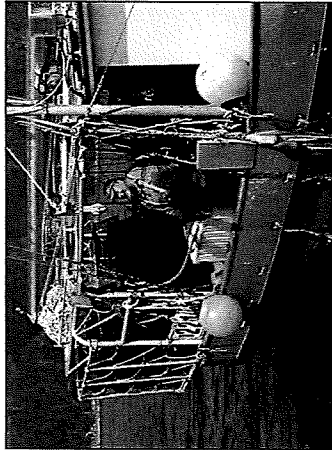
By Blaine Johnson

In the expansive realm of white-hulled fishing vessels that prowl the North Pacific Coast, John Mitchell's *Fresh Catch* stands out for its hull painted a color reminiscent of sun-bleached moss.

Aside from the palette applied to his 36 ft. trawler, John stands out in a host of rugged individualists as a man who has eluded the clutches of conformity. It feels strange to call him a hermit, because he is socially engaging when one is in his company. But hermit seems the appropriate description for a man who has spent the past twenty-five years hunkered down in a cabin on the shores of Teakern Arm, in Desolation Sound, British Columbia.

During a Coastal Heritage Alliance educational research trip aboard *Commencement* in 2004, we pulled alongside *Fresh Catch* as John pulled shrimp pots onto the aft deck. Two men processed the shrimp, packing them in brightly colored boxes that would soon be enjoyed by a Japanese consumer.

As the two vessels bobbed a few feet apart Capt. Mike Vlahovich and John renewed an acquaintance that had developed through their experiences in salmon fishing. When fishing regulations in the salmon grounds around Queen Charlotte Island became too restrictive, John adapted.



(Above) Capt. John Mitchell aboard his shrimp boat *Fresh Catch* in Canada.

He rigged up to go after spot prawns with *Fresh Catch*, and he began aqua farming from the craggy shoreline in front of his cabin; first raising oysters, then switching to scallops.

After leaving *Fresh Catch*, we cruised past John's homestead, seeing the aqua pens in front of the cabin, a mountain rising directly behind. Even on this sunny day we couldn't help feeling the isolation of a lifestyle that is so far from the hammering modern world yet so adapted to the demands of the maritime marketplace. •

what they would like to see in the restoration of the historic purse seine fishing vessel, *Shenandoah*.

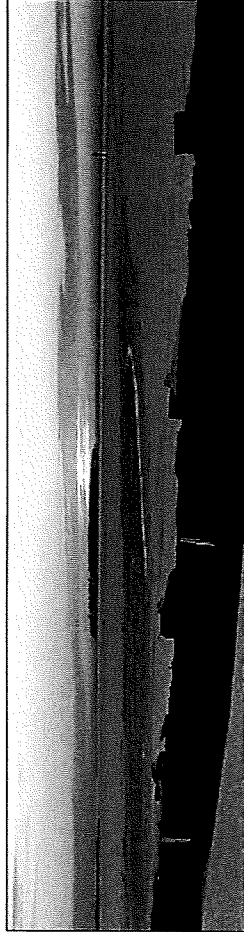
The 65 ft. commercial fishing vessel was built in 1925 at the local Skansie Shipbuilding & Transportation Company. It had been donated to the Gig Harbor Peninsula Historical Society & Museum a few years earlier, and now the Society wanted to develop a plan and program for restoring the vessel and placing it as a permanent exhibit in a central place in the new museum.

Under Mike Vlahovich's guidance, the survey group responded to four questionnaires on what messages the restored vessel should convey to museum goers — and what the restoration process itself should mean to apprentices, volunteers, local crafts people and descendants of commercial fishing families.

Drawing on the expertise of educators, commercial fishers, museum professionals and community leaders, CHA summarized the opinions that were gathered. That information now serves as a guide as the Society undertakes the task of restoring *Shenandoah* and interpreting it for museum goers in the years to come. •



(Above) *Shenandoah* in Gig Harbor, Washington. Photograph by David Allen.



## A TILGHMAN ISLAND RETREAT

By Melissa McLoud

On a cold sunny morning last February, seven hardy volunteers woke up with coffee and donuts at the So Neat Café and Bakery on Tilghman Island, just south of Knapp's Narrows on the eastern shore of Maryland. Huddled around a corner table, the motley group was welcomed and introduced by master boatbuilder Michael Vlahovich. Urban development expert David Allen had flown in from Tacoma, Washington, the night before; Ed Thiele, a retired surgeon and boat model maker from Oxford, Maryland, had driven over that morning. Chesapeake Bay Foundation educator Capt. Lonnie Moore, Capt. Dan James from Cape Cod, Massachusetts, and eastern shore resident Phillip Jones completed the group. After discussing the day ahead, they walked to Severn Marine boatyard to participate in restoration work being done on the skipjack *Stanley Norman*. Half the group caulked and the other half drove bronze drifts. As they worked they got to know the boat, its condition, and each other.

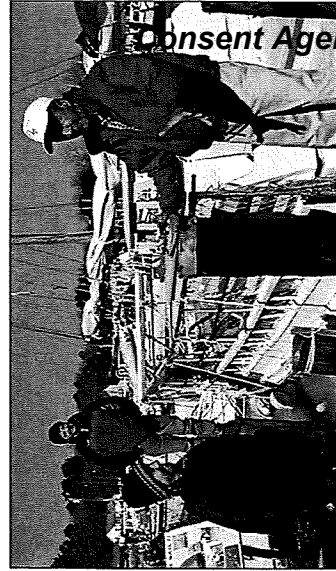


This gathering was one of the first meetings of the new non-profit organization Coastal Heritage Alliance. Called together by Mike Vlahovich, who achieved national prominence even before leading the effort to restore the historic skipjack fleet on Chesapeake Bay, the group was joined that evening by folklorists Betty Belanus and Paula Johnson of the Smithsonian Institution, historian Melissa McLoud of the Chesapeake Bay Maritime Museum, the Museum's board of apprentices (who had put in time for CHA making the mast for the skipjack *Joy Parks* at last summer's Smithsonian Folklife Festival in Washington, D.C.), filmmakers John McManus and Katrina Rill from Pacifica, California, and Paula Vlahovich, Mike's wife and board vice-president/secretary. For two days the group met and shared meals while discussing and planning the future of CHA. Field trips were taken to Dogwood Harbor, home of the nation's and to Chesapeake Bay Maritime Museum

last commercial sailing fleet — the oyster dredge boats known as skipjacks. The museum visit included a special tour of the Oystering on the Chesapeake exhibit and the skipjacks *Rosie Parks* and *Lady Katie* with oysterman Capt. Scott Todd. We also examined the progress of restoration of an early twentieth-century log-bottom crab dredging boat with Lonnie Moore and visited the museum boatshop to hear about the museum's Apprentice-for-a-Day program.

Highlights of the weekend included an illustrated talk by fourth-generation Dorchester County, Maryland, waterman Scott Todd and a film that Katrina Rill made ten years ago about Mike Vlahovich and his dream of creating a bi-coastal heritage organization. Over the course of a busy weekend it became clear that Mike's vision is now much more than a dream: Coastal Heritage Alliance has become a vigorous, working reality. •

(Above) A February sunset over the Chesapeake Bay. Photograph by Teresa Vlahovich. (Left) Phillip Jones lends a hand on the skipjack *Stanley Norman*. Photograph by Ed Thiele. (Below) Tilghman Island native, Capt. Wade Murphy shares his love of the 1886 skipjack *Rebecca Rank*.

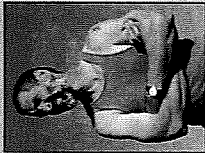






## Director's Notes

Dear Members and Friends,



"Don't worry boys, everything starts with one" were the words passed on to us by Capt. George Cuculich, aboard the seine boat/New Oregon, some 35 years ago. After months of preparation in port, over 100 hours of sea travel to the Alaska fishing grounds, and with visions of making a fortune, our first attempt to corral a school of fish produced only one 2.5 lb. pink salmon. As it hit the deck, so did the jaws of the disillusioned crew. What seemed like a doomed beginning to the greenhorns was in fact a hopeful sign to the wise and weathered mariner, for now the season had begun.

Starting with one is everything. So it is with pride, gratitude and promise that I present you with this copy of *The Commencement*, issue #1 of our organization's newsletter. We have begun!

Since its inception, Coastal Heritage Alliance has not had a moment's rest. From our first activity—participating in the Smithsonian Folklife Festival on the National Mall in Washington D.C.—CHA has provided a wide array of maritime preservation and education services to other non-profits, municipalities, and individuals nationwide. This issue recaps some of those activities and projects to better inform you, our Charter Members, and to introduce CHA to potential new members. I am most grateful to the program participants and board members who have contributed their perspectives on the following pages.

Your involvement and comments are always welcome. I can be reached at [mike@coastalheritage.org](mailto:mike@coastalheritage.org). Enjoy the read and thanks for signing on!

Sincerely,  
A. Michael Vlahovich  
Founding Director



COASTAL HERITAGE ALLIANCE  
P.O. BOX 313  
ST. MICHAELS, MD 21663  
410-745-0512

[www.coastalheritage.org](http://www.coastalheritage.org)  
[cha@coastalheritage.org](mailto:cha@coastalheritage.org)

PAULA VLAHOVICH  
Editor

LAURA VLAHOVICH  
Graphic Designer & Photographer  
(unless otherwise credited)

## HERITAGE ADHESIVE

By Capt. Mike Vlahovich

In 1993 I purchased the 65 ft. wooden seine boat *La-Touche*. The deal was contingent upon forfeiting the name, which was okay because I looked forward to giving her a new identity. I fished her for three seasons, but it had always been my intent to use the vessel for heritage education. I gave her the name *Commencement*, to represent a new direction for the old classic.

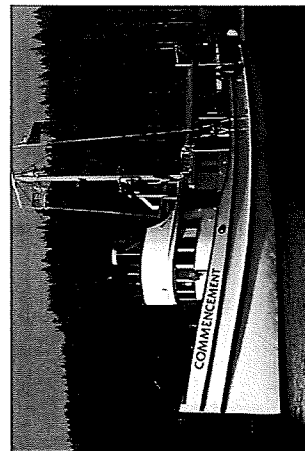
After converting the boat from a fish harvester to a vessel that could provide the public with seagoing experiences, I was proud of my accomplishments. So many compliments poured in about *Commencement* and her activities that I came to expect positive feedback from everyone who saw her. The praise of strangers I occasionally overheard while dockside at various ports always meant the most to me. Usually, they didn't even know I was listening.

Such was the case in Port Townsend, Washington, during a yearly haul-out. Once she was hanging in the travel lift, *Commencement* needed to be transported to her assigned spot at the other end of the storage lot. Travel lifts move slowly and since its path would take it past a cafe, I decided to have a latte and watch. I took a seat behind two local boat guys doing the same. Soon my vessel would be paraded in front of them – strutting her stuff! This couldn't be better. Two boat guys with a ring-side seat of my beautiful *Commencement* as she passed by, and me sitting behind them to pick up on their flattering remarks.

Although I could only see the backs of their heads, it was clear they were checking her out. Soon I'd get the fix I'd grown accustomed to – praise and admiration! But not so, not this time. Just one of them did the talking, he said "That's a strange name for a boat, *Commencement*".

I kept quiet and busied myself with my latte.

Now after all these years I find meaning and purpose in the notion that perhaps CHA can be the common-cement that binds our efforts to preserve and educate. •



(Above) Sawdust shavings accumulated on the deck of Stanley Norman are a sign of progress. Photograph by Ed Thelker.

## RESTORING STANLEY NORMAN

By Patrick Dunn

For three months last winter, long after my standard workday was over, I happily froze my fingers, shed my blood, and bruised my knuckles on an old wooden oyster dredger in a small, almost forgotten fishing community. Though that may seem odd to most people, I was determined to seize an increasingly rare opportunity to learn the traditional skills of wooden boat restoration. Few opportunities would be better than this.

Beside a changing array of Coastal Heritage Alliance shipwrights, apprentices, and volunteers, I labored on Tighman Island, Maryland, each cold night. We all fought snows and slumber on our way to restoring the skipjack *Stanley Norman*, flagship of the Chesapeake Bay Foundation.

Though *Stanley Norman*, which was originally built in 1902,

had been extensively restored in the late 70s, her hull still showed the predictable signs of age. Under the guidance of CHA founder Mike Vlahovich, our crew replaced nearly everything on the hull from the rub rails on up, and successfully returned Stanley Norman to her work of educating the public on the history and ecology of the Chesapeake Bay.

In the end, though, this project meant more than a lot of cold nights and weekends. It also meant that the project's shipwrights were able to properly pass on their traditional skills, that the apprentices were able to learn those skills through authentic means, and that all involved would from then on have a tangible tie to one of the last surviving skipjacks of Chesapeake Bay.

I have the scars to prove it. •

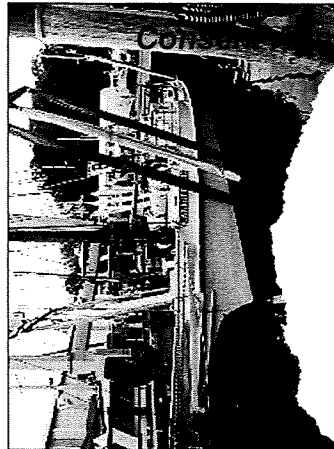
## TO THE RESCUE

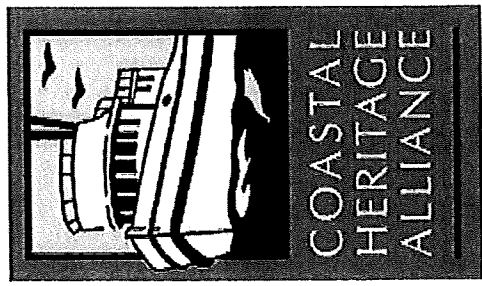
By Capt. Mike Vlahovich

During what was expected to be a routine haulout and survey of the oyster dredging skipjack *Martha Lewis*, serious structural defects in the hull were discovered. The vessel's owners, Chesapeake Heritage Conservancy of Havre de Grace, Maryland called upon CHA to provide project oversight, staff and volunteer training as well as hands-on repair services.

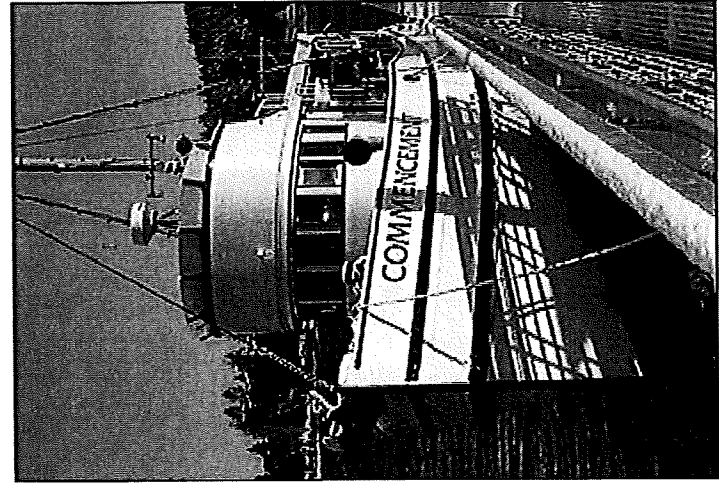
The combined efforts of these two non-profit organizations were successful in returning this historic vessel to service in the spring of 2005. When not dredging oysters, *Martha Lewis* provides heritage education charters on Chesapeake Bay. •

(Right) Martha Lewis on the travel lift at Cooragetown Yacht Basin on Maryland's Eastern Shore. Photograph by Joe Irc.





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- [Projects](#)
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*Welcome!*

*Updates*



**Apprentice Skill Training**

Click to view our apprentices hard at work restoring endangered historic vessels while maintaining traditional skills.



**Program Spotlight**

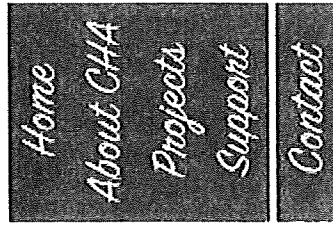
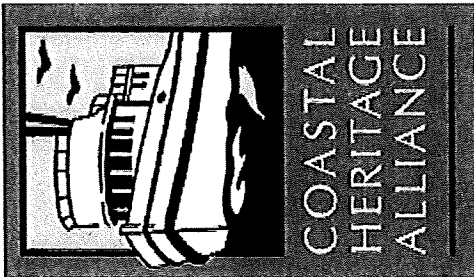
Stay current on CHA's latest activities, events and opportunities. Also, find links to our new photo albums.

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(Left) *F/V Commencement*, CHA's West Coast education and training vessel, is moored in Gig Harbor, WA. Built in 1926 by Skansie Brothers Shipbuilding and Transportation Company, *Commencement* was gifted to CHA in 2006 by the Michael and Paula Vlahovich family.

Coastal Heritage Alliance is a 501(c)(3) non-profit educational organization dedicated to preserving the vessels, skills and stories of a proud working waterfront culture.

© 2004-2008 Coastal Heritage Alliance



Mission, Vision & Case Statement | Concept | Founding Director | Board of Governors

*Mission*

CHA is a non-profit educational organization dedicated to the preservation and advancement of commercial fishing family cultural heritage as it still exists in the persons, vessels, skills and stories of a rapidly vanishing industry once prevalent among and vital to the socio-economic life of communities along the shores of North America.

*Vision*

CHA will become a pivotal and guiding advocate for the maintenance and preservation of commercial fishing family heritage through the design, development and implementation of innovative and effective research projects, documentation techniques and public programming both at sea and within the coastal communities of North America.

*Case Statement*

For centuries, the harvest of the seas has provided food, income and a distinct cultural heritage for individual fishers, their families and communities.

From First Nation peoples and European settlers, to modern day immigrants and North America's present coastal population, commercial fishing families have contributed greatly to economic growth, technological advancement, social stability and cultural diversity.

The positive socio-economic role that commercial fishing families have played along the shores of North America cannot be denied; yet, at the beginning of the 21st century, this industry and its heritage have become severely threatened to the point where its future existence is now in jeopardy.

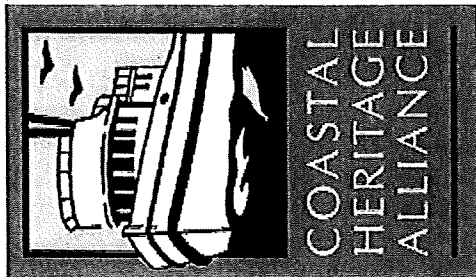
The ongoing loss of seafaring folk culture, commercial fishing livelihood, maritime skills and historically significant working watercraft has reached a crisis point on this continent and abroad. Diminishing fish stocks, environmental degradation, unchecked coastal development, inadequate resource protection, global economic recession and the onset of corporate fish farming worldwide are just some of the conditions contributing to this rapid decline.



With the elimination of the industry, fishing family cultural heritage will be lost and forgotten unless immediate steps are taken to preserve and protect what remains intact today along the remote coastal regions of North America.

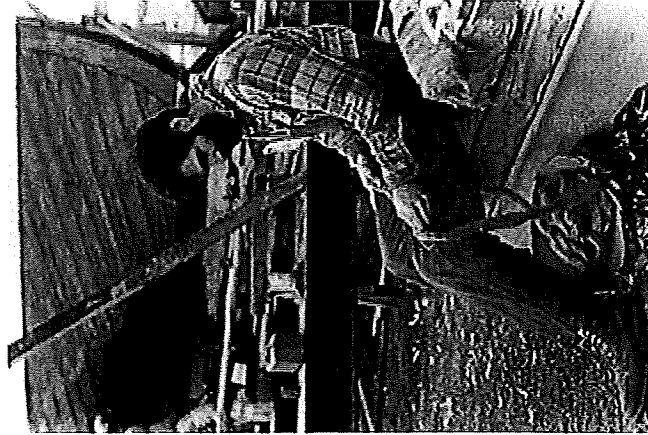
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Mission, Vision & Case Statement | Concept | Founding Director | Board of Governors

### *Founding Director*



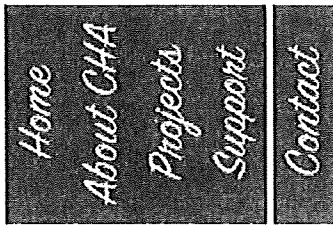
Capt. Mike Vlahovich spins oakum to caulk the seams of his grandfather's purse seine vessel *Defiance*.

Michael Vlahovich is a master builder and restorer of wooden boats. His family came to the Pacific Northwest from Croatia about a hundred years ago. An important part of his heritage was the fishing life, and as a teenager, he became involved in commercial fishing for salmon in Puget Sound and Southeast Alaska. He also fished in California and Baja and traveled by sea to New Zealand, Europe, and through the Panama Canal.

Michael became intrigued by the complex construction of the heavy work vessels he fished aboard. After a few fishing seasons, he pursued an education in the skills of the shipwright. He studied under Joe Trumbly, a well-known builder and teacher who had roots in the boatyards of Tacoma and Gig Harbor.

During his years in the trade, Michael has become known internationally as a master of wooden boat construction, restoration, and repair. In recent years he has concentrated on the passing on of skills through apprenticeship programs, technical college instruction, community boat building projects, and public maritime demonstrations. He co-founded what is now called the Working Waterfront Museum in Tacoma, Washington in 1994. This was a grassroots project designed to preserve the vessels, skills and stories along the waterfront of his hometown. He was also the originator of the Maritime Fest, an annual celebration of maritime arts, heritage, and community in Tacoma.

In 1999, Michael was presented with the Washington State Governor's Art and Heritage Award for preservation of commercial fishing heritage and folklore, and for maintaining the traditional craft of wooden boat building.

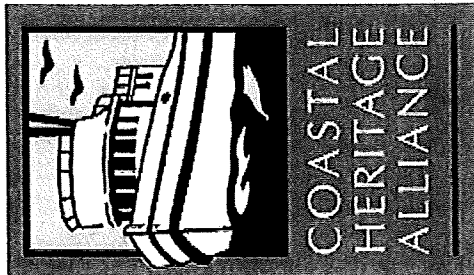


During his time as booyard manager and director of special projects for the Chesapeake Bay Maritime Museum, Michael and his apprentices played a pivotal role in the restoration of the last remaining boats in Maryland's working skipjack fleet. Skipjacks fished Chesapeake Bay for oysters while under sail, and have been designated by the National Trust for Historic Preservation as one of America's most endangered places. They are the last commercial sailing fleet in this country.

As captain of his own 65' boat, *Commencement*, which he converted from a seiner to a charter boat several years ago, he seeks to provide experiences for passengers during natural heritage cruises in Puget Sound, British Columbia, and Southeast Alaska. He believes that time and resources must be dedicated to the preservation of the occupational traditions of fishing, seafaring, and boat building. In addition, he seeks to pass on an appreciation of the natural world on the shores and in the waters of the Northwest. He emphasizes the telling and enjoyment of stories as a valuable way of keeping the past alive.

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Mission, Vision & Case Statement | Concept | Founding Director | Board of Governors

*Concept*

The daily loss of commercial fishing family cultural heritage demands immediate action. Therefore, Coastal Heritage Alliance is proceeding with thoughtful and deliberate steps to ensure quality, long lasting constructive results through its innovative approach to the maintenance and preservation of this threatened American way of life. CHA's primary focus will be to assist fishing families in passing on their heritage to new generations within their own communities and to the broader public audience.

Coastal Heritage Alliance will become an organization composed of individuals, vessels, skills and stories that are representative of commercial fishing family traditions as they still exist in various regions along the North American seaboard. A small number of culturally significant retired fishing boats will be selected, procured, restored and maintained in operational condition to facilitate the organization's mission both dock side and at sea.

Initially, CHA does not anticipate ownership of land-based headquarters; but, will seek out hailing ports around the North American coastline to station individual vessels within its historic fleet. Dockage will be secured through partnerships arranged with municipalities, museums, educational institutions and other maritime entities as may be appropriate and advantageous to CHA's public programming goals.

The vessels will be utilized as a portal or passageway to the discovery of the fisheries and fishing family cultural heritage at selected sites. While dock side, each boat will become an interpretive center accessible to the general public. Occasionally, each boat will be used as a narrative stage and learning hub where traditions and maritime skills are passed on.

On a seasonal basis, each historic vessel will embark on research and documentation voyages. Traveling to the actual fishing grounds, observing fishers at work and visiting fishing family communities will be the ongoing critical work of the Alliance. Still photography, field drawings, video, written text and audio recordings are some techniques that will be used to capture and preserve aspects of fishing family life. Goodwill and relationship building will be key to CHA's long term effectiveness within these close-knit populations.

As deemed appropriate, fishers, their families, their skills and their stories will be incorporated into program curriculum presented to the general public through a variety of media both dock side and at sea. Through this involvement in the organizations education work, fishing families will reinforce ties to their own culture each time they articulate a story or teach a skill. Their incorporation will enhance each learning experience by adding authenticity and credibility to all of CHA's public programming activities.

Once established, CHA will orchestrate and repeat this three-phase process of research, documentation and programming on a yearly cycle within each region. Partnering with other local,



regional and national organizations may be possible and beneficial to the growth and success of these efforts.

Beginning with a modest first step of one vessel, CHA will open a portal site in Puget Sound with the potential to research northward through the Inside Passage of British Columbia and South East Alaska. The intent is to create this initial site in the maritime town of Gig Harbor, WA at the Skansie Brothers Park. The primary focus would be on the heritage of commercial salmon fishing families and on the history of wooden fishing boat construction within the region. To accomplish this, CHA will secure the use of the 65' retired purse seine vessel Commencement, built in Gig Harbor by Skansie Shipbuilding Co. in 1926. The Commencement will be used for dock side interpretation, skill training, research/documentation trips and sea going programs. Opportunities do exist to partner with the town of Gig Harbor and the Gig Harbor Peninsula Historical Society at this location.

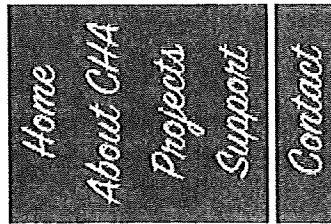
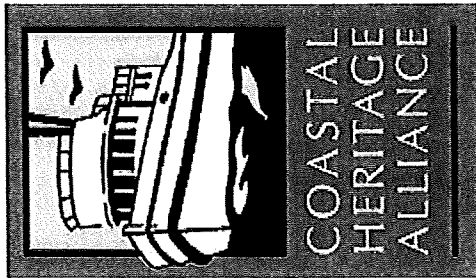
As resources allow, a second indigenous working watercraft would be acquired and a portal site established in the Chesapeake Bay in the mid-Atlantic region. Possibilities do exist for CHA to acquire a culturally significant working vessel in this area. The eastern shore town of Crisfield, Maryland would most likely become the base of operation because of its proximity to numerous commercial fishing communities.

Once the Puget Sound and Chesapeake Bay sites are operational, a coastal exchange of tradition bearers will be undertaken. The transfer of skills and stories, of issues and concerns from one region to another would provide the opportunity for a rich mix of cross-cultural awareness, appreciation, support and celebration. The exchange would be a unique and beneficial educational experience for fishing families and others interested in learning first hand about this threatened North American maritime culture.

Expansion would continue as funding allowed, with CHA establishing programs in other coastal areas such as New England, Northern California, the Gulf states, Alaska and others. Achievement of these goals will depend upon ongoing constructive affiliation and alliance-building with fishing families and the present structures which support them. It is anticipated that the establishment and favorable operation of CHA's inaugural portal site in Puget Sound will set the pace and become a model program for export to these other regions.

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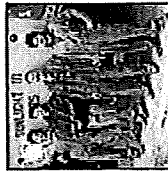
*Projects* - updated March 2008



Coastal Heritage Alliance

Activity: Education  
 Location: Tilghman, MD  
 Status: Complete

Sponsor a presentation and a fisherman's cultural exchange forum.



Coastal Heritage Alliance

Activity: Education  
 Vessel: *Sunlight III*  
 Home Port: Bristol Bay, AK  
 Status: Complete

Provide skill training to apprentices in ships caulking and vessel maintenance.



Chesapeake Bay Foundation

Activity: Restoration & Training  
 Vessel: *Stanley Norman*, skipjack  
 Home Port: Annapolis, MD  
 Status: On-going

Shape and install new masts. Train apprentices and demonstrate skills to museum visitors.

Washington State History Museum & City of Gig Harbor

Activity: Education  
 Location: Tacoma & Gig Harbor, WA



Status: On-going

Design, construct and install traveling ship's caulking exhibit to include: tool panels, interpretive text and large format photos.



Chesapeake Heritage Conservancy

Activity: Restoration  
Vessel: *Martha Lewis*, skipjack  
Home Port: Havre de Grace, MD  
Status: Completed

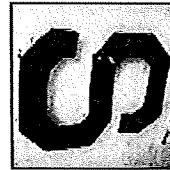
Provide project management, staff and volunteer training, and restoration services.



National Folklife Festival

Activity: Education  
Location: Richmond, VA  
Status: Completed

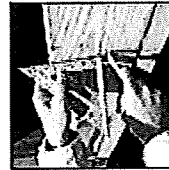
Provide a ship's caulking and mast making demonstration to the visitors at the National Folklife Festival.



Harbor History Museum

Activity: Stabilization & Documentation  
Vessel: F/V *Shenandoah*  
Location: Gig Harbor, WA  
Status: On-going

Project management of the comprehensive stabilization and documentation of a Skansie Shipyard purse seiner built in 1925.



*Saving What Matters* for Coastal Heritage Alliance

Activity: Preservation & Apprentice Training  
Vessel: Chesapeake Bay skipjack fleet  
Location: Maryland's Eastern Shore  
Status: On-going

A mobile historic vessel preservation service.

Center for Wooden Boats

Activity: Education  
Location: Seattle, WA  
Status: Completed

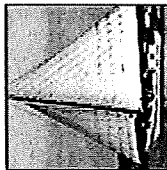
Provide a ship's caulking demonstration at CWB's 4th of July festival at South Lake Union Park.



4Culture

Activity: Consulting  
Location: Seattle, WA  
Status: Completed

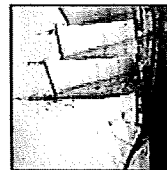
Research, develop and deliver a feasibility study and business plan for an envisioned historic vessel shipyard to be located on Lake Union in Seattle, WA.



CHESAPEAKE HERITAGE CONSERVANCY

Activity: Restoration  
Vessel: *Martha Lewis*, skipjack  
Home Port: Havre de Grace, MD  
Status: Completed

Historic fishing vessel restoration with assistance from staff and volunteers.



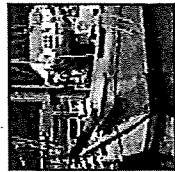
CITY OF SEATTLE PARKS AND RECREATION

Activity: Preservation  
Vessel: *Wawona*, 165 ft. sailing ship, present owners NW Seaport.  
Home Port: Seattle, WA  
Status: Current

Historic vessel condition survey and restoration site identification.

ANONYMOUS





Activity: Preservation  
Vessel: *Nellie Byrd*, skipjack  
Home Port: Tilghman Island, MD  
Status: Pending

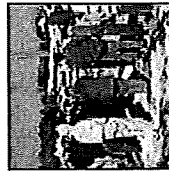
Historic vessel survey, restoration and program plan.



CHESAPEAKE BAY FOUNDATION

Activity: Preservation/Education  
Vessel: *Stanley Norman*, skipjack  
Home Port: Annapolis, MD  
Status: Completed

Historic vessel restoration project.



COASTAL HERITAGE ALLIANCE

Activity: Educational Forum/Research  
Location: Tilghman Island, MD  
Status: Completed

Local, regional, and national participants gathered in the commercial fishing community of Tilghman Island, MD to share the skills and stories of fishing families. Volunteer work was provided on the restoration of an historic working vessel.



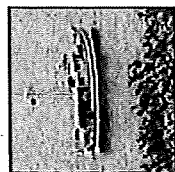
GIG HARBOR PENINSULA HISTORICAL SOCIETY

Activity: Programming & Interpretive Services/Preservation  
Vessel: *Shenandoah*, 65 ft. salmon purse seine vessel  
Home Port: Gig Harbor, WA  
Status: Completed

Complete restoration and education program plan for historic vessel slated to become the centerpiece of a new museum exhibit.

COASTAL HERITAGE ALLIANCE

Activity: Education  
Vessel: *Commencement*, rehabilitated purse seine vessel  
Home Port: Tacoma, WA



Status: Completed

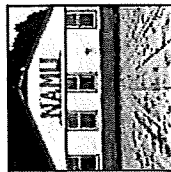
6 weeks of programming along the West Coast of British Columbia and South East Alaska.



SMITHSONIAN INSTITUTION 2004 FOLKLIFE FESTIVAL

Activity: Education  
Vessel: Joy Parks, skipjack  
Home Port: Washington, D.C.  
Status: Completed

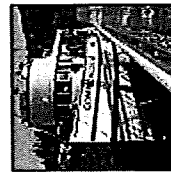
CHA provided a public skill demonstration of skipjack mast shaping and heritage interpretation of the oyster dredge fishery of the Mid-Atlantic region. Fifteen skill demonstrators and watermen were assembled to provide these educational services to nearly one million visitors.



COASTAL HERITAGE ALLIANCE

Activity: Research & Documentation  
Vessel: Commencement, rehabilitated purse seine vessel  
Home Port: Tacoma, WA  
Status: Completed

2 weeks of studying the commercial fishing grounds and coastal communities of British Columbia and Alaska.



COATAL HERITAGE ALLIANCE

Activity: Education  
Vessel: Commencement, rehabilitated purse seine vessel  
Home Port: Tacoma, WA  
Status: Completed

CHA sponsored a 6 week master/apprentice opportunity in historic vessel maintenance and repair.

SMITHSONIAN INSTITUTION

Activity: Programming & Interpretive Exhibit Services  
Status: Completed

Provided planning and consultation in regards to skill demonstrations and commercial fishing interpretation for the 2004 Folklife Festival.

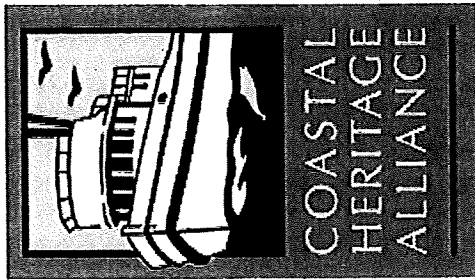


CHESAPEAKE BAY FOUNDATION

Activity: Preservation  
Vessel: *Stanley Norman*, skipjack  
Home Port: Annapolis, MD  
Status: Completed

Provided restoration plans, timeline, cost estimates, and consulting services in regards to the top-side rebuild of the organization's flagship.

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Membership | Volunteering | In-Kind | Contributions | Program Sponsorship | Major Gifts

## *Volunteer Opportunities*

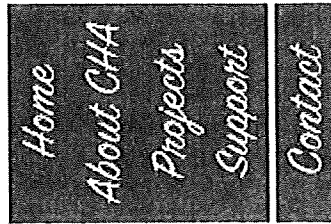


CHA has assembled volunteers to assist with historic vessel restoration projects and to interpret the skills and stories of commercial fishing families at folklife festivals and community events. Future volunteer opportunities will be offered to our members through our email updates, or posted online.

Questions regarding volunteer opportunities can be directed to [mikev@coastalheritage.org](mailto:mikev@coastalheritage.org).

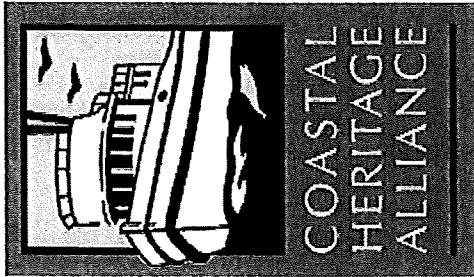
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(Left) A CHA volunteer practicing the traditional skill of ship's caulking while restoring a historic oyster dredge boat.




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Membership | Volunteering | In-Kind | Contributions | Program Sponsorship | Major Gifts

## Program Sponsorship



Exciting opportunities exist for donors to sponsor specific projects and activities within CHA's mission of research, documentation, education, and preservation.

Presently, sponsorship opportunities include the underwriting of:

- narrative stage and maritime skills demonstrations at festivals within commercial fishing family communities in Puget Sound and Chesapeake Bay. (eg. Port Townsend Wooden Boat Festival, Port Townsend, WA; 4th of July Celebration, Seattle, WA; Tilghman Days, Tilghman Island, MD; Crab Days, Crisfield, MD)

Projected cost range: \$5,000-7,500

- at-sea research and documentation of commercial fishing family cultural heritage on the salmon fishing grounds of the American San Juan Islands (*A Return to the Salmon Banks*).

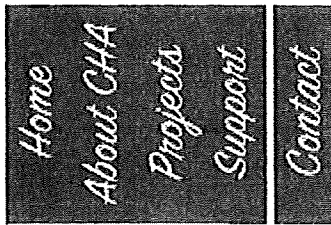
Projected cost range: \$12,500-15,000

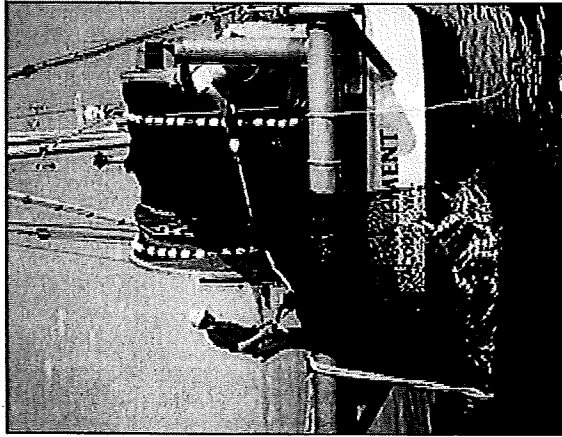
- a Master/Apprenticeship program where the skills of historic vessel restoration are passed on to the next generation.

Projected cost range: \$25,000-30,000

- the research and publication of a coffee table book documenting the stories and recipes of professional fishing boat cooks of the North Pacific.

Projected cost range: \$30,000-35,000





For more information on program sponsorship, contact [mikev@coastalheritage.org](mailto:mikev@coastalheritage.org).

*Coastal Heritage Alliance is a 501(c)(3) nonprofit organization. All contributions are tax deductible.*

(Top) Capt. Mike demonstrating and interpreting maritime skills at the Seattle Folklife Festival. (Bottom) A commercial fishing family harvesting salmon in the American San Juans.

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**Subject:** BB-16/Interchange  
Project Management – Amendment to the  
Consultant Services Contract with Stephen B.  
Lovell & Associates

**Proposed Council Action:** Authorize an  
amendment to the Consultant Services  
Contract with Stephen B. Lovell & Associates  
for the BB-16 Interchange Project  
Management in the amount-not-to-exceed  
\$54,352.50.

**Dept. Origin:** Engineering Division

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

**For Agenda of:** July 28, 2008

**Exhibits:** Consultant Services Contract

	Initial & Date
<b>Concurred by Mayor:</b>	<u>CLH 7/28/08</u>
<b>Approved by City Administrator:</b>	<u>PAK 7/18/08</u>
<b>Approved as to form by City Atty:</b>	<u>CAM 7/17/08</u>
<b>Approved by Finance Director:</b>	<u>DR 7/16/08</u>
<b>Approved by Department Head:</b>	<u>DR 7/16/08</u>

Expenditure	Amount	Appropriation	
Required \$54,352.50	Budgeted \$11,000,000	Required	\$0

**INFORMATION / BACKGROUND**

Steve Lovell and Associates (SLA) was retained by the City last year and this year to assist City staff with the on-going oversight, design and review of the design and permitting aspects associated with the Burnham/Borgen/Canterwood Interim Improvement Project. His continued assistance is required to be continued in 2008. His scope of services outlines his major work tasks to be performed including project coordination, project meetings and project management assistance.

**FISCAL CONSIDERATION**

The Franciscan Health System (FHS) will be funding these engineering services.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Amendment to the Consultant Services Contract for Stephen B. Lovell & Associates for the above mentioned continued services for the SR-16 Interchange Project for the not-to-exceed amount of Fifty Four Thousand Three Hundred Fifty-Two Dollars and Fifty Cents (\$54,352.50).

**FIRST AMENDMENT TO CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
STEPHEN B. LOVELL & ASSOCIATES**

THIS FIRST AMENDMENT is made to the AGREEMENT, dated February 11, 2008, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Stephen B. Lovell & Associates, a sole proprietorship organized under the laws of the State of Washington, located and doing business at 1614 40<sup>th</sup> Avenue, Seattle, Washington 98122 (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the final design for the SR-16 Interchange Project and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agreed to perform the services, and the parties executed an Agreement on February 11, 2008, (hereinafter the "Agreement"); and

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

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

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

**Section 2. Amendment to Compensation.** Section II(A) of the Agreement is amended to require the City to pay compensation to the Consultant for the work described in **Exhibit A** to the Amendment in the amount of Fifty-Four Thousand Three Hundred Fifty-Two Dollars and Fifty Cents (\$54,352.50). This Amendment shall not modify any other of the remaining terms and conditions in Section II, which shall be in effect and fully enforceable.

**Section 3. Amendment to Duration of Work.** Section IV of the Agreement is amended to require the tasks described in **Exhibit A** to begin 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.



**Consent Agenda - 5**

**Section 4. Effectiveness of all Remaining Terms of Agreement.** All of the remaining terms and conditions of the Agreement between the parties shall be in effect and be fully enforceable by the parties. The Agreement shall be incorporated herein as if fully set forth, and become a part of the documents constituting the contract between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

THE CITY OF GIG HARBOR

By: Stephen B. Lovell  
Its Principal

By: \_\_\_\_\_  
Mayor

Notices to be sent to:  
CONSULTANT:  
Attn: Stephen B. Lovell  
Stephen B. Lovell & Associates  
1614 40<sup>th</sup> Avenue  
Seattle, WA 98122  
(206) 329-9463

City of Gig Harbor  
Stephen Misiurak, P.E.  
City Engineer  
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 KING         )

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 \_\_\_\_\_ LLC, 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: \_\_\_\_\_

July 14, 2008

Stephen T. Misiurak, P.E.  
City Engineer  
City of Gig Harbor  
Community Development – Engineering  
3510 Grandview Street  
Gig Harbor, Washington 98335

RE: Scope of Work for Contract Extension for BB16 Interchange Project.

Dear Mr. Misiurak:

This proposal is for the continuation of my involvement with the SR16 Interchange Project as well as other projects as needed. The following scope of services (SOS) details the project work by task, and lists the deliverables and assumptions for each task. SBLA has identified the following tasks needed to be complete for the project: This contract extension is for a six-month period beginning July 1, 2008 through December 31, 2008.

Task 1 – Project Coordination @8 hours per week for 26 weeks	208 Hours
Task 2 – Project Meetings @ 2 meeting per month = 16 hours per month for six months	96 Hours
Task 3 - Project Management Assistant @ 8 hours per week for 26 weeks	208 Hours
Total Hours	512 Hours

The SOW, budget and associated schedule details the overall timeline, cost, and tasks for the completion of the process to facilitate construction of the interchange beginning in the spring of 2008.

**Task 1 – Project Coordination**

- SBLA will manage and attend bi-weekly meetings (2 hours) with the City, WSDOT and DEA staff.
- SBLA will coordinate with WSDOT on project direction.
- SBLA will manage the coordination with the City on SEPA and local permits.

**Task 2 - Project Meetings**

SBLA will attend biweekly meetings with the City and WSDOT. SBLA will take notes of all meetings and send them to the City in a timely manner. SBLA will also prepare the AGENDA for each meeting. After each meeting, SBLA will spend the remainder of the day at the City offices to be responsive to City needs.

In addition, SBLA will plan to attend at least one day per week at the City offices.

**Task 3 – Project Management**

Provide Project Management - SBLA will provide management, coordination, and direction to complete the project on time and within budget.

Monthly Project Reports and Invoices - SBLA will prepare monthly progress reports to be included with invoices.

Quality Management Program - SBLA will establish a quality management program and be responsible for review of environmental work.

Prepare a Project Schedule and Revise as necessary - SBLA will ensure that DEA maintains a current project schedule; and prepares and submits a current list of activities list to the City. The schedule will show appropriate milestones for the project. SBLA will ensure that DEA revises the schedule to reflect changes in the project milestones and timelines.

Project File Management (Administrative Record) - SBLA will develop project file management protocols and set up and maintain an electronic and paper filing system. DEA will be responsible for sending copies of all correspondence to SBLA at the City of Gig Harbor on a weekly basis.

Prepare Out of Scope Log - SBLA will prepare additional work scopes as directed by the City, if the project changes direction or additional work is necessary to complete any of the tasks in the original scope.

**Hours and Budget**

Tasks and Hours

<u>Tasks</u>	<u>Hours</u>
Task 1 – Project Coordination	208 Hours
Task 2 – Project Meetings	96 Hours

STEPHEN B. LOVELL & ASSOCIATES  
Transportation & Environmental Planning and Management

Consent Agenda - 5

Task 3 - Project Management	208 Hours
<b>Total Hours</b>	<b>512 Hours</b>
<u>Budget</u>	
512 Hours @ \$95.00 per hour =	\$48,640.00
Expenses:	
Travel – 1 trip per week to/from Gig Harbor @ \$0.445 per mile for 100 miles per week. 100 miles * 26 * \$0.585 =	\$1,521.00
Travel Time: 1.25 hours each way @ \$ 47.50 per hour * 26 *2 =	\$3,087.50
SR-16 Tolls @ \$ 4.00 per toll * 26 =	\$104.00
Other expenses as occur. Estimated at:	\$1,000.00
<b>Grand Total</b>	<b>\$54 ,352.50</b>

Sincerely,

Stephen B. Lovell & Associates (SBLA)  
Transportation & Environmental Planning Consultants  
1614 40th Avenue  
Seattle, Washington 98122  
206.329.9463  
206.276.4467 (cell)





**Subject:** Borgen Boulevard/SR-16/  
Canterwood (BB-16) Interchange Level III  
Screening Analysis  
-- Amendment to the Consultant Services  
Contract with H.W. Lochner, Inc.

**Proposed Council Action:** Authorize the  
Mayor on behalf of Council to execute an  
Amendment to the Local Agency Standard  
Consultant Agreement with H.W. Lochner, Inc.

**Dept. Origin:** Engineering Division

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

**For Agenda of:** July 28, 2008

**Exhibits:** Amendment to Local Agency  
Standard Consultant  
Agreement

Initial & Date

**Concurred by Mayor:** *CLH 7/21/08*  
**Approved by City Administrator:** *PSK 7/15/08*  
**Approved as to form by City Atty:** *Cam 7/17/08*  
**Approved by Finance Director:** *DR 7/16/08*  
**Approved by Department Head:** *DR 7/16/08*

Expenditure	Amount	Appropriation
Required \$209,920.00	Budgeted \$100,000.00	Required \$37,906.00

**INFORMATION / BACKGROUND**

On April 28, 2008, the City awarded a Consultant Services Contract to H. W. Lochner, Inc. in the amount of \$172,014.00 for the fatal flaw analysis of the two current alternative designs for the long term solution for the Burnham/Borgen/SR 16 Interchange in sufficient detail for the City and stakeholders to select the single preferred alternative.

The City requested a proposal from H.W. Lochner to perform additional work in order to consider a hybrid SPUI; an additional SR16 crossing; minor modifications of alternatives; additional WSDOT meetings; travel demand model additions for future year alternatives; and a time extension to allow for additional work.

**FISCAL CONSIDERATION**

Funding for this work is included under the Burnham/Borgen/SR-16 Interchange Corridor Improvements budget item number 10 in the Street Capital Fund in the amount of \$100,000. The excess can be funded from other budget savings or out of the ending fund balance as we get closer to year's end. With this Amendment, it brings the total amount of the contract to \$209,920.00, an increase of \$37,906.00 over the current contract amount.

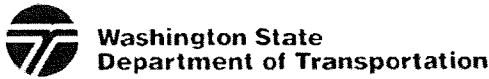
**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor on behalf of Council to execute the Amendment to the Local Agency Standard Consultant Agreement with H.W. Lochner, Inc., which increases the existing contract amount from \$172,014 to a not-to-exceed amount of two hundred nine thousand, nine hundred twenty dollars and no cents (\$209,920.00).





<b>Supplemental Agreement Number 1</b>	Consultant/Address/Telephone H. W. Lochner, Inc. 400 - 108 <sup>th</sup> Ave NE Suite 401 Bellevue, WA 98004
Agreement Number CSP-0803	
Project Number	Phone 425-454-3160
Project Title SR 16 Burnham/Borgen Interchange	New Maximum Amount Payable \$ 209,920.00
Description of Work Added work to consider hybrid SPUI off-ramp to Harbor Hill, additional SR-16 crossing, minor modifications of alternatives, added WSDOT meetings, travel demand model additions for future year alternatives, and time extension to allow for additional work. Extends Phase I completion to September 30, 2008.	

The Local Agency of City of Gig Harbor desires to supplement the agreement entered into with H. W. Lochner, Inc. and executed on July 15, 2008 and identified as Agreement No. CSP-0803. All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are describes as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

See Addendum 1 Exhibit A-1, attached.

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of work to read: N/A

III

Section V, PAYMENT, shall be amended as follows:

Maximum contract amount, including fixed fee is increased in the amount of \$37,906.00 (Exhibit E-1 attached) and adjusted to \$209,920.00 as noted above, and

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the appropriate spaces below and return to the office for final action.

By: Stephen G. Lewis, Principal

By: Charles L. Hunter, Mayor

*Robert J. Manclowski*  
\_\_\_\_\_  
Consultant Signature  
Vice President †

\_\_\_\_\_  
Approving Authority Signature

\_\_\_\_\_  
Date

**Exhibit A-1  
Scope of Work**

Project No: CSP-0803

Addendum 1: Scope of Work additions (re: Exhibit A-1, April 22, 2008)

General Approach (re: Page A4, second paragraph): Extend contract completion of Phase I to September 30, 2008.

(re: Page A4, Item 1): Add verbiage in last sentence to read "...complete the analyses of selected alternatives, considering minor modifications of the remaining alternatives, in sufficient detail..."

Section 2b (re: Page A7, Section 2.b., second bullet): Add two meetings (total of 6 in contract) with WSDOT to determine needs and begin the IJR process.

Revise Deliverables to delete "four (4)" and replace with "six (6)".

Section 3c: (re: Page A8, 3.c.): Add third bullet "Run travel model to supplement existing modeling and develop new future year volumes for alternatives."

Section 5: (re: Page A10, paragraph 1): Revise first sentence to delete "two" and read "...up to three build alternatives..."

(re: Page A10, Section 5): Add new Section 5.c. to read "This traffic analysis assumes that the existing Burnham/Borgen Interchange will be reconfigured into a SPUI, brought up to current design standards and ramp terminals improved with the northbound off-ramp extended south to accommodate an additional off-ramp to 96<sup>th</sup> (Harbor Hill), with and without an additional overcrossing of SR-16. A discussion with WSDOT, Pierce County and the CITY will be held to determine what improvements should be incorporated into the existing interchanges to meet current design standards. The future year SPUI traffic data will be analyzed to identify expected Levels Of Service (LOS) along SR-16 (mainline, merge/diverge) and at key intersections in the study area. Add to 5.d. to consider with and without an additional SR-16 overcrossing."

Change existing Section 5.c. to 5.d.

Change existing Section 5.d. to 5.e.

**Documents To Be Furnished By The Consultant**

No Change

**Exhibit E-1**  
**Consultant Fee Determination - Summary Sheet**  
**(Lump Sum, Cost Plus Fixed Fee, Cost Per Unit of Work)**

**Project:** SR-16 Burnham/Borgen Interchange (with Addendum 1)

**Direct Salary Cost (DSC):**

<u>Classification</u>	<u>Man Hours</u>		<u>Rate</u>		<u>Cost</u>
Project Principal	116	X	76.18	= \$	8,836.88
Project Manager	208	X	52.29	= \$	10,876.32
Project Engineer	216	X	57.74	= \$	12,471.84
Senior Engineer	120	X	53.85	= \$	6,462.00
Traffic Engineer	198	X	42.80	= \$	8,474.40
Design Engineer	140	X	43.44	= \$	6,081.60
Hydraulics Engineer	0	X	33.10	= \$	0.00
Engineer	0	X	30.50	= \$	0.00
Technical	84	X	28.15	= \$	2,364.60
Administration	52	X	17.00	= \$	884.00
<b>Total DSC</b>					<b>= \$ 57,964.52</b>

(Includes avg 4% escalation as of July 1, 2008)

**Overhead (OH Cost – Including Salary Additives):**

OH Rate x DSC of 170.48% X \$ 57,964.52 98,817.91

**Fixed Fee (FF):**

FF Rate x DSC of 28.50% X \$ 57,964.52 16,519.89

**Reimbursables:**

Itemized 1,500.00

**Subconsultant Costs (See Exhibit G):**

35,117.68

**Grand Total**

209,920.00

(Total increase from original contract \$37,906.00)

Prepared By: Al King

Date: July 7, 2008



**Subject:** Canterwood Blvd Improvement Project Consultant Services Contract -- Construction Survey and Professional Technical Support Services

**Proposed Council Action:** Authorize the Consultant Services Contract for David Evans and Associates, Inc. for Construction Survey and Professional Technical Support Services

**Dept. Origin:** Engineering Division  
**Prepared by:** Stephen Misiurak, P.E. *[Signature]*  
**City Engineer**  
**For Agenda of:** July 28, 2008  
**Exhibits:** Consultant Services Contract  
 Initial & Date  
**Concurred by Mayor:** *CLH 7/21/08*  
**Approved by City Administrator:** *PK 7/18/08*  
**Approved as to form by City Atty:** *AM 7/17/08*  
**Approved by Finance Director:** *DF 7/17/08*  
**Approved by Department Head:** *DF 7/17/08*

Expenditure Required	\$242,670.00	Amount Budgeted	\$11,000,000.00	Appropriation Required	0
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**INFORMATION / BACKGROUND**

This contract provides for the construction survey and professional technical support services for the Canterwood Blvd. Improvement Project.

**FISCAL CONSIDERATION**

This project was anticipated for funding in the 2008 budget cycle and funded by FHS.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Consultant Services Contract for David Evans and Associates, Inc. for the Construction Survey and Professional Technical Support Services for the Canterwood Blvd. Improvement Project in the not to exceed amount of two hundred forty two thousand six hundred seventy dollars and no cents (\$242,670.00).

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
DAVID EVANS AND ASSOCIATES, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and David Evans and Associates, Inc., a corporation organized under the laws of the State of Washington, located and doing business at 3700 Pacific Highway East, Suite 311, Tacoma, Washington 98424 (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in construction surveying and professional technical support services for Canterwood Boulevard NW Improvement 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 Services, dated July 2008, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

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

**TERMS**

**I. Description of Work**

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

**II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Two Hundred Forty Two Thousand Six Hundred Seventy Dollars and no cents (\$242,670.00) 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.

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 Services 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 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	CITY OF GIG HARBOR
Michael Clark, Office Manager	Stephen Misiurak, P.E., City Engineer
David Evans & Associates, Inc.	City of Gig Harbor
3700 Pacific Highway East, Ste. 311	3510 Grandview Street
Tacoma, WA 98424	Gig Harbor, Washington 98335
(253) 922-9780	(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 \_\_\_\_\_ 2008.

CONSULTANT  
By: *Randy A. Anderson*  
Its Principal  
*SR. ASSOCIATE*

CITY OF GIG HARBOR  
By: \_\_\_\_\_  
Mayor

Notices to be sent to:  
Michael Clark, Office Manager  
David Evans & Associates, Inc.  
3700 Pacific Highway East, Ste. 311  
Tacoma, WA 98424  
(253) 922-9780

CITY OF GIG HARBOR  
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  
\_\_\_\_\_ 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 signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
My Commission expires:\_\_\_\_\_



**Subject:** Canterwood Boulevard NW Roadway Improvements Project Project Management.

**Proposed Council Action:** Authorize the Mayor to execute a Project Management Agreement for the Canterwood Blvd. NW Improvement Project between the Washington State Department of Transportation and the City of Gig Harbor.

**Dept. Origin:** Public Works

**Prepared by:** David Stubchaer  
Public Works Director

**For Agenda of:** July 28, 2008

**Exhibits:** Project Management Agreement (GCA-5817)

	Initial & Date
<b>Concurred by Mayor:</b>	<u>CSH 7/24/08</u>
<b>Approved by City Administrator:</b>	<u>POK 7/24/08</u>
<b>Approved as to form by City Atty:</b>	_____
<b>Approved by Finance Director:</b>	_____
<b>Approved by Department Head:</b>	<u>Def 7/24/08</u>

Expenditure Required	\$456,684.96	Amount Budgeted	\$11,000,000	Appropriation Required	\$0
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**INFORMATION / BACKGROUND**

On June 30, 2008 Council authorized the Mayor to award the Canterwood Blvd Improvements Project if the winning bid came in less than \$5,6000,000. The winning bid was received from Active Construction, Inc. in the amount of \$3,788,982.65. Therefore, it is the intention of the Public Works Department to move forward with the construction of the project.

The bulk of the project is within the limited access control right of way of the State Department of Transportation (WSDOT). In order to construct the project, WSDOT has required the City to enter into two agreements between WSDOT and the City of Gig Harbor.

The Project Management Agreement (GCA-5817) is for WSDOT, at an estimated cost of \$456,684.96, to perform the project management for the Canterwood Blvd. NW Improvement Project. The amount shown is only an estimate. As per the agreement, the City will be financially liable for the actual costs incurred by WSDOT to manage the project. The agreement requires the City to assume other risks and liabilities as stated in the agreement.

The State has determined that this agreements must be executed by the City in order for the project to be constructed.

**FISCAL CONSIDERATION**

This project, including the cost of project management, will be funded primarily by developers, including St. Anthony's Hospital and Quadrant Homes, and a CERB grant.

**BOARD OR COMMITTEE RECOMMENDATION**

None

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor to execute a Project Management Agreement for the Canterwood Blvd. NW Improvement Project between the Washington State Department of Transportation and the City of Gig Harbor.



**Agreement between the  
State of Washington and the City of Gig Harbor  
GCA - 5817  
Canterwood Blvd. NW**

This Agreement is made and entered into between the STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION, hereinafter the "STATE," and the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335, hereinafter the "CITY."

WHEREAS, the CITY is planning to widen Canterwood Blvd. NW which requires the relocation of approximately 200 feet of a tributary of McCormick Creek onto STATE limited access right of way and the construction of an additional 24" culvert under SR 16 (located next to an existing 18" culvert), hereafter the "Project," and

WHEREAS, the State has determined that the construction of the Project could significantly impact the safety, maintenance and operation of SR 16, as well as downstream properties, and

WHEREAS, RCW 47.28.140 provides that whenever the State determines that any highway, road or street will be benefitted by an alteration to a portion of a highway in an urban public transportation system, either by the State or a municipal corporation, the two entities may enter into a cooperative agreement, in which the costs and expenses are reimbursed by the party whose responsibility it was to perform the work in the first instance; and

WHEREAS, the STATE has determined that it is in the STATE's best interest for the STATE to administer the construction contract for the Project in an effort to control and minimize impacts to the safety, maintenance and operation of SR 16, and

WHEREAS, the STATE requires that the contract construction administration be performed by the STATE for the Project, and

WHEREAS, the CITY is obligated for 100% of the cost to construct the Project, including the STATE's costs and expenses as reflected herein,

NOW, THEREFORE, pursuant to RCW 47.28.140 and in consideration of the terms, conditions, and performances contained herein, IT IS MUTUALLY AGREED AS FOLLOWS:

**1. PURPOSE**

- 1.1 The STATE, on behalf of the CITY, agrees to perform construction administration for the construction of the Project, as further provided herein, and pursuant to the attached exhibits. Exhibit A is the Cost Estimate and Exhibit B



outlines the Project limits, both Exhibits are attached hereto and by this reference both made a part of this Agreement.

**2. PROJECT MANAGEMENT**

- 2.1 The STATE and the CITY have designated the following Project managers to be the contacts for all communications under this Agreement. The Project managers, with written concurrence from the other Party, may delegate contact responsibilities for specific Sections and Subsections of this Agreement to other employees of the STATE and CITY.

CITY:

Steve Misiurak  
City Engineer  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 851-8145  
misiuraks@cityofgigharbor.net

STATE:

Washington State  
Department of Transportation  
Rumina Suafoa  
Tacoma Project Engineer's Office  
1614 S. Mildred St. E.  
Tacoma, WA 98465-1613  
(253) 534-3107  
suafoar@wsdot.wa.gov

**3. DESIGN REVIEW, PROJECT AD AND AWARD**

- 3.1 The CITY must submit design documents pertaining to the portions of the Project located on STATE limited access right of way for STATE's review and approval. The design and design submittals shall conform to the STATE's Design Manual and policies. The CITY shall not advertise the Project for bids before receiving written approval from the STATE. The required design documents for this Project are:

- Hydraulic report
- Geotechnical report
- Staging plans including Work Zone Traffic Control Strategy
- Preliminary wall plans
- Approved access break showing the CITY's right to access the tributary of McCormick Creek for maintenance activities
- Plans, specifications and cost estimates, including backup calculations, staking data and breakdowns for lump sum items

- 3.2 The CITY must secure the following for the Project:
- State Environmental Policy Act (SEPA) approval
  - National Environmental Policy Act (NEPA) approval, if applicable
  - All permits
  - Right of way including temporary construction easements needed to construct the Project.
- 3.3 The CITY agrees to develop the Plans, Specifications, and Estimate (PS&E) in accordance with the current State of Washington Standard Specifications for Road, Bridge and Municipal Construction and amendments thereto, current as of the date of contract advertisement (Standard Specifications).
- 3.4 The CITY must provide to the STATE fifteen (15) copies of the advertisement-ready PS&E for the Project, and one (1) copy of:
1. Backup calculations
  2. Staking data
  3. Breakdown for lump sum items
- 3.5 Within fifteen (15) working days of the receipt of the advertisement-ready PS&E, the STATE shall issue a letter of approval, conditional approval or rejection of the PS&E. In the event the PS&E is either conditionally approved or rejected the STATE's letter shall include the reasons for conditional approval or rejection. The STATE and CITY will resolve all issues to the mutual satisfaction of both Parties before the Project is advertised for bids.
- 3.6 The CITY shall advertise the Project for bids, prepare and issue any addenda and award and execute the Project construction contract. Any Project addenda must be reviewed and approved by the STATE prior to issuance.
- 3.7 Costs incurred by the STATE in the review for approval of the Project Design, PS&E, and other associated submittals as outlined herein and for coordinating efforts with the CITY prior to executing this Agreement will be reimbursed by the CITY under existing agreement JC-1229.
- 3.8 All STATE reviews and approvals provided for herein are solely for the benefit of the STATE and not for CITY or any other third party.

#### **4. CONSTRUCTION ADMINISTRATION**

- 4.1 The STATE agrees to provide construction administration of the CITY's Project contract. The executed Project contract plans and specifications (hereinafter Contract) are by this reference made a part of this Agreement as Exhibit C, as if fully attached herein. [nk: executed project contract plans and specifications are the city's contract items they went to ad with plus any adendems, and as if fully

attached will become a part of this agreement.]) The STATE's Project manager will provide all necessary services and tools to provide construction administration, including but not limited to answering contractor questions during advertisement, inspection, materials testing, and the representation necessary to administer the Contract to ensure that the Project is constructed in accordance with the Contract.

- 4.2 As much as possible, formal and informal communication between the CITY and the CITY's contractor (hereinafter Contractor) will be through the STATE's Project manager or representative. The CITY shall make the STATE's Project manager aware by copy or written account of any direct communication affecting the Contract. The STATE's Project manager shall communicate with the CITY's Project manager to keep the CITY up-to-date on all significant issues affecting the Project.
- 4.3 The CITY may also inspect the Project. All contact between the CITY's inspector(s) and the Contractor shall be only through the STATE's Project manager or representative.
- 4.4 After the CITY has executed the Contract, the STATE will provide the CITY with a monthly progress report, which will include details regarding progress of the Contract work and Contract time, updates to the Contractor's critical path schedule, estimated progress payments for payments to the Contractor, estimated costs for the STATE's engineering and administration, Contract changes (change orders), and a comparison of quantities (planned vs. actual quantities).
- 4.5 The STATE will prepare the final construction documentation in conformance with the STATE Construction Manual. The STATE will maintain one set of plans as the official "as-built" set, then make notations in red ink of all plan revisions typically recorded per standard STATE practices, as required by the STATE's Construction Manual. Once final acceptance of the Project has occurred, per Section 6 of this Agreement, the STATE will submit one reproducible set of as-built plans to the CITY within six (6) months.
- 4.6 Should, for any reason, the CITY decide not to complete the Project after construction has begun, the STATE shall determine what work must be completed to restore SR 16 and STATE limited access right of way to a condition and configuration that is safe for public use, and the CITY agrees that the STATE shall have the authority to direct the Contractor to complete SR 16 and STATE limited access right of way restoration. The CITY agrees that all costs associated with Contract termination, including engineering, completing SR 16 and STATE limited access right of way restoration, and Contractor claims, will be the sole responsibility of the CITY. If the Contractor is not available to restore SR 16 and state limited access right of way, the STATE may perform the restoration work at CITY expense. This Subsection shall survive the termination of this Agreement.

4.7 Upon completion of the Project, the STATE shall submit all Project records to the CITY for retention.

**5. PROJECT CHANGES**

5.1 Changes to the Contract will be documented by change order as defined in the Standard Specifications. The STATE shall prepare all change orders in accordance with Chapter 1-2.4C of the STATE's Construction Manual (M41-01), current edition.

5.2 Required changes are changes that involve:

- Changes in the work, work methods, working days, or quantities as necessary to satisfactorily complete the scope of the Project within the STATE's limited access right of way or jurisdiction.
- Mitigating an emergency or safety threat to the traveling public.

All other change shall be considered elective.

5.3 The STATE will approve and submit final required change orders to the CITY for execution and payment. The STATE will submit final elective change orders to the CITY for approval, execution, and payment.

5.4 The CITY authorizes the STATE to initiate, negotiate, document, approve, and direct the Contractor by either verbal or written direction in all matters regarding required changes, see Subsection 5.2.

5.5 The STATE reserves the right, when necessary and in the opinion of the STATE due to emergency or safety threat to the traveling public, to direct the Contractor to proceed with work associated with a required change prior to the CITY's execution of the change order.

5.6 The STATE will advise the CITY of any proposed required change as soon as reasonably possible and provide an opportunity, if time permits, to review the change before providing direction to the Contractor.

5.7 In the event that the CITY disagrees with the STATE's determination of a required change, the CITY may pursue resolution under Subsection 11.5, Disputes.

Subsection 5.9 applies (optional at CITY request).

5.9 The CITY authorizes the STATE to direct the Contractor to proceed with changed work without consultation with the CITY for changes resulting in cost increases less than \$500.00.

- 5.10 The STATE will advise the CITY of any proposed change as soon as reasonably possible. The STATE shall seek and receive written approval from the CITY (email is sufficient) prior to directing the Contractor to implement an elective change to the Contract.
- 5.11 The CITY may request additions to the Contract through the STATE. The STATE will direct the Contractor to implement the requested change, provided that the change complies with the Standard Specifications, Project permits, state and/or federal law and applicable rules and/or regulations and/or design policies.
- 5.12 The STATE will notify the CITY of errors or omissions in the Contract. The CITY shall provide to the STATE the necessary documents (plans, specifications, and cost estimate) that will be incorporated into a change order. If both Parties agree, the STATE may produce the necessary documents at CITY expense.
- 5.13 The STATE will develop change orders, secure signatures from the Contractor, and submit change orders with backup documentation to the CITY for execution and payment.

**6. ACCEPTANCE**

- 6.1 Prior to acceptance of the Project, the STATE and the CITY will perform a joint final inspection. The CITY agrees, upon satisfactory completion of the Project by its Contractor, and receipt of a "Notice of Physical Completion," as determined by the STATE, to deliver a letter of acceptance which shall include a release of the STATE from all future claims or demands except from those resulting from the negligent performance of the STATE's construction administration under this Agreement.
- 6.2 If a letter of acceptance is not received by the STATE within sixty (60) days following delivery of a "Notice of Physical Completion" of the Project to the CITY, the Project shall be considered accepted by the CITY and the STATE shall be released from all future claims and demands except from those resulting from the negligent performance of the STATE's construction administration under this Agreement..
- 6.3 The CITY may withhold its acceptance of the Project by submitting written notification to the STATE within sixty (60) days following "Notice of Physical Completion" of the Project. This notification shall include the reason(s) for withholding the acceptance. The Parties shall then work together to resolve the outstanding issues identified in the CITY's written notification.

**7. PAYMENT TO STATE AND PROJECT CONTRACTOR**

- 7.1 The CITY, in consideration of the faithful performance of the work to be done by the STATE as described in this Agreement, agrees to reimburse the STATE for

the actual direct salary and direct non-salary cost of the STATE's work as provided herein and estimated in Exhibit A.

- 7.2 The STATE 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 agrees to make partial payments within thirty (30) days of receipt of a STATE invoice. These payments are not to be more frequent than one (1) per month. If the CITY objects to all or any portion of any invoice, it shall notify the STATE 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.
- 7.3 A partial payment for STATE work will not constitute agreement as to the appropriateness of any item, and at the time of final invoice, the Parties will resolve any discrepancies.
- 7.4 The CITY agrees that it shall be solely responsible for all costs associated with the CITY's Project Contract with its Contractor. The CITY further agrees that the STATE shall have no liability or responsibility for payment of any or all Project Contractor or subcontractor costs, including the costs of required and or elective change orders.
- 7.5 INCREASE IN COST: In the event unforeseen conditions require an increase in costs for STATE construction administration by more than twenty-five (25) percent, the Parties must negotiate and execute an amendment to this Agreement addressing said increase.

**8. RIGHT OF ENTRY**

- 8.1 The CITY hereby grants to the STATE, its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the CITY has an interest, for the purpose of performing Contract administration under this Agreement.
- 8.2 The STATE hereby grants to the CITY, its authorized agents, contractors, subcontractors, and employees, a right of entry upon STATE limited access right of way for the purpose of inspecting and constructing the Project.

**9. CONTRACTOR CLAIMS AND THIRD PARTY DAMAGE**

- 9.1 Contractor Claims for Additional Payment
  - 9.1.1 In the event the Contractor makes a claim for additional payment associated with the Project work, the STATE will immediately notify the CITY of such a claim.

9.1.2 The STATE shall provide a written recommendation to the CITY regarding resolution of Contractor claims. The CITY agrees to defend such claims at its sole cost and expense. The STATE will cooperate with the CITY in the CITY's defense of the claim. The CITY shall reimburse any STATE costs incurred in providing such assistance.

9.2 Third Party Claims for Damages Post Project Acceptance: After Project acceptance, in the event of claims for damages or loss attributable to bodily injury, sickness, death, or injury to or destruction of property that occurs because of the Project located on state right of way, the CITY shall defend such claims and hold harmless the STATE and the STATE shall not be obligated to pay any such claim or the cost of defense. Nothing in this subsection, however, shall remove from the STATE any responsibilities defined by the current laws of the State of Washington or from any liabilities for damages caused by the STATE's own negligent acts or omissions independent of the construction administration performed under this Agreement. The provisions of this section shall survive the termination of this Agreement.

9.3 Third Party Damage to the Project

9.3.1 The CITY authorizes the STATE to direct the CITY's Contractor to repair all third party damage to the Project during construction.

9.3.2 The CITY agrees to be responsible for all costs associated with said third party damage and for collecting such costs from the third party.

9.3.3 The STATE will document the third party damage by required change order and cooperate with the CITY in identifying the third party. The STATE will also document and invoice the CITY separately for STATE's costs associated with third party damage.

## **10. OWNERSHIP, OPERATION AND MAINTENANCE**

10.1 Upon acceptance of the Project as provided in Section 6, the CITY shall be the sole owner of that portion of the Project within the CITY's right of way, and the CITY shall be solely responsible for all future operation and maintenance of the Project within the CITY's right of way at its sole cost, without expense or cost to the STATE.

10.2 Upon the CITY's acceptance of the Project as provided in Section 6, the STATE shall be the sole owner of that portion of the Project within the STATE's right of way.

10.3 Maintenance and Operation, as well as indemnification and waiver obligations, of that portion of the Project located within the STATE's right of way is set forth under separate agreement, GM-1498, which shall be executed concurrently with this Agreement.

10.4 Section 10 shall survive the termination of this Agreement.

## 11. GENERAL PROVISIONS

11.1 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

11.2 Termination: The CITY may terminate this Agreement upon written notice to the STATE. The STATE may terminate this Agreement only with the written concurrence of the CITY.

11.2.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the CITY agrees to reimburse the STATE for the actual direct and related indirect expenses and costs the STATE has incurred up to the date of termination, as well as the costs of non-cancelable obligations.

11.2.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

11.2.3 Termination prior to completing the Project within state limited access right of way will terminate the right of the CITY to complete the Project within state limited access right of way. The Contractor will be directed by the STATE to restore SR 16 and state limited access right of way in accordance with Subsection 4.6. If the Contractor is not available to restore SR 16 and state limited access right of way, the STATE may perform the restoration work at CITY expense. This Subsection shall survive the termination of this Agreement.

11.3 Independent Contractor: The STATE shall be deemed an independent contractor for all purposes, and the employees of the STATE or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the CITY.

11.4 Indemnification

11.4.1 Unless the claim falls within the provisions of Subsections 6.1, 6.2 or 9.2, the Parties shall protect, defend, indemnify, and hold harmless each other and their employees and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, the work to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; Provided that if



such claims, suits, or actions result from the concurrent negligence of (a) the STATE, its employees or authorized agents and (b) the CITY, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's, its employees' or authorized agents' own negligence.

11.4.2 The CITY agrees to accept full liability for any facilities the CITY has provided direction to the STATE to design and/or construct outside the STATE's limited access right of way and/or STATE's jurisdiction that do not meet STATE standards.

11.4.3 Subsections 11.4.1 and 11.4.2 shall survive the termination of this Agreement.

11.5 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: The STATE and the CITY shall each appoint a member to a disputes board within seven days, these two members shall select a third board member not affiliated with either Party within seven days. The three-member board shall conduct a dispute resolution hearing within two weeks of their appointment to the Board, that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

11.6 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each will be solely responsible for payment of their own attorney's fees, witness fees, and costs.

11.7 Audit Records: All Contract administration records in support of all STATE costs shall be maintained by the STATE for a period of three (3) years. The CITY shall have full access to and right to examine said records during normal business hours and as often as it deems necessary, and should the CITY require copies of any records, it agrees to pay the costs thereof. The Parties agree that the work performed herein is subject to audit by either or both Parties and/or their designated representatives and/or state and federal government.

11.8 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is executed and shall continue until the Project is accepted by the CITY pursuant to Section 6, all records and as-built plans are submitted to the CITY pursuant to Subsections 4.5 and 4.7, and all obligations for payment have been met, except for Subsections 4.6, 9.2, 11.2.3 and 11.4 and Section 10 which shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last date signed below.

**GIG HARBOR**

**STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Chuck Hunter, Mayor

By: \_\_\_\_\_

Kevin J. Dayton, Region Administrator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

**APPROVED AS TO FORM**

By: \_\_\_\_\_

CITY Attorney

By: \_\_\_\_\_

Assistant Attorney General

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**Subject:** Canterwood Boulevard NW Roadway Improvements Project Maintenance Agreement.

**Proposed Council Action:** Authorize the Mayor to execute a Maintenance Agreement for the Canterwood Blvd. NW Improvement Project between the Washington State Department of Transportation and the City of Gig Harbor.

**Dept. Origin:** Public Works

**Prepared by:** David Stubchaer  
Public Works Director

**For Agenda of:** July 28, 2008

**Exhibits:** Maintenance Agreement (GM-1498)

	Initial & Date
<b>Concurred by Mayor:</b>	<i>CH 7/24/08</i>
<b>Approved by City Administrator:</b>	<i>AK 7/24/08</i>
<b>Approved as to form by City Atty:</b>	_____
<b>Approved by Finance Director:</b>	_____
<b>Approved by Department Head:</b>	<i>DJ 7/24/08</i>

Expenditure Required	\$0	Amount Budgeted	\$11,000,000	Appropriation Required	\$0
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**INFORMATION / BACKGROUND**

On June 30, 2008 Council authorized the Mayor to award the Canterwood Blvd Improvements Project if the winning bid came in less than \$5,6000,000. The winning bid was received from Active Construction, Inc. in the amount of \$3,788,982.65. Therefore, it is the intention of the Public Works Department to move forward with the construction of the project.

The bulk of the project is within the limited access control right of way of the State Department of Transportation (WSDOT). In order to construct the project, WSDOT has required the City to enter into two agreements between WSDOT and the City of Gig Harbor.

The Maintenance Agreement (GM-1498) requires the City to inspect and maintain the project solely at the City's expense until the improvements no longer exist or are substantially altered. The agreement also requires the City to assume other risks and liabilities as stated in the agreement.

The State has determined that this agreement must be executed by the City in order for the project to be constructed.

**FISCAL CONSIDERATION**

This project will be funded primarily by developers, including St. Anthony's Hospital and Quadrant Homes, and a CERB grant.

**BOARD OR COMMITTEE RECOMMENDATION**

None

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor to execute a Maintenance Agreement for the Canterwood Blvd. NW Improvement Project between the Washington State Department of Transportation and the City of Gig Harbor.

 **DRAFT**

**GM-1498**  
**MAINTENANCE AGREEMENT**  
**Between the**  
**State of Washington and the City of Gig Harbor**  
**SR 16, BURNHAM DRIVE VICINITY**

This Agreement is made and entered into between the STATE OF WASHINGTON, Department of Transportation, hereinafter the “STATE,” and the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, Washington 98335, hereinafter the “CITY.”

WHEREAS, the CITY has a project to widen Canterwood Blvd. NW in the vicinity of the SR 16, Burnham Drive interchange, and

WHEREAS, the CITY’s project relocates a tributary of McCormick Creek approximately 200 feet onto STATE limited access right of way and adds an additional 24” culvert crossing SR 16, along side an existing 18” STATE cross-culvert, and

WHEREAS, the STATE has approved the CITY’s project plans and specifications and determined that the project will not adversely impact the STATE’s highway facility, and

WHEREAS, the CITY agrees, at CITY expense, to operate and maintain: (1) the tributary of McCormick Creek relocated onto STATE right of way and (2) the inlet to the additional 24” SR 16 culvert crossing, hereinafter called the “Facility;” and the STATE agrees to maintain the remainder of the additional 24” culvert,

NOW, THEREFORE, pursuant to RCW 47.28.140 and in consideration of the terms, conditions, covenants, and performance contained herein or attached and made part of, IT IS MUTUALLY AGREED AS FOLLOWS:

**1. CITY MAINTENANCE RESPONSIBILITY**

1.1 Upon completion of the CITY’s project, the CITY agrees to perform the maintenance and operation of the Facility as identified in Exhibit A, attached hereto and by this reference made part of this Agreement, at the CITY’s sole cost and expense, to insure the free flow of water through the STATE limited access right of way and prevent damage to the STATE’s highway.

1.2 The CITY shall maintain and operate the Facility as follows:

- Inspect the Facility at a minimum of twice per year.
- Maintain the Facility for the condition and capacity for which it was designed and constructed including but not limited to fencing, walls, fish ladder, channel and stream bed, surrounding stream bed wetland boundary including large woody debris, rock riffles, pools, and rip rap armoring.

- Use similar materials in maintaining the Facility as was constructed.
- Maintain vegetation within the stream channel and the wetland boundary as designed.
- Control weeds and vegetation within the Facility.
- Inspect and maintain the inlet to the CITY's 24 inch cross culvert under SR 16 a minimum of twice per year and during major storm activity.
- Remove graffiti on concrete structures.
- Acquire hydraulic permits when required.
- Use approved Best Management Practices when performing all maintenance activities for the protection of fish and water quality.

1.3 The CITY shall be responsible for all costs, not reimbursed by FEMA or FHWA, for the STATE to repair damage to the STATE's highway infrastructure and the Facility that the STATE determines to have been caused by storm water and / or debris passed by the CITY's box culvert under Canterwood Blvd. NW. The STATE will notify the CITY as soon as practical after damage to the STATE's highway infrastructure is known to the STATE and will document the damage before repair. [nk: The procedure for the City's dispute of the State's determination of damage would be through dispute resolution 12.1 and then, if not resolved, on to litigation.]

## **2. STATE RESPONSIBILITY**

2.1 Should the STATE determine that the CITY has failed to perform the maintenance, operation, and/or repair of the Facility in accordance with this Agreement, the STATE will notify the CITY in writing that the STATE intends to perform the noted maintenance, operation, and/or repair after the thirty (30) day notification to the CITY at CITY expense. The CITY shall have the thirty (30) day notice period to perform the maintenance, operation, and/or repair (or inform the STATE in writing that it disputes the STATE's determination).[nk: Parentheses added around new dispute statement, above.] If the CITY does not perform the noted maintenance or repair, the CITY agrees to reimburse the STATE for the actual direct and related indirect costs associated with the STATE's maintenance, operation, and/ or repair of the Facility.

2.2 The STATE shall repair damage to the STATE's highway infrastructure and the Facility, that the STATE determines to have been caused by storm water and debris passed by the CITY's box culvert under Canterwood Blvd. NW at the CITY's expense per Subsection 1.3.

## **3. PAYMENTS, ASSOCIATED COSTS, AND RECORDS**

3.1 Should the STATE find it necessary to perform the maintenance, operation, and/or repair of the Facility due to the CITY's nonperformance pursuant to Subsection 2.1, as well as for all work pursuant to Subsection 2.2, the CITY agrees to reimburse the STATE for 100% of the actual direct and related indirect costs. The CITY also agrees to waive the OH agreement, OH-00206 for STATE's work pursuant to Subsection 2.1 and pay the STATE's then current Federally approved overhead rate.

3.2 Payments shall be made within thirty (30) days after the CITY has received a detailed invoice from the STATE. Invoices are not to be more frequent than one (1) per month.



3.3 Should the CITY fail to make payment to the STATE as provided herein, the CITY authorizes and agrees that the STATE may withhold any moneys to which the CITY is entitled to receive from the Motor Vehicle Fund and expend such moneys until the CITY's obligations are paid.

**4. RIGHT OF ENTRY**

4.1 The STATE hereby grants to the CITY or its authorized agents a right of entry upon the limited access right of way for the purpose of operating, repairing and maintaining the Facility. Access to the Facility shall be only from a STATE-approved access break from Canterwood DR SW.

4.2 The CITY hereby grants to the STATE, its contractors, subcontractors, agents, and employees a right of entry upon all land which the CITY has interest, within the CITY's right of way, for the purpose of inspecting, and if necessary, operating, maintaining, and/or repairing the Facility.

**5. REMOVAL OF FACILITY**

5.1 If a future STATE project requires the relocation of the Facility, as solely determined by the STATE, the CITY agrees to bear all costs of relocating the Facility, including if necessary the acquisition of additional right of way. The CITY and STATE agree to work together on a suitable relocation design and schedule.

**6. TERM OF AGREEMENT**

6.1 This Agreement shall become effective upon the date of its execution and shall remain in effect, unless otherwise terminated pursuant to Section 7.

**7. TERMINATION**

7.1 The STATE may terminate this Agreement at any time without written consent of the CITY. The CITY may terminate this Agreement only upon written consent by the STATE.

**8. MODIFICATIONS AND NOTICE**

8.1 Any modifications to the terms and conditions of this Agreement shall be only by written amendment and signed by both Parties.

8.2 If the Facility is significantly altered in the future by either Party, either Party may request modifications to this Agreement to take into account the effects of the future alteration.

8.3 Notice to the Parties under this Agreement shall be given as follows:

CITY:  
City Engineer  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98380  
(253) 851-8145

STATE:  
Port Orchard Maintenance Facility  
Maintenance Superintendent  
8293 Spring Creek Road S.E.  
Port Orchard, WA 98367  
(360) 874-3050

**9. ASSIGNMENT**

9.1 Neither Party to this Agreement shall transfer or assign any right or obligation hereunder without the prior written consent of the other Party.

**10. SEVERABILITY**

10.1 Should any section, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected and the same shall continue in full force and effect.

**11. LEGAL RELATIONS**

11.1 The CITY shall protect, defend, indemnify, and save harmless the STATE, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from: (1) the design, construction, operation, maintenance, and/or repair of the Facilities pursuant to the provisions of this Agreement, (2) the added downstream flow capacity of the additional 24” cross culvert under SR 16, and (3) the relocation of the tributary of McCormick Creek onto STATE limited access right of way. The CITY will not be required to indemnify, defend, or save harmless the STATE if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the STATE. Where such claims, suits, or actions result from concurrent negligence of both Parties, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party’s own negligence.

11.2 The STATE shall protect, defend, indemnify, and hold harmless the CITY its officers, officials, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, judgments and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, the STATE’s ownership, operation and maintenance



of its limited access facility, STATE maintenance of the additional 24” culvert (except for culvert inlet maintenance that is the CITY’s responsibility), and STATE obligations pursuant to the provisions of this Agreement. The STATE will not be required to indemnify, defend, or save harmless the CITY if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the CITY. Where such claims, suits, or actions result from the concurrent negligence of the Parties, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party’s own negligence.

11.3 The CITY agrees that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any CITY employees or agents while performing operation and maintenance to the Facilities located on STATE-owned limited access right of way. For this purpose, the CITY, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of chapter 51.12 RCW.

11.4 The Parties recognize and agree that the operation and maintenance of the Facilities, as well as the added downstream flow capacity of the additional 24” cross culvert under SR 16, represent long-term Party liabilities; therefore, the Parties agree that indemnification Subsections 11.1 and 11.2 and waiver Subsection 11.3 shall survive the termination of this Agreement and remain in full force and effect until both Parties agree to their termination.

11.5 No officer or employee of the STATE or the CITY shall be personally liable for any act, or failure to act, in connection with this Agreement; it understood that in such matters, they are acting solely as agents of their respective agencies.

11.6 The CITY and/or STATE, their employees, contractors, subcontractors, and agents shall be deemed for all purposes as employees of the CITY and/or STATE and shall not in any manner be deemed employees of the other Party.

11.7 Any forbearance by the STATE or the CITY in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of, any such right or remedy.

## **12. DISPUTES**

12.1 In the event a dispute arises under this Agreement which cannot be resolved by the STATE and the CITY, the STATE and the CITY may elect to each appoint a member to a Dispute Board. These two members shall select a third member not affiliated with either the STATE or CITY. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution shall be a prerequisite to the filing of any litigation concerning the dispute. The STATE and the CITY shall equally share in the cost of the third Dispute Board member. The Parties shall be responsible for their own costs, including attorneys fees.

13. VENUE

13.1 In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in the superior court situated in Thurston County, Washington.

14. CLAIMS

14.1 All claims brought which arise out of, in connection with, or incident to the performances required by this Agreement or the relocation of the tributary of McCormick Creek onto STATE limited access right of way, will be forwarded to the CITY for initial processing. Any such claims believed to be caused by the concurrent or sole negligence of the STATE will be formally tendered to the General Administration/Office of Risk Management for processing pursuant to RCW 4.92.100.

15. EXECUTION

15.1 This Agreement is executed by the undersigned, not as an individual incurring personal obligation and liability, but solely for, and on behalf of the State of Washington in his or her respective capacity as a representative of the Washington State Department of Transportation.

15.2 This Agreement is executed by the undersigned, not as an individual incurring personal obligation and liability, but solely for, and on behalf of the CITY in his or her respective capacity as a representative of the CITY.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date signed last hereto below.

CITY OF GIG HARBOR

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Chuck Hunter, Mayor

By: \_\_\_\_\_  
Kevin J. Dayton, Region Administrator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Approved as to form:

By: \_\_\_\_\_  
CITY Attorney

By: \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**Subject:** Robinson, Noble & Saltbush Consultants Contract - Phase I on the Crescent Creek Conservation Grant Parcels at City Park.

**Proposed Council Action:** Authorize the Mayor on behalf of Council to approve the Consultants Agreement for a Phase I Environmental Site Assessment of the Crescent Creek Conservation Grant Parcels at City Park.

**Dept. Origin:** Administration

**Prepared by:** Lita Dawn Stanton  
Special Projects

**For Agenda of:** July 28, 2008

**Exhibits:** Consultants Contract

Initial & Date

**Concurred by Mayor:** CLH 7/22/08  
**Approved by City Administrator:** LR 7/22/08  
**Approved as to form by City Atty:** AM 7/22/08  
**Approved by Finance Director:** DR 7/22/08  
**Approved by Department Head:** \_\_\_\_\_

Expenditure		Amount		Appropriation	
Required	\$3,350	Budgeted	\$75,000	Required	-0-

**INFORMATION / BACKGROUND**

In 2007, the City applied to the Pierce County Conservation Futures Program Fund to purchase two parcels of land that border the west shore of Crescent Creek at City Park. \$140,000 was approved by the Pierce County Council to purchase the property. The City committed up to \$75,000 as match but based on the sale price, the City's match will be \$35,000. Prior to completing the acquisition, the City will initiate a Phase I environmental assessment of the 2 parcels. Environmental consultants Robinson, Noble & Saltbush will do the work (see map, scope of services and fee schedule attached).

**FISCAL CONSIDERATION**

This work is part of Objective #17 of the 2008 Park Development Budget to acquire the Crescent Creek west shore right-of-way.

**BOARD OR COMMITTEE RECOMMENDATION**

The Parks Commission supported the Conservation Futures application to acquire the properties at City Park.

**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 Crescent Creek Conservation Grant Parcels at City Park not to exceed \$3,350.00.

**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 July 17, 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 three thousand three hundred fifty dollars and no cents (\$3,350.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – 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 August 22, 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: Lita Dawn Stanton  
Special Projects  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 853-7609

#### **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**

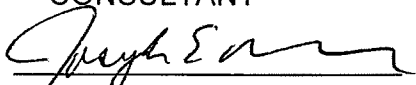
No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

#### **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: Lita Dawn Stanton  
Special Projects  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 853-7609

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

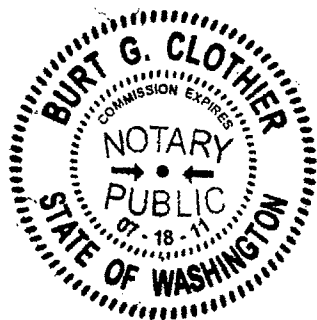
ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that JOSEPH 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 & SALT BUSH to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7-22-08



[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: \_\_\_\_\_

July 17, 2008

Lita Dawn Stanton  
City of Gig Harbor  
Grandview  
Gig Harbor, WA 98335

EXHIBIT A

Re: Scope of work and cost estimate for a Phase I Environmental Assessment for:  
Two parcels at Crescent Creek

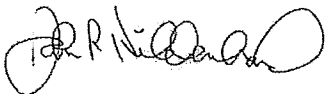
Dear Ms. Stanton:

Robinson, Noble & Saltbush would be pleased to complete a Phase I Environmental Site Assessment (Phase I) for the above-referenced site. The Phase I will be performed in accordance with the attached scope of services, which is based on standard industry practices and ASTM Standard E1527-05. Unless an item is specifically addressed in the noted scope of services and discussed herein, it should be assumed that it is not included in the scope of work for this project.

Based on our understanding of the project, we estimate the cost of our services to be \$3,350. Should you decide to pursue some or all of the work discussed above, please provide us with an authorized purchase order or your contract for our review and execution. Unless unexpected conditions are found to exist, the estimated completion time for the project is 20 working days following the return of the executed purchase order or contract, and provided submittal of site access authority documentation is received within five days of the contract execution.

We hope this scope of work and cost estimate is adequate for your needs. Please contact us if we can provide additional information or modify the scope of work to better assist you. If at any time prior to or during this project you identify a concern or problem with our work or progress that cannot be resolved by the assigned Robinson, Noble & Saltbush project manager, please contact Joseph Becker, our company President, and he will make every effort to resolve the issue to your satisfaction.

Sincerely,  
**Robinson, Noble & Saltbush**



John F. Hildenbrand  
Associate Environmental Scientist  
Environmental Services Manager

attachments



**ROBINSON**

**NOBLE** F. SALT BUSH

GROUNDWATER & ENVIRONMENTAL SCIENTISTS

1947 *60 Years* 2007

Ph: (253) 475-7711 • Fax: (253) 472-5846

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

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

<b>Service Category</b>	<b>Typical Duties</b>	<b>Fee Per Hour</b>
<b>Legal Support/Testimony</b>	Expert witness services.	150% of above rates
<b>Administrative Services</b>	Contracts, technical specifications, administrative tasks, grammatical editing.	\$58 - \$72
<b>Typist/Clerical Support</b>	Word processing, report preparation or reproduction, general office tasks	\$52 - \$72
<b>Subcontracts/Management Fee</b>	Professional Services Outside Laboratory Services Construction Subcontracts	Negotiated 15% 15%
<b>Other Costs</b>	Travel (Auto) Travel (Other) Direct Other Expenses <input type="checkbox"/>	\$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>
<b>Water Level Transducer and Data Logger</b>	First five days	\$80
	Each day thereafter	\$27.50
<b>Field Laptop Computer</b>	Per day	\$30
<b>Electric Water Level Sounder(s)</b>	<b>0 to 300 ft</b>	Flat fee per project \$30
	<b>over 300 ft</b>	Flat fee per project \$55
<b>DC Submersible Purge Pump</b>	Per pump	\$80
<b>Double-Ring Infiltrometer</b>	Per day	\$50
<b>Schonstedt Gradient Magnetometer</b>	Per day	\$75
<b>Geonics EM-61 Metal Detector</b>	Per day	\$500
<b>Downhole Gamma/Resistivity/Temperature Logging Equipment (includes Draw Works)</b>	Per day	\$1,100
<b>Downhole Analog Caliper Logging Equipment</b>	Per well	\$100
<b>Draw Works</b>	Per well	\$525
<b>Mechanical Sieve Sample Equipment</b>	Flat fee per well	\$25
<b>2-inch Gasoline-powered Centrifugal Pump (includes hoses)</b>	Per day	\$55
<b>2-inch Submersible Pump + Controller</b>	Per day	\$180
<b>Generator</b>	Per day	\$70
<b>Survey Gear (laser level &amp; rod)</b>	Per day	\$85
<b>Stream Gaging</b>	Per day	\$75
<b>GPS</b>	Per day	\$22.50
<b>Other Equipment</b>	Negotiated	Negotiated

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



**Consent Agenda - 10**

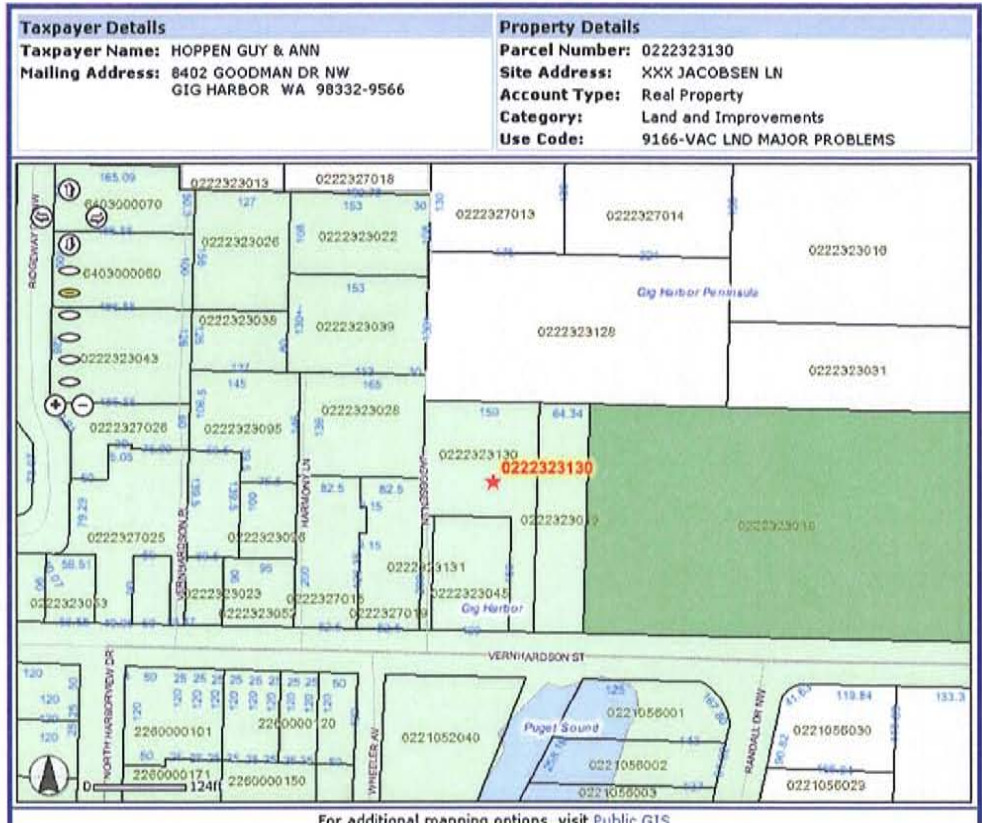
**Environmental Equipment Rental and Consumable Schedule**  
**October 1, 2007**

<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
Low-Flow Bladder Pump	Per day	\$175
Photoionization Detector	Per day	\$75
Combustible Gas Indicator	Per day	\$65
Water Quality 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
<b><u>Consumable Items:</u></b>		
Polyethylene Purge/Sampling Tubing	Each 10 feet	\$2.50
Silicone Peristaltic Pump Head Tubing	Each foot	\$4.00
Bladders for Low-Flow Bladder Pump	Each	First 3 Free - \$5.00 each additional bladder
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.

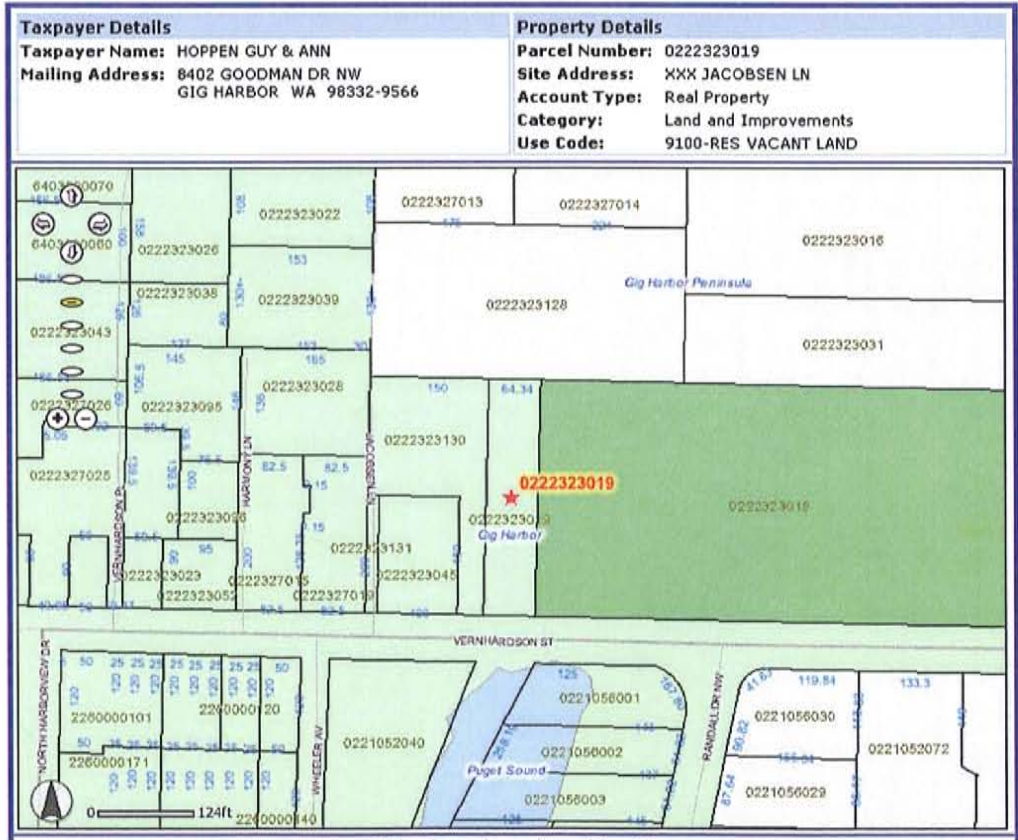
Parcel Map for 0222323130

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Parcel Map for 0222323019

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**Subject:** North Well (No. 9) and South Well (No. 10) Project Contract – Carollo Engineers

**Proposed Council Action:** Approve and execute a Consultant Services Contract with Carollo Engineers for an amount not-to-exceed two hundred ninety three thousand four hundred three dollars and zero cents (\$293,403.00).

**Dept. Origin:** Engineering Division

**Prepared by:** Jeff Langhelm, PE Senior Engineer *KL*

**For Agenda of:** July 14, 2008

**Exhibits:** Consultant Services Contract

Initial & Date

**Concurred by Mayor:** *CLH 7/2/08*  
**Approved by City Administrator:** *PK 7/2/08*  
**Approved as to form by City Atty:** *Cam 7/2/08*  
**Approved by Finance Director:** *DR 7/2/08*  
**Approved by Department Head:** *RS 7/2/08*

Expenditure Required	\$293,403.00	Amount Budgeted	\$ 600,000.00	Appropriation Required	0
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**INFORMATION / BACKGROUND**

The City's available water supply is rapidly diminishing due to increased water use and water capacity reservations within the City of Gig Harbor's water service area. Currently, if the City's only high production well were taken out of service during the peak summer season, the remainder of the supply wells would likely not be able to meet the City's water demands. To augment the available water supply for current and future customers, the development of two new supply wells is proposed.

The proposed North Well (No. 9) would be a deep, high production well located adjacent to the City's Gig Harbor North Water Tank. Prior to supplying water to the City's water system Well No. 9 requires the acquisition of water rights, permitting, design, and construction. The work proposed under this contract provides for assistance with the acquisition of new water rights based on the City's August 2000 water rights application and preliminary design specifications for the well drilling.

The proposed South Well (No. 10) would be a shallow well located in Crescent Creek Park adjacent to the existing Well No. 2. Prior to supplying water to the City's water system, Well No. 10 also requires the acquisition of water rights, permitting, design, and construction. The work proposed under this contract provides for assistance with the acquisition of water rights based on the City's May 2008 water rights application, permitting, design, and construction of the well and related facilities.

The City sought professional services to assist with the water rights acquisition, permitting, design, and construction associated with the new wells. Upon reviewing and interviewing



qualified consultants, Carollo Engineers was selected as the most qualified to perform the work. Their selection was based on their understanding of the work, past City performance, extensive specialized well design experience and availability of qualified personnel.

**FISCAL CONSIDERATION**

These two projects were identified in the 2008 Water Capital Budget with \$100,000 allocated for the North Well (No. 9) and \$500,000.00 allocated for the South Well (No. 10). Adequate funds exist in the adopted 2008 budget to perform the work. The remaining budget will be applied to the Well No. 10 drilling activities, which will be performed through the public bidding process.

**BOARD OR COMMITTEE RECOMMENDATION**

None.

**RECOMMENDATION / MOTION**

**Move to:** Approve and execute the Consultant Services Contract with Carollo Engineers in an amount not to exceed two hundred ninety three thousand four hundred three dollars and zero cents (\$293,403.00).

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
CAROLLO ENGINEERS**

---

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Carollo Engineers, a corporation organized under the laws of the State of Washington located and doing business at 1218 Third Avenue, Suite 1600, Seattle, WA 98101 (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in North Well (#9) and South Well (No. 10) Projects and desires that the Consultant perform design and engineering 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 June 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 two hundred ninety three thousand four hundred three dollars and no cents (\$293,403.00) 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 A – Scope of Work**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B – Schedule of Charges** or bill at rates in excess of the hourly rates shown in **Exhibit B – Fee Schedule**; 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 June 30, 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 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:  
Carollo Engineers  
Attn: Lara Kammereck, P.E.  
1218 Third Avenue, Suite 1600  
Seattle, WA 98101  
(206) 684-6532  
FAX (206) 903-0419

City of Gig Harbor  
ATTN: Stephen Misiurak, P.E.  
City Engineer  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 851-6170  
FAX (253) 853-7597

## **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.

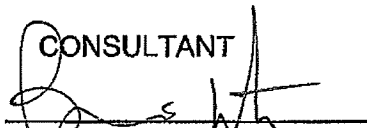
## **XVIII. Modification**

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**

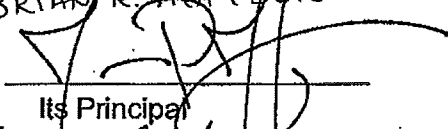
The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering 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 \_\_\_\_\_, 2008.

By:   
CONSULTANT  
Its Principal  
BRIAN R. MATSON

CITY OF GIG HARBOR

By: \_\_\_\_\_  
Mayor

By:   
Its Principal  
JAMES P. HAGSTROM

Notices to be sent to:  
CONSULTANT:  
Carollo Engineers  
ATTN: Lara Kammereck, P.E.  
1218 Third Avenue, Suite 1600  
Seattle, WA 98101  
(206) 684-6532  
FAX (206) 903-0419

City of Gig Harbor  
ATTN: Stephen Misiurak, P.E.  
City Engineer  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 851-6170  
FAX (253) 853-7597

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 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

### PURPOSE

The purpose of this Scope of Work is to provide water rights assistance and a drilling specification for Well 9 (deep well), and siting, drilling, permitting, design, and construction for Well 10 (shallow well) to augment the City of Gig Harbor's water supply. Well 9 is proposed to be located off Borgen Boulevard near the new water tank; Well 10 is proposed to be near the existing Well 2.

The ENGINEER prepared the following scope of services based on its understanding of the project objectives and goals expressed during discussions with engineering staff at project meetings and with selection committee members during the project interview. Services performed will consist of eleven (11) main tasks:

- Task 1 - Research and Preparation for Meeting with Department of Ecology
- Task 2 - Well 9 Water Rights Assistance and Drilling Specification
- Task 3 - Well 10 Water Rights Assistance and Drilling
- Task 4 - 30 Percent Design of Well 10 Facilities
- Task 5 - 60 Percent Design of Well 10 Facilities
- Task 6 - 90 Percent Design of Well 10 Facilities
- Task 7 - Final Contract Documents for the Well 10 Facilities
- Task 8 - Bid Period and Construction Services
- Task 9 - Permitting and Regulatory Approval Assistance
- Task 10 - QA/QC
- Task 11 - Project Management

### ENGINEER'S SERVICES

Tasks under this Task Order include:

#### **1. Task 1 - Research and Preparation for Meeting with Department of Ecology**

- a. Research: Conduct research for the regulatory meeting with Ecology on pending water rights in the Gig harbor area. This includes generating a "short list" of applications likely to be processed if the City pursues a cost-reimbursement project for Well 9. Team will work with the Water Rights attorney to review the City water rights current conditions in preparation for the meeting with Ecology. The team will obtain City and County GIS data, topography, City features, and water system map to develop project base maps for water supply planning efforts. Additionally, the future demand forecast and groundwater well water rights from the City's Comprehensive Water Plan will be evaluated. The supply needs for each service area will be compared to the supply sources to provide the City with future supply needs per service area.
- b. Water Right Application: In support of the Water Rights process, the Water Rights Attorney is recommending the City would be required to prepare and submit, in the course of the Ecology CR process, a new additive water right application. The team will

assist Tom Mortimer with the application, as needed. RNS will perform a preliminary assessment of the groundwater flow pattern of the subject aquifer, and thereby make a tentative determination of existing senior applications and/or surface streams that may be affected.

- c. Meeting with Ecology: Prepare and attend meeting with Ecology and provide follow-up recommendations or findings. Two meetings are assumed with the full water supply team.
- d. Technical Memorandum: A technical memorandum will be developed that summarizes the Ecology direction.

**Task 1 Deliverables:** Meeting minutes. Technical Memorandum summarizing the direction given by Ecology. Four (4) hard copies of the technical memoranda shall be provided to the City as well as electronic copies via email or on a CD.

## 2. Task 2 - Well 9 Water Rights Assistance and Drilling Specification

- a. Task 2 will be primarily performed by sub-consultant Robinson, Noble, and Saltbush (RNS) (see attached Appendix A for detailed RNS scope). The Engineer will assist RNS in performing Task 2.
- b. Engineer will provide and assist the City in property site acquisition, including site surveying and site inspections as requested by the City. The site survey will be performed by Prizm Surveying Inc. (Prizm) (see Appendix B for detailed Prizm scope) and will include both topographic features and property boundary.
- c. Engineer will develop drilling technical specifications suitable for a single public bidding for one pilot well that will be expandable into a suitable production well of approximately 1000 gpm capacity.

**Task 2 Deliverables:** Meeting minutes. Drilling specification. Drilling Report. Four (4) hard copies of the drilling specification shall be provided to the City as well as electronic copies via email or on a CD.

## 3. Task 3 – Well 10 Water Rights Assistance and Drilling

- a. Task 3 will be primarily performed by sub-consultant RNS. The Engineer will assist RNS in performing Task 3.
- b. Engineer will develop detailed technical specifications suitable for a single public bidding for the drilling and development of a shallow ground water well to approximately 125 feet in depth, with a 16" diameter exterior bore hole and with a 12" diameter finished water production casing and screen.
- c. Engineer will provide a site survey, including topographic and property boundary information. The site survey will be performed by Prizm and will include both topographic features and property boundary.

- d. Engineer will assist the City in providing precise placement for the drilling activity for the development of shallow well Number 10 on existing city property with a capacity of approximately 480-gpm.
- e. Attend team meeting to present results of findings.

**Task 3 Deliverables:** Meeting minutes. Site survey. Drilling specification. Drilling Report. Four (4) hard copies of each deliverable shall be provided to the City as well as electronic copies via email or on a CD.

**4. Task 4 – 30 Percent Design of Well 10 Facilities**

- a. Task 4 will be performed concurrent with Task 3.
- b. Based upon information provided from driller, Engineer will prepare a Drilling Report indicating approximate ground water encountered, quantity, and quality. Quality samples will be taken by the Engineer and the driller and submitted to appropriate testing laboratories. Primary MCL's and secondary MCL's will be tested at this time.
- c. Engineer will provide preliminary drawings, technical specifications table of contents, and a preliminary cost estimate as the 30 percent Deliverable based on the installation of suitable well pump and construction of a CMU building approximately 20 feet by 20 feet, containing basic electrical and instrumentation control and including bulk sodium hypochlorite injection system. After confirmation that the well produces the desired quality and quantity of water, the 30 percent Deliverable will be finalized.
- d. Attend 30 percent review meeting.

**Task 4 Deliverables:** Meeting minutes. Drilling report. 30 percent Deliverable, including preliminary drawings, specification table of contents, and preliminary cost estimate. Four (4) hard copies of the each deliverable shall be provided to the City as well as electronic copies via email or on a CD.

**5. Task 5 – 60 Percent Design of Well 10 Facilities**

- a. Engineer will provide 60 percent level drawings, draft technical specifications, and a 60 percent cost estimate as the 60 percent Deliverable.
- b. Engineer will incorporate review comments from the internal QA/QC and the City's 30 Percent Deliverable review.
- c. Attend 60 percent review meeting.

**Task 5 Deliverables:** Meeting minutes. 60 percent Deliverable, including preliminary drawings, draft specifications, and 60 percent level cost estimate. Four (4) hard copies of the each deliverable shall be provided to the City as well as electronic copies via email or on a CD.

**6. Task 6 – 90 Percent Design of Well 10 Facilities**

- a. Engineer will provide 90 percent level drawings, draft technical specifications, and a 90 percent level cost estimate as the 90 percent Deliverable.



- b. Engineer will incorporate review comments from the internal QA/QC, internal constructability review, and the City's 60 Percent Deliverable review.
- c. Attend 90 percent review meeting.

**Task 6 Deliverables:** Meeting minutes. 90 percent Deliverable, including preliminary drawings, draft specifications, and 90 percent level cost estimate. Four (4) hard copies of the each deliverable shall be provided to the City as well as electronic copies via email or on a CD.

#### 7. Task 7 – Final Contract Documents for Well 10 Facilities

- a. Engineer will develop detailed technical specifications suitable for a single public bidding for the drilling and development of a shallow ground water well to approximately 125 feet in depth, with a 16" diameter exterior bore hole and with a 12" diameter finished water production casing and screen.
- b. Engineer will prepare plans and specifications suitable for permitting and a single public bidding including installation of suitable well pump and construction of a CMU building approximately 20 feet by 20 feet, containing basic electrical and instrumentation control and including bulk sodium hypochlorite injection system.
- c. Engineer will incorporate review comments from the internal QA/QC and the City's 90 Percent Deliverable review.

**Task 7 Deliverables:** Meeting minutes. Final Contract Documents Deliverable, including final contract drawings, final contract specifications, and Final Engineer's Estimate. Four (4) hard copies of the each deliverable shall be provided to the City as well as electronic copies, including AutoCAD files, via email or on a CD.

#### 8. Task 8 – Bid Period and Construction Services

- a. Engineer will assist City with public bidding of the well pump installation and pump station plans, including attendance at the pre-bid meeting. Engineer will provide the following services: review and provide written recommendations on prospective bidder pre-qualification information and requests for approval, prepare responses to questions from prospective bidders pertaining to technical information in the contract documents, and prepare a written evaluation of bids received on the project.
- b. Engineer will assist the City by answering two (2) addenda during the bidding process and by attending the bid opening for the project.
- c. Engineer will assist the City in construction management services. Construction Services include office services only, and do not include the following: resident inspection by the Engineer and facility start-up services. The Engineer will provide an operation manual, submittal review (assumes 10 submittals), request for information (RFI) reviews (assumes 10 RFI responses), and miscellaneous construction services.
- d. Engineer will assist with project close out.

**Task 8 Deliverables:** Two (2) Operation Manuals, Pre-bid meeting minutes, two (2) addenda, review of ten (10) submittals, response to ten (10) requests for information.

**9. Task 9 – Permitting and Regulatory Approval Assistance**

- a. Engineer will prepare and submit a project report with plans and construction documents to DOH for review. Upon review, the Engineer will incorporate comments and finalize well development and design. No meetings with DOH are included in this task.
- b. The proposed Well 10 site is on the City Park Property. It is assumed the City will coordinate regulatory approval for the project, such as SEPA, land use and building permits. The Engineer will assist the City in obtaining regulatory approval by the City by providing site plans and figures for permit applications. The SEPA, permit applications, or attendance at permit meetings are not included in this task.
- c. Upon completion of the facility, the Engineer will submit a construction report for DOH that acknowledges the source has been properly developed and is ready for operation. No meetings with DOH are included in this task.

**Task 9 Deliverables:** Two (2) Project reports with plans and construction document to DOH, site plans and figures necessary for permits and one (1) final construction report for DOH.

**10. Task 10 – Quality Assurance/Quality Control (QA/QC)**

- a. Engineer will coordinate QA/QC reviews with internal senior level staff for each deliverable. Engineer will prepare a summary of the review comments to include with each deliverable.
- b. A constructability review will be performed by the Engineer as part of the 60 percent Deliverable

**Task 10 Deliverables:** Summary of review comments for the 30 percent, 60 percent, 90 percent, and constructability review.

**11. Task 11 - Project Management**

- a. Provide project management services for the duration of the project, including: coordination with sub-consultants, coordinate and attend monthly project meetings with the City and the contractor(s), and monthly invoicing. Also included are three meetings with the City Council and/or other agencies for coordination and discussion purposes.

**Task 11 Deliverables:** Twelve (12) Monthly Project Reports, Two (2) Project Management Plans, and minutes from progress meetings.



## APPENDIX A

### ROBINSON, NOBLE & SALT BUSH, INC. PROPOSED SCOPE OF WORK

#### **Task 1: Research and Preparation for Meeting with Department of Ecology**

Robinson, Noble & Saltbush (RNS) has provided and will continue to provide hydrogeologic consulting services to support the City of Gig Harbor (City) in processing a water rights application for Well 10. These activities are described in Task 1 of Exhibit A and include the following subtasks:

- a) Research
- b) Water Right Application
- c) Meeting with Ecology
- d) Technical Memorandum

Our activities and deliverables will be dictated by the team efforts described in Task 1, but may also require additional technical work in response to Department of Ecology (Ecology) requests. In this later case, we cannot estimate the additional time or effort that might be required, so the City should be aware that the budget or scope for this task may need to be changed accordingly.

#### **Task 2: Well 9 Pre-Construction Planning**

Robinson, Noble & Saltbush hydrogeologists will provide professional services for the Well 9 pre-construction planning as detailed in the following tasks.

##### **Subtask A: Water Rights Support & Mitigation Planning**

Gig Harbor has already submitted a primary/additive application for Well 9 (G2-29937A) that is proposed for development near the new North Tank site. Based on current knowledge and on comments from Ecology staff, the permitting of Well 9 could involve substantial mitigation issues and conditions, as well as the processing of four to ten senior pending applications.

This task will cover the various discussions and analyses necessary to support the processing of the water rights application. It is difficult to anticipate the level of investigation or effort that will be required because the cost-reimbursement contract has not been finalized and we do not yet know the full scope of the work Ecology and its consultant will perform. For the purposes of this scope, we have assumed the following activities will be accomplished:

- a) Provide assistance to the City and its attorney in completing the cost-reimbursement contracting. (This may be completed as part of Phase 1).
- b) Meet with Ecology and its consultant to discuss preliminary technical issues
- c) Expand or revise our previous regional hydrogeologic investigations to include or address technical issues
- d) Define any mitigation issues considered likely to result from the proposed Well 9 production
- e) Assist the City and the team in devising a suitable mitigation plan
- f) Provide technical findings and a proposed mitigation plan to Ecology's consultant

- g) Assist with final negotiations after Ecology's consultant has completed their draft report of examination

Two meetings with Ecology or its consultant are assumed above. Two additional meetings with the team and City to discuss technical items are also anticipated. (More meetings are possible but are not included in our cost/time estimate.) Note that the time and cost commitments for the above items have been estimated based on our current knowledge, but these may need to be revised if one or more items require more time than anticipated.

### **Subtask B: Project Design & Contracting**

RNS will assist the City in arranging a site inspection by Tacoma-Pierce County Health Department (as part of DOH's source approval program and Ecology's well drilling standards). This inspection will require an application and fee, to be paid by the City, and will be completed prior to bringing a well rig to the site.

RNS will prepare well drilling technical specifications for inclusion into the City's standard general contract conditions. It is probable that the drilling process will be accomplished in two stages: test well drilling and conversion of a successful test well into a production well. The technical specifications will be subdivided into Schedules A and B. The City staff will supplement the RNS specifications, as necessary, for any site-related construction activities that may be required for access, surface restoration, etc. The complete document will be provided and advertised by the City according to its bidding procedures.

RNS and Carollo will assist the City as needed with Contractor selection. It is presumed that the City will contract directly with the drilling company. After a contractor has been selected, RNS will organize and lead a pre-construction meeting at the site between the Team, City representatives, and the Contractor to discuss site logistics and work schedules. RNS will also review Contractor invoices before they are submitted to the City for payment.

### **Subtask C: Project Management**

This project management task includes up to two meetings with the City or team to discuss project progress or strategies. We will be responsive to the City and the team in coordinating our activities within established schedules.

## **Task 3: Construction of Well 10**

Robinson, Noble & Saltbush hydrogeologists will provide professional services for the drilling of Well 10 as detailed in the following tasks.

### **Subtask A: Project Design & Contracting**

RNS will assist the City in arranging a site inspection by Tacoma-Pierce County Health Department (as part of DOH's source approval program and Ecology's well drilling standards). This inspection will require an application and fee, to be paid by the City, and will be completed prior to bringing a well rig to the site.

RNS will prepare well drilling technical specifications for inclusion into the City's standard general contract conditions. The City staff will supplement the RNS specifications, as necessary, for any site-related construction activities that may be required for access, surface

restoration, etc. The complete document will be provided and advertised by the City according to its bidding procedures.

RNS and Carollo will assist the City as needed with Contractor selection. It is presumed that the City will contract directly with the drilling company. After a contractor has been selected, RNS will organize and lead a pre-construction meeting at the site between the Team, City representatives, and the Contractor to discuss site logistics and work schedules. RNS will also review Contractor invoices before they are submitted to the City for payment.

### **Subtask B: Well Drilling & Completion**

The construction of the production well assumes the following conditions:

- a) City will perform a utility locate prior to drilling.
- b) City will provide necessary site preparation.
- c) The disposal of drilling spoils will be accomplished on-site.
- d) City will assist as necessary with arrangements for water disposal during test pumping, including possible direction of water into the storm water system. The selected Contractor will provide and install all necessary equipment or piping to escort discharged water to the designated area.
- e) The well will be constructed using cable-tool drilling methods.

A qualified RNS hydrogeologist will observe well construction and keep the City informed of Contractor progress. RNS staff will be on-site during all critical phases of construction, completion, and development, including collecting aquifer samples during drilling for sieve analysis in our soils laboratory and conducting a natural gamma log (or other geophysical testing as deemed necessary) of the well to assist with determination of well screen placement.

RNS will provide final well screen design to the City for approval before the Contractor is allowed to purchase completion materials. RNS staff will observe the installation and exposure of the well screen assembly by the Contractor and direct the development of the screen prior to determining when development is complete.

### **Subtask C: Well Testing and Analysis**

Robinson & Noble personnel will provide and install automatic water level sensing and recording devices in the pumping well and available observation wells (Well 2) prior to conducting a 24-hour well test. The automatic data will be backed up by manual measurements at appropriate intervals. At the end of the 24-hour test, we will collect any required water quality samples for transport to a certified laboratory.

We will complete an analysis of the test to determine well performance and aquifer parameters. The analysis will provide for conclusions and recommendations for pump sizing and well operations. We will also include an initial assessment of wellfield performance and suggest how the City can operate the two wells in concert in order to optimize production.

We currently anticipate the need to provide an analysis defining the potential for saltwater intrusion at this location. While we currently regard the likelihood of saltwater intrusion as low, such an investigation is typical for new well construction along the shoreline. This step will be accomplished using an analytical modeling approach and the findings included in our project report.

**Subtask D: Prepare Technical Report**

Robinson & Noble's report will include all information and analysis requested in Ecology's preliminary permit, including a location map, lithologic and geophysical logs, well completion details, and graphic analysis of the well test along with all test data. Our report will provide calculations for aquifer parameters and our recommendation for long-term sustainable yield and a preliminary delineation of the wellhead protection area.

This report will also include hydrogeologic cross sections and analysis of potential impacts to surface water and other water rights in the area. Because of the proposed location within 200 feet of the shoreline, the well will also be evaluated for its potential to induce sea water into the aquifer.

**Subtask E: Project Management**

Robinson, Noble & Saltbush will coordinate field and project activities with the project team and the City as needed during the implementation of the task items. Two meetings with City staff are included to provide and discuss interim findings of the project, if needed.

**Task 4: Additional Support**

During the completion of Tasks 4 through 11 of Exhibit A, RNS may be requested to provide additional support services. While the potential amount of works is likely to be small, we anticipate the following:

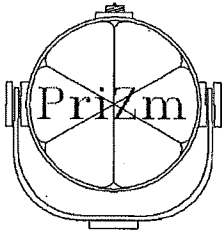
- a) Participation in up to two additional meetings with City staff not otherwise addressed above
- b) Assistance in providing technical documentation for Permitting and Regulatory Assistance (i.e. Task 9), if needed

Additional work requests could require time or effort beyond that assumed here, in which case we will request a change order to address a specific scope of activities.

Water rights support beyond that described above or Well 9 construction activities are not included in this task.

APPENDIX B  
PRIZM SURVEYING, INC.  
SCOPE OF WORK

Consent Agenda - 11



**PRIZM**  
SURVEYING INC.

P.O. Box 110700  
Tacoma, WA 98411  
Office: 253-404-0983  
Fax: 253-404-0984  
[ablaisdell@prizmsurveying.com](mailto:ablaisdell@prizmsurveying.com)  
[gletzring@prizmsurveying.com](mailto:gletzring@prizmsurveying.com)  
[gzurn@prizmsurveying.com](mailto:gzurn@prizmsurveying.com)

Lara Kammereck  
Carollo Engineers  
1218 Third Avenue  
Seattle, WA 98101

June 13, 2008

Re: Topographic Survey of Crescent Creek Park for future Water Facility Improvements

Prizm Surveying is pleased to provide this proposal for the Topographic survey of a portion of Crescent Creek Park, Parcel Number 022232-3018. It is understood that the final survey will be used for design of a new well site within the park.

**Task 1 -Topographic Survey:**

1. Perform office research of the Pierce County's and the Department of Natural Resources Records for relevant monumentation, Right of way and Control surveys in the vicinity of the subject parcel. Perform a random field traverse survey locating relevant monumentation and vertical control as recoverable through a diligent search. Vertical and horizontal project datum will be per Pierce County published data.
2. Run a control traverse in the vicinity of the site measuring horizontal monument positions and vertical benchmarks. A site benchmark will be set for future use.
3. Perform a topographic survey of the site and the adjacent roadway of Vernhardson Street. This will include: access ways, parking, edges of impervious surfaces, surface evidence of utilities, the location of the existing well facility, the water line of Crescent creek at the time of the survey, the centerline of the creek, park features and use areas, fences, walls, buildings and shelters, ground shots as necessary, top and toe of slopes and significant trees 6" and larger. The offsite road (Vernhardson) data will include channelization out to opposite side of the right of way. Prizm will contract with a utility locate service to identify any underground utilities in these areas prior to the survey, so that they may also be located and shown on the final map. Temporary benchmarks will be set at convenient locations for your future reference. **Note: The services of an underground utility locate company will be obtained to complete the mapping of the existing utilities. This service is considered a reimbursable expense and is not included in the estimated cost for Task 1 listed below. The cost for this service is estimated to be around \$350.**
4. Reduce field notes, plot data obtained from the fieldwork, and prepare an AutoCAD drawing of the above for design use at a convenient scale showing the data collected along with 1-foot interval contours. The final Map will be reviewed, checked and certified by a Professional Land Surveyor, and provided in electronic format and paper copies.

The estimated cost for Task 1 services is \$6,915

**Task 2 - Boundary Survey:**

1. Using public records from research completed under Task 1, determine the legal description of the subject parcel. Perform additional field work as necessary to measure the positions of the controlling monumentation for the legal description of the subject property. Using the measured data and record data obtained from research, calculate the parcel boundary.

Carollo Engineering  
Crescent Creek  
June 13, 2008

- 2. Field stake the property corners and line stakes as necessary setting either an iron bar with plastic cap at each angle point along the exterior of the parcel boundary or a wooden stake at designated intervals along property lines, as requested by the client.
- 3. Reduce field notes, plot data obtained from the fieldwork, and prepare an 18" X 24" Record of Survey map to be filed with the Pierce County Auditor, per state regulations. The current recording fee for this instrument is determined by Pierce County and is considered a reimbursable expense.

The estimated cost for Task 2 services is \$1,890

<u>Task Summary</u>	<u>Estimated Cost</u>
<u>Task 1 - Topographic Survey</u>	\$6,915
<u>Task 2 - Boundary Survey</u>	\$1,890
<b>TOTAL COST ESTIMATE:</b>	<b><u>\$8,805</u></b>

Prizm Surveying will send you an invoice each month for work in progress. In the event your invoices are not paid according to the terms of the contract, your project will not receive priority scheduling until payment arrangements are made. Prizm Surveying will require that; at the completion of the above described tasks, full payment for the task shall be collected prior to proceeding.

Specifically excluded from our described scope of services are geotechnical studies, wetland or traffic studies, landscaping, historical/preservation consulting or any engineering services. The Client will pay all costs of title reports, filing fees, and other governmental fees and assessments not specifically identified within this proposal.

All survey related data, field and/or office, as it relates to this project, is the property of Prizm Surveying, Inc and is not to be used, in whole or in part, for any project without written authorization of Prizm Surveying, Inc.

The costs outlined in this proposal are an estimate only, based on the circumstances presented by you and perceived by Prizm Surveying at the time of contract preparation. They are not a guarantee that the costs will not exceed the amount of this estimate. Prizm Surveying is hereby authorized to exceed the estimated costs by up to ten percent without prior written notice to the Client if circumstances encountered in the performance of Prizm's obligations result in an overrun.

The total estimated cost could vary depending on the time required to complete this project due to governmental or construction delay or if the project is put on hold at your request. If the completion of the services outlined in this document exceeds 4 months, this contract is subject to modification in accordance with Prizm's most current hourly rates.

Prizm Surveying will perform additional services beyond the basic scope of work upon your request. Revisions to work completed or in progress, requested by you or your agents through no fault of Prizm Surveying, will be considered extra services for which additional compensation is due. If you require a written proposal and authorization for additional services, this should be addressed at the time the work is requested.



Carollo Engineering  
Crescent Creek  
June 13, 2008

For additional information not referenced above, please refer to our general conditions located on the last page of this proposal or call our office. Any part of this proposal is negotiable pending your particular survey requirements. Should you desire additional services beyond the scope above our regular hourly rates are as follows:

- 2-man survey crew \$135 an hour
- Licensed Land Surveyor \$100 an hour
- Survey Technician \$85 an hour

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

Sincerely,



Desirae Harpel, L.S.I.T.  
Project Surveyor



Carollo Engineering  
Crescent Creek  
June 13, 2008

## WORK AUTHORIZATION

DATE: June 13, 2008 JOB NAME/NUMBER: Crescent Creek

COMPANY OR OWNER (CLIENT): Carollo Engineers

PERSON AUTHORIZING WORK: Lara Kammereck

ADDRESS: 1218 Third Avenue, Suite 1600 Seattle, WA 98101

Phone: (206) 684-6532 Email ADDRESS: LKammereck@carollo.com

SITE ADDRESS: Crescent Creek Park - Gig Harbor, WA

WORK DESCRIPTION: Tasks 1 - 2

ESTIMATED PRICE OR HOURLY RATE: \$8,805.00

TERMS: 15 DAYS FROM DATE OF INVOICE

By signing this agreement, Client acknowledges that he/she/they has/have read and understand the terms and conditions set forth and that he/she/they is/are authorized to bind his/her/their principals hereto.

CLIENT ACCEPTANCE SIGNATURE:

\_\_\_\_\_  
Date

PRIZM SURVEYING, INC. ACCEPTANCE SIGNATURE:

\_\_\_\_\_  
Date

**EXHIBIT B – SCHEDULE OF CHARGES**

**EXHIBIT B- SCHEDULE OF CHARGES  
CITY OF GIG HARBOR – SHALLOW AND NORTH DEEP WELL DESIGN AND CONSTRUCTION PROJECT**

TASK DESCRIPTION	Carollo Engineers		Robinson & Noble, Inc.		Prizm		TOTALS							
	Carollo Total Labor Hours	Total Carollo Labor Costs	Total R&N Hours	Total Robinson & Noble Inc. Labor Costs	Total Prizm Hours	Total Prizm Labor Costs	Total Labor Hours	Total Sub Labor	Carollo Other Direct Costs	Robinson & Noble, Inc. Other Direct Costs	Prizm Other Direct Costs	Sub-Consultant Mark up at 10%	Carollo PECE Costs	TOTAL COSTS
Hourly Billing Rates													\$0.00	
Task Descriptions														
Task 1: Research and Preparation for Meeting with Department of Ecology	83	\$13,521	131	\$ 15,848.00	0	\$ -	214	\$15,848	\$600	\$80	\$0	\$1,585	\$747	\$32,381
Task 2: Well 9 Water Rights Assistance and Drilling Specification	12	\$2,020	322	\$ 38,163.00	32	\$ 3,710	366	\$41,873	\$300	\$291	\$693	\$4,187	\$108	\$49,472
Task 3: Well 10 Water Rights Assistance and Drilling	20	\$3,780	273	\$ 28,250.00	32	\$ 3,710	325	\$31,960	\$300	\$1,435	\$692	\$3,196	\$180	\$41,543
Task 4: 30 Percent Design of Well 10 Facilities	92	\$12,692	57	\$ 6,806.00	0	\$ -	149	\$6,806	\$1,200	\$0	\$0	\$681	\$828	\$22,207
Task 5: 60 Percent Design of Well 10 Facilities	200	\$24,492	0	\$ -	0	\$ -	200	\$0	\$1,200	\$0	\$0	\$0	\$1,800	\$27,492
Task 6: 90 Percent Design of Well 10 Facilities	208	\$27,140	0	\$ -	0	\$ -	208	\$0	\$1,200	\$0	\$0	\$0	\$1,872	\$30,212
Task 7: Final Contract Documents for the Well 10 Facilities	138	\$19,572	0	\$ -	0	\$ -	138	\$0	\$1,200	\$0	\$0	\$0	\$1,242	\$22,014
Task 8: Bid Period and Construction Services	168	\$23,684	0	\$ -	0	\$ -	168	\$0	\$1,200	\$0	\$0	\$0	\$1,512	\$26,396
Task 9: Permitting and Regulatory Approval Assistance	46	\$5,946	0	\$ -	0	\$ -	46	\$0	\$0	\$0	\$0	\$0	\$414	\$6,360
Task 10: QA/QC	74	\$13,544	0	\$ -	0	\$ -	74	\$0	\$1,000	\$0	\$0	\$0	\$666	\$15,470
Task 11: Project Management	96	\$17,352	0	\$ -	0	\$ -	96	\$0	\$1,800	\$100	\$0	\$0	\$864	\$20,016
<b>SUBTOTAL PERSONNEL HOURS AND TOTAL FEE</b>	<b>1,137</b>	<b>\$ 163,743</b>	<b>783</b>	<b>\$ 89,067</b>	<b>64</b>	<b>\$ -</b>	<b>1,984</b>	<b>\$ 96,487</b>	<b>\$ 10,000</b>	<b>\$ 1,906</b>	<b>\$ 1,385</b>	<b>\$ 9,649</b>	<b>\$ 10,233</b>	<b>\$ 293,758</b>
<b>SUBTOTAL PERSONNEL FEE</b>		<b>\$163,743</b>		<b>\$89,067</b>		<b>\$7,420</b>		<b>\$96,487</b>						

**CAROLLO ENGINEERS, PC  
FEE SCHEDULE**

**As of March 1, 2008**

	<u>Hourly Rate</u>
<b>Engineers/Scientists</b>	
Assistant Professional	\$125.00
Professional	158.00
Project Professional	189.00
Lead Project Professional	205.00
Senior Professional	226.00
Senior Process Specialist	315.00
<b>Technicians</b>	
Technicians	95.00
Senior Technicians	137.00
<b>Support Staff</b>	
Document Processing / Clerical	81.00
<b>Project Equipment Communication Expense (PECE) Per DL Hour</b>	<b>9.00</b>
<b>Other Direct Expenses</b>	
Travel and Subsistence	at cost
Mileage	.585/mile*
Subconsultant	cost + 10%
Other Direct Cost	cost + 10%
Expert Witness	Rate x 2.0

\* Updated June 2008 as a result of the IRS increases in the standard mileage rates for the final six months of 2008.

This fee schedule is subject to annual revisions due to labor adjustments.



**Subject:** Point Fosdick Drive Sidewalk Project - Consultant Services Contract with HDR Engineering, Inc.

**Proposed Council Action:** Authorize the Mayor on behalf of Council to execute the Consultant Services Contract with HDR Engineering, Inc.

**Dept. Origin:** Public Works/Engineering

**Prepared by:** Marcos R. McGraw  
Project Engineer *MRM*

**For Agenda of:** July 28, 2008

**Exhibits:** Local Agency Consultant Agreement, scope & fee schedule

Initial & Date

**Concurred by Mayor:**

*CUH 7/21/08*

**Approved by City Administrator:**

*PK 7/18/08*

**Approved as to form by City Atty:**

*CAM 7/17/08*

**Approved by Finance Director:**

*CB 7/17/08*

**Approved by Department Head:**

*D&S 7/17/08*

Expenditure		Amount		Appropriation	
Required	\$20,907.00	Budgeted	\$ .00	Required	\$ 20,907.00

**INFORMATION / BACKGROUND**

This contract with HDR Engineering, Inc. provides for the design of a City sidewalk along the west side of Point Fosdick Drive NW from Briarwood Lane north to the end of the existing sidewalk just east of the library. The new sidewalk to be designed under this consultant services contract will finish the intended alignment of the existing sidewalk. Completion of the sidewalk from its current terminus at Harbor Country Glen to Briarwood Lane will provide pedestrian continuity and a safe route for pedestrian traffic. This project will provide low-impact development (LID) components including pervious concrete and low-impact landscaping to match the rural character of this section of Point Fosdick Drive.

The City intends to apply for a grant for the design and construction costs to widen this section of Point Fosdick Drive. Design and construction of this sidewalk is one phase of this widening. Upon approval of the grant application the City can be reimbursed for these design costs, but only if the Local Agency Standard Consultant Agreement is used (enclosed).

**FISCAL CONSIDERATION**

The cost of this Consultant Services Contract will be paid from the Street Capital Budget.

**BOARD OR COMMITTEE RECOMMENDATION**

This project was previously presented before the Public Works Committee on April 17, 2008. The Committee endorsed this project.

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor on behalf of Council to execute the Consultant Services Contract with HDR Engineering, Inc. in the not-to-exceed amount of twenty thousand nine hundred seven dollars and no cents (\$20,907.00).

<b>Local Agency Standard Consultant Agreement</b>	Consultant/Address/Telephone HDR ENGINEERING INC. 4717 97TH STREET NW GIG HARBOR, WA. 98332	
<input checked="" type="checkbox"/> Architectural/Engineering Agreement <input type="checkbox"/> Personal Services Agreement		
Agreement Number CSP-0819	Project Title And Work Description POINT FOSDICK DRIVE NW PEDESTRIAN IMPROVEMENT PROJECT	
Federal Aid Number N/A		
Agreement Type (Choose one) <input checked="" type="checkbox"/> <b>Lump Sum</b> Lump Sum Amount \$ <u>20,907.00</u>	DBE Participation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No _____ %	
<input type="checkbox"/> <b>Cost Plus Fixed Fee</b> Overhead Progress Payment Rate _____ % Overhead Cost Method <input type="checkbox"/> Actual Cost <input type="checkbox"/> Actual Cost Not To Exceed _____ % <input type="checkbox"/> Fixed Rate _____ % Fixed Fee \$ _____	Federal ID Number or Social Security Number 47-0680568	
<input type="checkbox"/> <b>Specific Rates Of Pay</b> <input type="checkbox"/> Negotiated Hourly Rate <input type="checkbox"/> Provisional Hourly Rate	Do you require a 1099 for IRS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Completion Date December 31, 2008
<input type="checkbox"/> <b>Cost Per Unit of Work</b>	Total Amount Authorized \$ <u>20,907.00</u> Management Reserve Fund \$ _____ Maximum Amount Payable \$ <u>20,907.00</u>	

**Index of Exhibits**

- Exhibit "A" - Scope of Work
- Exhibit "B" - DBE Participation
- Exhibit "C" - Electronic Exchange of Engineering and Other Data
- Exhibit "D" - Payment (by Agreement Type)
- Exhibit "E" - Consultant Fee Determination
- Exhibit "F" - Breakdown of Overhead Cost
- Exhibit "G" - Subcontract Work/Fee Determination
- Exhibit "H" - Title VI Assurances
- Exhibit "I" - Payment Upon Termination of Agreement
- Exhibit "J" - Alleged Consultant Design Error Procedures
- Exhibit "K" - Consultant Claim Procedures
- Exhibit "L" - Liability Insurance Increase
- Exhibit "M" - Certification Documents

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between the Local Agency of \_\_\_\_\_ City of Gig Harbor \_\_\_\_\_, Washington, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

**WITNESSETH THAT:**

**WHEREAS**, the AGENCY desires to accomplish the above referenced project, and

**WHEREAS**, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

**WHEREAS**, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

**NOW THEREFORE**, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

### **I General Description of Work**

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor, and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

### **II Scope of Work**

The Scope of Work and projected level of effort required for this PROJECT is detailed in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT.

### **III General Requirements**

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY and/or such Federal, State, Community, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

The CONSULTANT, and each SUBCONSULTANT, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT, and each SUBCONSULTANT, shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT that may result in the termination of this AGREEMENT.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made a part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY'S "DBE Program Participation Plan". The mandatory DBE participation goals of the AGREEMENT are those established by the WSDOT'S Highway and Local Programs Project Development Engineer in consultation with the AGENCY.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.



#### **IV Time for Beginning and Completion**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY.

All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

#### **V Payment Provisions**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "D" attached hereto, and by reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the State Auditor, WSDOT External Audit Office and/or at the request of the AGENCY'S PROJECT Manager.

#### **VI Sub-Contracting**

The AGENCY permits sub-contracts for those items of work as shown in Exhibit "G" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "G."

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this AGREEMENT.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for sub-contracting shall create, between the AGENCY and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum amount of their sub-contracted agreement that is established by the WSDOT Highways and Local Programs Project Development Engineer in consultation with the AGENCY.

#### **VII Employment**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a

third party as a consequence of any act or omission on the part of the CONSULTANT'S employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, or the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

### **VIII Nondiscrimination**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973  
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et seq.)

Civil Rights Restoration Act of 1987  
(Public Law 100-259)

American with Disabilities Act of 1990  
(42 USC Chapter 126 Section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "H" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "H" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

### **IX Termination of Agreement**

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit "I" for the type of AGREEMENT used.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT'S failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the PROJECT, or dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. This subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY'S concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

### **X Changes of Work**

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

### **XI Disputes**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided, however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J", and disputes concerning claims will be conducted under the procedures found in Exhibit "K".

### **XII Venue, Applicable Law, and Personal Jurisdiction**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in the county in which the AGENCY is located.

### **XIII Legal Relations**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT'S negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY or the STATE against and hold harmless the AGENCY or the STATE from claims, demands or suits based solely upon the conduct of the AGENCY or the STATE, their agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT'S agents or employees, and (b) the AGENCY or the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the AGENCY or the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT'S negligence or the negligence of the CONSULTANT'S agents or employees.

The CONSULTANT'S relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the PROJECT. Subject to the processing of a new sole source, or an acceptable supplemental agreement, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

#### **Insurance Coverage**

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the AGENCY will be named on all policies as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by the AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the AGENCY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT'S professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater, unless modified by Exhibit "L". In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### **XIV Extra Work**

- A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment", hereafter referred to as "CLAIM", under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### **XV Endorsement of Plans**

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

#### **XVI Federal and State Review**

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

#### **XVII Certification of the Consultant and the Agency**

Attached hereto as Exhibit "M-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "M-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "M-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "M-4" Certificate of Current Cost or Pricing Data. Exhibit "M-3" is required only in AGREEMENTS over \$100,000 and Exhibit "M-4" is required only in AGREEMENTS over \$500,000.


#### **XVIII Complete Agreement**

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

#### **XIX Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

By  \_\_\_\_\_ By \_\_\_\_\_

Consultant HDR ENGINEERING Agency \_\_\_\_\_

**Exhibit A-1  
Scope of Work**

Project No. CSP-0819

The proposed project includes the design of the approximately 1000 LF of pervious concrete pedestrian sidewalk from the intersection of Briarwood lane and Point Fosdick Drive to the existing sidewalk terminus at the Peninsula Library located across from Harbor County Drive. The project will also include the design of a bio-filtration swale and low impact development plantings for the treatment of storm water runoff from the adjacent road.

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**Documents To Be Furnished By The Consultant**

For a complete description of the work proposed to be performed by HDR. Please see the attached scope of work for the Point Fosdick Drive Pedestrian Improvement Project, provided by HDR Engineering to The City of Gig Harbor.

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**Exhibit A-2**  
**Scope of Work**  
**(Task Order Agreement)**

Each item of work under this AGREEMENT will be provided by task assignment. Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the AGENCY. The AGENCY is not obligated to assign any specific number of tasks to the CONSULTANT, and the AGENCY'S and CONSULTANT'S obligations hereunder are limited to tasks assigned in writing. Task assignments may include but are not limited to, the following types of work:

- A. Task 1 Sidewalk Design (Plans, Specifications and Estimate)
- B. 1.1 Topographic Survey
- C. 1.2 Detailed Construction Drawings
- D. 1.3 Specifications
- E. 1.4 Estimate (Opinion of Probable Cost)
- F. 1.5 Public Information and Outreach

Task assignments made by the AGENCY shall be issued in writing by a Formal Task Assignment Document similar in format to page 2 of this exhibit.

An assignment shall become effective when a formal Task Assignment Document is signed by the CONSULTANT and the AGENCY, except that emergency actions requiring a 24-hour or less response can be handled by an oral authorization. Such oral authorization shall be followed up with a Formal Task Assignment Document within four working days, and any billing rates agreed to orally (for individuals, subconsultants, or organizations whose rates were not previously established in the AGREEMENT) shall be provisional and subject to final negotiation and acceptance by the AGENCY.





**Enterprise Utilization Certification**

**(Optional - Use only when DBE Consultant is Utilized)**

To be eligible for award of this contract the bidder must fill out and submit, as part of its bid proposal, the following Disadvantaged Business Enterprise Utilization Certification relating to Disadvantaged Business Enterprise (DBE) requirements. The Contracting Agency shall consider as non-responsive and shall reject any bid proposal that does not contain a DBE Certification which properly demonstrates that the bidder will meet the DBE participation requirements in one of the manners provided for in the proposed contract. If the bidder is relying on the good faith effort method to meet the DBE assigned contract goal, documentation in addition to the certificate must be submitted with the bid proposal as support for such efforts. The successful bidder's DBE Certification shall be deemed a part of the resulting contract. Information on certified firms is available from OMWBE, telephone 360-753-9693.

certifies that the Disadvantaged Business Enterprise

Name of Bidder \_\_\_\_\_

(DBE) Firms listed below have been contacted regarding participation on this project. If this bidder is successful on this project and is awarded the contract, it shall assure that subcontracts or supply agreements are executed with those firms where an "Amount to be Applied Towards Goal" is listed. (If necessary, use additional sheet.)

Name of DBE Certificate Number	Project Role * (Prime, Joint Venture, Subcontractor, Manufacturer, Regular Dealer, Service Provider)	Description of Work	Amount to be Applied Towards Goal **
1. NA		No DBE is proposed as part of the project	0.00
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Disadvantaged Business Enterprise Subcontracting Goal: \_\_\_\_\_ DBE Total \$ \_\_\_\_\_ 0.00 \*\*\*

- \* Regular Dealer status must be approved prior to bid submittal by the Office of Equal Opportunity, Wash. State Dept. of Transportation, on each contract.
- \*\* See the section "Counting DBE Participation Toward Meeting the Goal" in the Contract Document.
- \*\*\* The Contracting Agency will utilize this amount to determine whether or not the bidder has met the goal. In the event of an arithmetic difference between this total and the sum of the individual amounts listed above, then the sum of the amounts listed shall prevail and the total will be revised accordingly.

## **Exhibit C**

### **Electronic Exchange of Engineering and Other Data**

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

- I. Surveying, Roadway Design & Plans Preparation Section
  - A. Survey Data
  - B. Roadway Design Files
  - C. Computer Aided Drafting Files
  - D. Specify the Agency's Right to Review Product with the Consultant
  - E. Specify the Electronic Deliverables to Be Provided to the Agency
  - F. Specify What Agency Furnished Services and Information Is to Be Provided
- II. Any Other Electronic Files to Be Provided
- III. Methods to Electronically Exchange Data
  - A. Agency Software Suite
  - B. Electronic Messaging System
  - C. File Transfers Format

## **Exhibit D-1 Payment (Lump Sum)**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31. The estimate in support of the lump sum amount is attached hereto as Exhibit "D" and by this reference made part of this AGREEMENT.

- A. Lump Sum Agreement: Payment for all consulting services for this PROJECT shall be on the basis of a lump sum amount as shown in the heading of this AGREEMENT.
  - 1. Management Reserve Fund: The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."
  - 2. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
  
- B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of costs on a monthly basis. To provide a means of verifying the billed salary costs for the CONSULTANT'S employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rate, and present duties of those employees performing work on the PROJECT at the time of the interview.
  
- C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

- D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

**Exhibit E-1  
Consultant Fee Determination - Summary Sheet  
(Lump Sum, Cost Plus Fixed Fee, Cost Per Unit of Work)**

**Project:** POINT FOSDICK DRIVE NW

**Direct Salary Cost (DSC):**

<u>Classification</u>	<u>Man Hours</u>		<u>Rate</u>	=	=	<u>Cost</u>
<u>Project Principal</u>	<u>2.0</u>	X	<u>62.00</u>		\$	<u>124.00</u>
<u>SR PM/QAQC Review</u>	<u>12.0</u>	X	<u>52.75</u>			<u>633.00</u>
<u>Project Manager</u>	<u>8.0</u>	X	<u>33.75</u>			<u>270.00</u>
<u>SR Project Engineer</u>	<u>12.0</u>	X	<u>39.40</u>			<u>472.80</u>
<u>Project Engineer</u>	<u>18.0</u>	X	<u>33.75</u>			<u>607.50</u>
<u>Design Engineer</u>	<u>42.0</u>	X	<u>21.00</u>			<u>882.00</u>
<u>CADD Tech</u>	<u>32.0</u>	X	<u>19.81</u>			<u>633.92</u>
<u>CADD Tech</u>	<u>32.0</u>	X	<u>15.00</u>			<u>480.00</u>
<u>Project Controller</u>	<u>9.0</u>	X	<u>29.75</u>			<u>267.75</u>

**Total DSC = \$ 4,370.97**

**Overhead (OH Cost -- including Salary Additives):**

OH Rate x DSC of 185 % x \$ 4,370.97 8,086.29

**Fixed Fee (FF):**

FF Rate x DSC of 28.5 % x \$ 4,370.97 1,245.73

**Reimbursables:**

Itemized 1,224.00

**Subconsultant Costs (See Exhibit G):**

5,980.00

**Grand Total**

20,906.99

Prepared By: HDR Engineering Inc

Date: July 15, 2008

**Exhibit F**  
**Breakdown of Overhead Cost**

<b>Account Title</b>	<b>\$ Beginning Total</b>	<b>% of Direct Labor</b>
Direct Labor	4,371.00	100.00%
Overhead Expenses:		
FICA	560.00	12.81%
Unemployment		
Health/Accident Insurance		
Medical Aid & Industrial Insurance	447.50	10.24%
Holiday/Vacation/Sick Leave	792.00	
Commission/Bonus/Pension	249.00	5.70%
<b>Total Fringe Benefits</b>	<b>2,048.50</b>	<b>46.87%</b>
General Overhead:		
State B&O Taxes	48.00	1.10%
Insurance	159.00	3.64%
Administration & Time Not Assignable	2,560.00	58.57%
Printing, Stationery & Supplies	166.00	3.80%
Professional Services	127.00	2.91%
Travel Not Assignable	186.00	4.26%
Telephone & Telegraph Not Assignable	161.00	3.68%
Fees, Dues & Professional Meetings	166.00	3.80%
Utilities & Maintenance	952.00	21.78%
Professional Development	423.00	9.68%
Rent	693.00	15.85%
Equipment Support	237.00	5.42%
Office, Miscellaneous & Postage	160.00	3.66%
<b>Total General Overhead</b>	<b>6,038.00</b>	<b>138.14%</b>
<b>Total Overhead (General + Fringe)</b>	<b>8,086.50</b>	<b>185.00%</b>
<b>Overhead Rate (Total Overhead / Direct Labor)</b>	<b>185.00%</b>	



**Exhibit G-3**  
**Breakdown of Subconsultants Overhead Cost**

<b>Account Title</b>	<b>\$ Beginning Total</b>	<b>% of Direct Labor</b>
Direct Labor	<b>2 3 8 2</b>	<b>100 %</b>
Overhead Expenses:		
FICA		
Unemployment		
Health/Accident Insurance		
Medical Aid & Industrial Insurance		
Holiday/Vacation/Sick Leave		
Commission/Bonus/Pension		
<b>Total Fringe Benefits</b>		
General Overhead:		
State B&O Taxes		
Insurance		
Administration & Time Not Assignable		
Printing, Stationery & Supplies		
Professional Services		
Travel Not Assignable		
Telephone & Telegraph Not Assignable		
Fees, Dues & Professional Meetings		
Utilities & Maintenance		
Professional Development		
Rent		
Equipment Support		
Office, Miscellaneous & Postage		
<b>Total General Overhead</b>		
<b>Total Overhead (General + Fringe)</b>		
<b>Overhead Rate (Total Overhead / Direct Labor)</b>	<b>3144 <u>24</u></b>	<b>132 %</b>



## Exhibit H Title VI Assurances

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.
2. **Non-discrimination:** The CONSULTANT, with regard to the work performed during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. **Solicitations for Sub-consultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by AGENCY, STATE or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY, STATE or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the CONSULTANT'S non-compliance with the non-discrimination provisions of this AGREEMENT, the AGENCY shall impose such AGREEMENT sanctions as it, the STATE or the FHWA may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
  - Cancellation, termination, or suspension of the AGREEMENT, in whole or in part

6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub-consultant or procurement as the AGENCY, STATE or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY and the STATE enter into such litigation to protect the interests of the AGENCY and the STATE and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

**Exhibit I**  
**Payment Upon Termination of Agreement**  
**By the Agency Other Than for**  
**Fault of the Consultant**

**(Refer to Agreement, Section IX)**

**Lump Sum Contracts**

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

**Cost Plus Fixed Fee Contracts**

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the Project. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

**Specific Rates of Pay Contracts**

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

**Cost Per Unit of Work Contracts**

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

## **Exhibit K**

### **Consultant Claim Procedures**

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

#### Step 1 – Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

#### Step 2 – Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Highways and Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Highways and Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

**Step 3 – Preparation of Support Documentation Regarding Consultant's Claim(s)**

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

**Step 4 – Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation**

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Highways and Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

**Step 5 – Informing Consultant of Decision Regarding the Claim**

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

**Step 6 – Preparation of Supplement or New Agreement for the Consultant's Claim(s)**

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.

**Exhibit M-1(a)  
Certification Of Consultant**

Project No. CSP-0819

Local Agency City of Gig

I hereby certify that I am David R. Skinner and duly authorized representative of the firm of HDR ENGINEERING INC. whose address is 4717 97th Street NW, Gig Harbor, WA. 98332 and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure the AGREEMENT;
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

7/15/2008

Date

  
Signature

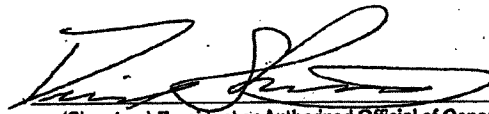
**Exhibit M-2**  
**Certification Regarding Debarment, Suspension, and Other Responsibility**  
**Matters-Primary Covered Transactions**

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (I) (B). of this certification; and
  - D. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): HDR ENGINEERING INC.

7/15/2008

(Date)



(Signature) President or Authorized Official of Consultant

**Exhibit M-3**  
**Certification Regarding The Restrictions**  
**of The use of Federal Funds for Lobbying**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

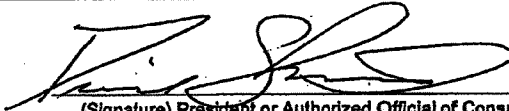
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Consultant (Firm): HDR ENGINEERING INC.

7/15/2008

(Date)



(Signature) President or Authorized Official of Consultant



**Exhibit M-4**  
**Certificate of Current Cost or Pricing Data**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of Pt. Fosdick Pedestrian Improvement Project \* are accurate, complete, and current as of June 23, 2008 \*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm HDR ENGINEERING INC.

Name David R. Skinner

Title Vice President

Date of Execution\*\*\* July 15, 2008

\* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

\*\*\* Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

<b>Supplemental Signature Page for Standard Consultant Agreement</b>	Consultant/Address/Telephone HDR ENGINEERING INC. 4717 97TH STREET NW GIG HARBOR, WA. 98332
Agreement Number CSP-0819	Project Title And Work Description POINT FOSDICK DRIVE NW PEDESTRIAN IMPROVEMENT PROJECT
Federal Aid Number N/A	
Local Agency City of Gig Harbor	

THIS AGREEMENT, made and entered into this 15 day of July, 2008, between the Local Agency of City of Gig Harbor, Washington, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**CONSULTANT**

**LOCAL AGENCY**

By 

By \_\_\_\_\_

Consultant David R. Skinner

Agency \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Consultant \_\_\_\_\_

Agency \_\_\_\_\_

By \_\_\_\_\_

Agency \_\_\_\_\_

By \_\_\_\_\_

Agency \_\_\_\_\_



## CITY OF GIG HARBOR

### Exhibit A | SCOPE OF SERVICES

#### Point Fosdick Drive NW Sidewalk Project

- Point Fosdick Pedestrian Sidewalk Plans, Specifications and Estimate
- Landscape Design

Prepared by:

**HDR Engineering, Inc.**  
4717 97<sup>th</sup> Street NW  
Gig Harbor, WA 98332

## **Exhibit A**

### **Scope of Services**

#### **Point Fosdick Drive Sidewalk Project**

### **I. Introduction**

During the term of this AGREEMENT, HDR Engineering, Inc. (CONSULTANT) shall perform professional services for the City of Gig Harbor (CITY) in association with the development of Plans, Specifications and Estimate for the Point Fosdick Dr. Sidewalk Improvement Project.

The City of Gig Harbor (OWNER) requests that the (CONSULTANT) HDR design approximately 1100 LF of new pedestrian sidewalk along the west side of Point Fosdick Drive and Landscape Architecture features in conjunction with the sidewalk project.

The project design shall include the following features:

- Pedestrian Sidewalk Design
- Low Impact Development (LID) Storm Water Run Off Design as follows:
  - Pervious Concrete Design
  - Associated LID Landscape Design

The work is authorized by the signing of this AGREEMENT. Work on subsequent phases may be authorized by supplement to this AGREEMENT, after negotiation of scope and budget.

The CONSULTANT(s) work is expected to start in July 2008, and be completed by December 2008. The CONSULTANT will perform the work tasks listed in Section III for the Point Fosdick Drive NW Sidewalk Improvement Project.

### **II. General Assumptions**

All work performed under this agreement shall be in accordance with the approved scope and budget for the Point Fosdick Dr. NW Sidewalk Project and shall be subject to the approval of the CITY ENGINEER or their duly authorized representative and requirements of Section I and III of the Approved Scope of Services.

### III. Detailed Scope of Services

#### Task 1 Sidewalk Design (Plans, Specifications and Estimate)

##### *Task 1.1 Topographic Survey*

The CONSULTANT shall arrange for the OWNER with all topographic survey and utility locates, base maps and other available support data for use in the CONSULTANT(s) development of plans for the Sidewalk Improvement Project. Topographic survey work in this section includes the survey work necessary for the design of the sidewalk along the west side of Point Fosdick Drive.

- CONSULTANT shall have the project surveyor (PriZm Surveying) research Pierce County right-of-way and easement records and the Department of Natural Resources records for relevant boundary control, ownerships, Right-of-Way and control surveys along the length of the project.
- CONSULTANT shall arrange for the surveyor to provide horizontal and vertical survey control adequate to control the topographic mapping. Mapping will be completed on Washington State Plane Coordinate System, South Zone and Pierce County Vertical Datum (NGVD 1929).
- CONSULTANT shall analyze and identify the existing right-of-way, adjacent property boundaries, easements and encumbrances.
- CONSULTANT shall complete a topographic survey to be completed from the centerline of Point Fosdick Drive up to 10 feet beyond the west Right of Way limits.
- Topographic survey will include: surface grades, pavement edges, utility poles, hydrants, valves, manholes, storm drains, culverts, mailboxes, signs, fences, significant landscaping, wetland and environmentally sensitive areas, etc (Assumed from Pierce County GIS and City Classifications) in sufficient detail to support design/PS&E development. Contours will be depicted at 1-foot intervals.
- Survey data utility ties will include: water, natural gas, telephone, fiber optics, cable television, electrical, storm drainage, and sanitary sewers. Base maps shall be prepared in accordance with applicable sections of CI/ASCE 38-02, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" and the prevailing standard of care.
- CONSULTANT shall research existing utility records, including record drawings of all utilities known to exist within project limits.
- It is assumed that utility potholing information, i.e.: depth/location/size of conduit, etc of existing buried utilities within project limits shall be provided by others.

**Assumptions:**

\*CONSULTANT shall be responsible for coordinating utility locates with the project limits.

\*Potholing of existing utilities to resolve potential utility conflicts and clarify existing utility location and depth as well as the additional survey will be considered outside of the scope of this project.

- Base Map

Base maps shall be developed in ACAD 2008 format, scaled at 1"=20' horizontal, showing all features outlined above. Maps will show contours at 1-foot intervals, spot elevations on existing roadway areas, and critical driveway areas, as necessary to support the design/PS&E development of project.

**Task 1.2 Detailed Construction Drawings**

**Assumptions:** Prepare detailed construction drawings, including plan views, profiles, cross-sections, and details. To develop a basis for work hour estimate, an estimate of the contract plans that are assumed to be required for the project is indicated below. The project limits are approximated to be 1100 linear feet of new pedestrian sidewalk along the west side of Point Fosdick Drive NW from Harbor Country Drive to Briarwood Lane.

CONSULTANT shall develop plans in accordance with the requirements set forth in the City of Gig Harbor Public Works Standards and WSDOT Plans Preparation Manual.

Plan Sheets shall 22" x 34" in size for full size plans, and 11"x17" for half size plans. All plans shall be developed using a scale of 1"=20' (full size), unless otherwise noted in the following sequence of plan submittal:

To develop a basis for work hour estimate, an estimate of the contract plans that are assumed to be required for the project is indicated below:

Title and Index (1 Sheet)

Legend, Abbreviations (1 Sheet)

Typical Section Sheets (1 Sheet)

Miscellaneous Details Sheets (2 Sheets)

Plan/Profile Sheets (3 Sheets ~ 1" = 20')

Retaining Wall Profiles (1 sheet)

LID Drainage Plans and Details (2 sheets)

Removal and Relocation Sheets (2 Sheets)

TESC Sheets (1 sheet)

Landscape Plans and details (3 Sheets)

\*Assumes a total of 17 Sheets

\*Assumes that grade differences are such that structural design and analysis is not required.

\*Assumes that conventional storm drainage feature will be depicted on the plan and profile sheets.

### ***Task 1.3 Specifications (Contract Provisions)***

Specifications (Contract Provisions) shall be developed using the City of Gig Harbor's "Boiler Plate" contract provisions. These provisions will be supplemented as necessary with project specific information, and include the deletion of unnecessary special provisions. It is assumed that the CONSULTANT will complete Divisions 2 through 8 in accordance with the 2008 WSDOT Standard Specifications and that the City of Gig Harbor will assemble the bid proposal and project bid package.

### ***Task 1.4 Estimate (Opinion of Probable Construction Costs)***

CONSULTANT shall provide to the City an Opinion of Probable Construction Cost (OPCC) using WSDOT Standard Bid Items. The "Engineer's Opinion of Probable Construction Cost" will include an itemized list in tabular form, describing section, item, and number of units (quantity), "estimated unit costs", and estimated total cost. Opinions of Probable Construction Cost will be prepared at the 90 percent and final levels of design.

### ***Task 1.5 Public Information and Outreach***

CONSULTANT shall attend one 4 hour public meeting in support of the project.

Assumptions:

- \* Graphic renderings previously provided to the City of Gig Harbor for the project can be used for meeting exhibits.
- \* Public notification, meeting setup and venue will be coordinated by the City of Gig Harbor
- \* Meeting minutes and summary will be provided by the City of Gig Harbor

## **Task 1 Deliverables**

### **Survey**

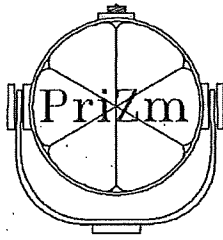
- Base map

### **Plans, Specifications and Estimate of Probable Cost**

- 60% Plans & Specs
- 90% Plans Specs and OPCC
- Final Plans and OPCC

### **Public Meetings**

- Public Meeting attendance



**PRIZM  
SURVEYING INC.**

P.O. Box 110700  
Tacoma, WA 98411  
Office: 253-404-0983  
Fax: 253-404-0984  
[ablaisdell@prizmsurveying.com](mailto:ablaisdell@prizmsurveying.com)  
[gletzring@prizmsurveying.com](mailto:gletzring@prizmsurveying.com)

July 9, 2008

Mr. Gus Garcia  
HDR One Company / Many Solutions  
4717 97<sup>th</sup> Street NW  
Gig Harbor, WA 98332

RE: Surveying Services for Point Fosdick Drive.

Dear Mr. Garcia,

PriZm Surveying is pleased to provide you with this proposal for Surveying Services. We estimate the total length of the survey to be 1,100 feet along the Point Fosdick corridor, extending from Briarwood Lane northerly to Harbor Country Drive. The following is our proposed scope of work.

**Task 1 - West Half of Point Fosdick Dr. Right-of-Way and Topographic Survey:**

1. Perform research of Pierce County's right-of-way and easement records and the Department of Natural Resources Records for relevant Boundary control, ownerships, Right of way and Control surveys along the entire length of the project.
2. Perform a random field traverse or GPS survey locating relevant monumentation and vertical control as recoverable through a diligent search.
3. Perform mathematical computations, analyze and resolve the right-of-way, boundaries, easements and encumbrances using the data found above.
4. Plot the data, and create a worksheet for use as a base map for planning, engineering and the other items identified below.
5. Perform a level loop over the traverse or GPS points which will elevate such to Pierce County Datum (NGVD 1929).
6. Perform a topographic survey of the corridor locating all relevant surface features deemed necessary for the future design of the water main. We will locate paved surfaces, roadway crown, canalization, flowlines, curbing, walks, utility structures, driveways, fences, walls, ditches, buildings, tops or toes of slopes, significant trees 12" or larger, etc., as part of this task, we will locate features up to 10 feet beyond the right-of-way line. We will also locate any underground utility locates performed in this vicinity. (Prizm will contract with a utility locate service to identify any locatable underground utilities in these areas prior to the survey, so that they may also be located and shown on the final map). Temporary benchmarks will be set at convenient locations along the corridor for your future reference.
7. Reduce field notes, plot data obtained from the fieldwork, and prepare an AutoCAD drawing of the above for design use at a convenient scale showing the data collected along with 2 foot interval contours and spot elevations as deemed necessary. The



final Map will be reviewed, checked and certified by a Professional Land Surveyor, and provided in electronic format for the engineers future design.

The estimated cost for Task 1 services is \$5,980.00

Prizm Surveying will send you an invoice each month for work in progress. In the event your invoices are not paid according to the terms of the contract, your project will not receive priority scheduling until payment arrangements are made.

Specifically excluded from our described scope of services are geotechnical studies, wetland or traffic studies, landscaping, historical/preservation consulting or any engineering services.

The Client will pay all costs of title reports, filing fees, and other governmental fees and assessments not specifically identified within this proposal.

The costs outlined in this proposal are an estimate only, based on the circumstances presented by you and perceived by Prizm Surveying at the time of proposal preparation. They are not a guarantee that the costs will not exceed the amount of this estimate.

Prizm Surveying will perform additional services beyond the basic scope of work upon your request. No extra work will be undertaken without your prior authorization. Revisions to work completed or in progress, requested by you or your agents through no fault of Prizm Surveying, will be considered extra services for which additional compensation is due. If you require a written proposal and authorization for additional services, this should be addressed at the time the work is requested.

Prizm has tried to include all items pertinent and discussed for this project, but if additional staking or restaking is necessary our current rates below will apply.

Prizm carries errors and omission (\$1,000,000) and liability insurance (\$1,000,000). If additional insurance is required, the premiums will be in addition to the above estimated price. Should you desire to be named primary additionally insured please add \$300.00 to the above price.

Any part of this proposal is negotiable pending your particular survey requirements. Should you desire additional services beyond the scope above, our regular hourly rates are as follows:

- 2-man survey crew                    \$140 an hour
- GPS survey crew                    \$155 an hour
- Licensed Land Surveyor            \$100 an hour
- Survey Technician                 \$85 an hour

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

Exhibit B

Estimated Hours and Fees

Client: City of Gt. Harbor Project Name: Point Fosdick Sidewalk Project		PM Date	GBG 6.19.08	NA NA	MJB/JLL Checked						
Description	Total Hours for Task	TOTAL HOURS/DOLLARS	Project Principal	Sr Project Manager	Project Manager	Project Engineer	Project Engineer	Design Engineer	CADD Tech	CADD Tech	Project Controller
<b>Project Name or Task Name</b>											
<b>1.00 Project Management</b>		<b>167 hours</b>									
Project Initiation, Management Review, etc. Project Guide Invoicing and Processing Project Status Meetings Project Closeout		2 3 3 5 3			1 1 1 1 1						1 2 2 2 2
<b>2.0 Plans Specs and Estimate</b>		<b>138 hours</b>									
2.1 30% PS&E (internal only) 2.2 60% PS&E 2.3 90% PS&E 2.4 Final Plans		0 20 44 42 30 0 0 0						8 12 12 10	4 12 10 6	4 12 10 6	
<b>3.0 QA/QC</b>		<b>12 hours</b>									
5.1 30% QA/QC (internal only) 5.2 60% QA/QC 5.3 90% QA/QC 5.4 Final QA/QC		0 2 2 4 4 0 0 0		2 2 4 4							
<b>4.0 Project Meetings</b>		<b>3 hours</b>									
4.1 Meeting 1		0 3 0 0 0 0			3						
<b>Subtotal HDR Labor Hours</b>		<b>167</b>	2	12	8	12	18	42	32	32	9
<b>Total Labor Costs, Allocated Overhead Costs and Fees</b>		<b>\$13,703</b>									
<b>Total Direct Expenses</b>		<b>\$1,224</b>									
<b>Total Subconsultant Expenses and/or Other Services</b>		<b>\$6,980</b>									
<b>Total Anticipated Contract Amount</b>		<b>\$20,907</b>									

**Subject:** Eddon Boat Building Restoration Project Amendment to the Agreement with SHKS Architects.

**Proposed Council Action:** Authorize the Mayor on behalf of Council to execute an Amendment to the Agreement with SHKS Architects for the Eddon Boat Restoration Project.

**Dept. Origin:** Administration  
**Prepared by:** Lita Dawn Stanton  
 Historic Preservation  
 Coordinator  
**For Agenda of:** July 28, 2008  
**Exhibits:** SHKS Architects Amendment  
 SHKS Architects Agreement

Initial & Date

**Concurred by Mayor:** CUA 7/22/08  
**Approved by City Administrator:** POK 7/22/08  
**Approved as to form by City Atty:** CAM 7/21/08  
**Approved by Finance Director:** OR 7/21/08  
**Approved by Department Head:** \_\_\_\_\_

Expenditure	Amount	Appropriation
Required <b>\$7,366</b>	Budgeted <b>\$980,000</b>	Required <b>\$ -0-</b>

**INFORMATION / BACKGROUND**

In 2006, the City of Gig Harbor was successful in securing a one million dollar grant from the Washington State Heritage Capital Projects Fund for the restoration of the Eddon Boat Building. On June 24, 2008, SHKS signed an Agreement with the City of Gig Harbor as consultant for the Restoration Project in the amount of \$102,148.00. The original SHKS Scope of Services Exhibit included an "Optional Fee and Scope of Services" in an amount not to exceed \$7,366 for civil work. Based on inspection results from the Civil Engineer this month, the additional civil work is necessary. The attached Amendment describes that work.

**FISCAL CONSIDERATION**

The grant from Washington State required a 2 to 1 match which was met through the 2004 Land Acquisition Bond.

**BOARD OR COMMITTEE RECOMMENDATION**

In 2006 Resolution No. 668 was approved by City Council to file for the Restoration Grant.

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor on behalf of Council to execute an Amendment to the Agreement with SHKS Architects for the Eddon Boat Restoration Project. The work will be completed by June of 2009.

**CONSULTANT AGREEMENT  
ARCHITECTURAL/ENGINEERING SERVICES  
EDDON BOAT PROJECT**

THIS AMENDMENT is made to the AGREEMENT, dated June 24, 2008, by and between the CITY OF GIG HARBOR (hereinafter the "City"), a Washington municipal corporation, and SNYDER HARTUNG KANE STRAUSS Architects (hereinafter "Consultant" ), a corporation organized under the laws of the State of Washington, located at 1050 North 38th Street, Seattle, WA 98103.

**RECITALS**

WHEREAS, the City is presently engaged in the Restoration of Eddon Boat Building and desires that the consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agreed to perform the services, and the parties executed an Agreement on June 24, 2009 (hereinafter the "Agreement"); and

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

WHEREAS, the work identified in the original Agreement as optional is now required as a result of the Civil Engineer's inspection of the building; and

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

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

**Section 2. Amendment to Compensation.** Section II(A) of the Agreement is amended to require the City to pay compensation to the Consultant for the work described in Exhibit A to the Amendment in the amount of: Seven Thousand Three Hundred Sixty-Six Dollars and no cents (\$7,366.00). This Amendment shall not modify any other of the remaining terms and conditions in Section 2., which shall be in effect and fully enforceable.

**Section 3. Effectiveness of all Remaining Terms of Agreement.** All of the remaining terms and conditions of the Agreement between the parties shall be in effect and be fully enforceable by the parties. The Agreement shall be incorporated herein as if

fully set forth, and become a part of the documents constituting the contract between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Consultant: SHKS Architects

THE CITY OF GIG HARBOR

By: \_\_\_\_\_  
Its Principal

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Gig Harbor City Attorney

ATTEST:

\_\_\_\_\_  
Gig Harbor City Clerk



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:  
\_\_\_\_\_

**Eddon Boat Building Restoration  
Civil Utilities and TESC Plan**

Civil Engineering Consulting Fee Estimate for SHKS Architects  
WR Consulting, Inc.

Date: April 28, 2008

C:\Documents and Settings\StantonL\Local Settings\Temporary Internet Files\OLKKB\Civil\_EddonBoatBldg.xls\Civil Fee

	Engineer	Tech/ Drafter	Subtotal
<b>Program Review</b>			
Meetings & Coordination w/Architect & Team	2		
Review Utility Requirements	3		
Utility and TESC Plan	not included this phase		
<b>TOTAL PHASE HOURS &amp; LABOR</b>	<b>5</b>	<b>0</b>	
Subtotal Cost	\$500	\$0	\$500

<b>Schematic Design</b>			
Meetings & Coordination w/Architect & Team	2		
Site Visit (one)	5		
Meetings/Presentation to Owner	0		
Layout Connection for Fire Sprinkler	2	0	
Layout Sanitary Sewer for Restroom Connection	2		
Drainage Connections	2		
Utility Plan (Fire Service, Sewer and Drainage)	4	2	
TESC Plan and Details	not included this phase		
Estimate of Construction Cost	1		
<b>TOTAL PHASE HOURS &amp; LABOR</b>	<b>18</b>	<b>2</b>	
Subtotal Cost	\$1,800	\$110	\$1,910

<b>Design Development</b>			
<b>not included in this scope</b>			
Meetings & Coordination w/Architect & Team			
Meetings/Presentation to Owner			
Drainage Connections			
TESC Plan			
Estimate of Probable Construction Cost			
<b>TOTAL PHASE HOURS &amp; LABOR</b>	<b>0</b>	<b>0</b>	
Subtotal Cost	\$0	\$0	\$0



## Eddon Boat Building Restoration Civil Utilities and TESC Plan

Civil Engineering Consulting Fee Estimate for SHKS Architects

WR Consulting, Inc.

Date: April 28, 2008

C:\Documents and Settings\StantonL\Local Settings\Temporary Internet Files\OLKB\Civil\_EddonBoatBldg.xls\Civil Fee

	Engineer	Tech/ Drafter	Subtotal
<b>Permit Drawings</b>			
Meetings & Coordination w/Architect & Team	2		
Meetings/Presentation to Owner	0		
General Notes and Details	2	1	
Utility Plan (Fire Service, Sewer and Drainage)	4	2	
TESC Plan and Details	4	2	
Technical Specifications	0		
Estimate of Probable Construction Cost	1		
<b>TOTAL PHASE HOURS &amp; LABOR</b>	<b>13</b>	<b>5</b>	
Subtotal Cost	\$1,300	\$275	\$1,575
<b>Construction Documents</b>			
Meetings & Coordination w/Architect & Team	2		
Meetings/Presentation to Owner	0		
General Notes and Details	3	2	
Utility Plan (Fire Service, Sewer and Drainage)	4	2	
TESC Plan and Details	4	2	
Technical Specifications	4		
Estimate of Probable Construction Cost	1		
<b>TOTAL PHASE HOURS &amp; LABOR</b>	<b>18</b>	<b>6</b>	
Subtotal Cost	\$1,800	\$330	\$2,130
<b>Bidding</b>			
Respond to Questions	1		
Addenda	0		
<b>TOTAL PHASE HOURS &amp; LABOR</b>	<b>1</b>	<b>0</b>	
Subtotal Cost	\$100	\$0	\$100
<b>Construction Administration</b>			
Respond to Questions	1		
Submittals	1		
Site Visits/Field Review - one	5		
RFIs	1		
Contract Revisions	0		
Record Drawings	0		
<b>TOTAL PHASE HOURS &amp; LABOR</b>	<b>8</b>	<b>0</b>	
Subtotal Cost	\$800	\$0	\$800

**Eddon Boat Building Restoration  
Civil Utilities and TESC Plan**

Civil Engineering Consulting Fee Estimate for SHKS Architects  
WR Consulting, Inc.

Date: April 28, 2008

C:\Documents and Settings\StantonL\Local Settings\Temporary Internet Files\OLKB\Civil\_EddonBoatBldg.xls\Civil Fee

	Engineer	Tech/ Drafter	Subtotal
<b>Summary of Fees:</b>			
<b>Basic Services:</b>			
Program Review			\$500
Schematic Design			\$1,910
Design Development			\$0
Permit Drawings			\$1,575
Construction Documents			\$2,130
Bidding			\$100
Construction Administration			\$800
		Subtotal	\$7,015
		Expenses	\$351
		<b>Total incl. Expenses</b>	<b>\$7,366</b>

**Basis of Estimate:**

Geotechnical or Structural Engineering not included.  
 TESC and notes and details assumes limited utility work and grading/paving on-site.  
 Storm drainage improvements limited to connections of building roof drains; detention is not required  
 Drainage improvements for paving modifications assume simple water quality elements such as a water quality swale or filter strip; structural treatment component not included.  
 Sanitary sewer improvements assume gravity side sewer or bidder designed "package" pump station.  
 Rainwater re-use assumes passive collection and use such as a raingarden; harvesting systems including tanks, pumps and controls are not included.  
 Assumes fire service connection to public water supply in street. No pumping station or storage facility  
 Off-site utility extensions or street improvements not included.  
 Electrical/Mechanical site work not included.  
 Traffic engineering and studies not included.  
 Presentations, public hearings and public meetings are additional services.  
 Landscape/Irrigation not included.

Accepted: \_\_\_\_\_

Date: \_\_\_\_\_

**CONSULTANT AGREEMENT  
ARCHITECTURAL/ENGINEERING SERVICES  
EDDON BOAT PROJECT**

This Agreement is made and entered into by and between the CITY OF GIG HARBOR (hereinafter the "City"), a Washington municipal corporation, and SNYDER HARTUNG KANE STRAUSS Architects (hereinafter "Consultant" ), a corporation organized under the laws of the State of Washington, located at 1050 North 38th Street, Seattle, WA 98103.

WHEREAS, the City issued an RFQ on February 6, 3008 for the Restoration of the Eddon Boat Building; and;

NOW, THEREFORE, the parties hereto agree as follows:

**T E R M S**

Section 1. Scope of Services.

Consultant shall perform services described in Exhibit A which is attached hereto and incorporated herein by this reference. Consultant shall perform these services according to Exhibit C (Estimated Eddon Boat Costs) and Exhibit D (Capital Contract #CPF 09-09) requirements set out by the Washington State Historical Society.

Section 2. Payment.

A. The City shall pay the Consultant for services provided by the Consultant at the rates set forth in Exhibit B, attached hereto and incorporated herein by this reference.

B. The total authorized compensation for all services set forth in this Agreement shall not exceed **one hundred two thousand, eight hundred eighty-five dollars and no cents (\$102,885.00)** for the duration of this agreement. This is the maximum amount to be paid under this Agreement for the services described in Section 1 and any related exhibits, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement.

C. Consultant shall not perform any services until such services are authorized by this Agreement or by a written Amendment to this Agreement that is executed by the duly authorized representatives of the parties. Additional services required or made necessary as a result of negligent acts or other wrongful acts or omissions or inaccuracies or inconsistencies or errors of Consultant or its subconsultants, at any tier, or the employees of any of them, shall be provided by Consultant at no additional cost to the City.

D. Payments to the Consultant shall be made based on invoices showing the percentage of services completed, as determined by the City. In order to receive payment the Consultant shall provide a monthly status report of the Project, together with an updated schedule of completed tasks. This progress or status report shall be directed to Lita Dawn Stanton and be submitted with the monthly invoice for services completed. Consultant shall submit payment requests to the City not more frequently than monthly. Each such request shall be in the form of an invoice prescribed and/or agreed to by the City's Project Manager, signed by the Consultant's authorized representative, and should identify the total amount of compensation and expense reimbursement (separately stated) being requested under the current invoice. Each invoice shall cover only services completed to the date of the invoice after such services have been performed, and shall not cover any services performed and reported under any previously submitted invoice(s).

E. The City shall pay the full amount of an invoice within thirty (30) days of receipt, unless the City disputes the amount of the invoice. 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.

Section 3. Term of Agreement. The term of this Agreement shall begin when fully executed by the duly authorized representatives of both parties, and shall end on **March 31, 2009**, unless completed or terminated earlier, pursuant to the provisions hereof.

Section 4. Commencement of Services. The Consultant shall begin the services outlined in the Scope of Services in Section 1 and any related exhibits to this Agreement, upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the services are complete. Time limits established pursuant to this Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for its convenience and will be extended for delays due to conditions beyond the Consultant's control.

Section 5. Extra Services. The City may desire to have the Consultant perform or render services other than those expressly described in the Scope of Services section herein. This will be considered Extra Services, supplemental to this Agreement, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of Extra Services prior to execution of a written amendment signed by the duly authorized representatives of both parties will be at the Consultant's risk and may not be reimbursed under this Agreement or any Amendment to this Agreement.

Section 6. Key Persons. The Consultant shall assign the services hereunder to the following Key Persons: Jonathan Hartung, David Strauss, Laura Lenss and MA Wright. The Consultant shall not transfer or reassign any individual designated in this Agreement as essential to the Services, without the express written consent of the City, and the City may withhold such consent in its sole discretion. If, during the term of this Agreement,

any such individual leaves the Consultant's employment, the Consultant shall present to the City one or more individual(s) with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld. The City's approval shall not be construed to release the Consultant from its obligations under this Agreement.

Section 7. Termination.

A. Termination of Agreement.

1. For Cause. Either may terminate this Agreement if the other party is in material breach of any of the terms of this Agreement, and such breach has not been corrected to the non-breaching party's reasonable satisfaction in a timely manner.

2. For City's Convenience. The City may terminate this Agreement at any time, without cause and for any reason including the City's convenience, at any time prior to completion of the services described in Section 1, Scope of Services. 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. Such notice may be delivered to the Consultant in person or by certified mail.

B. Rights Upon Termination. In the event of termination not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Agreement. The Consultant agrees that this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Agreement.

C. Return of Documents. Upon termination for any reason, the Consultant shall provide the City with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. The City may then 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. The City shall have the same rights to use these materials as if termination had not occurred; provided, however, that the City shall release, indemnify, and hold the Consultant harmless from any claims, losses or damages to the extent caused by modifications made by the City to the Consultant's work product. Any use of the materials following a termination for convenience shall be without liability on the part of the Consultant.

D. Completion of Services. 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 without cause, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the

Scope of Services 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, as the same may have been modified by subsequent amendments.

Section 8. Relationship of Parties.

A. 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 profession 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.

B. 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. This Agreement does not authorize the Consultant to act as the agent or legal representative of the City for any purpose whatsoever. The Consultant is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

C. 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.

E. 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.

Section 9. Construction Phase

A. The Consultant, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Consultant, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Consultant shall not be required to make exhaustive or continuous on-site observations or any inspections to check the quality or quantity of the Work. The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in

connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

B. The Consultant shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Consultant shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work not employed by the Consultant or their subconsultants.

C. The Consultant shall review and take other appropriate action upon the Contractors submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with the information given and the design concept expressed in the Contract Documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Consultants review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultants review of a specific item shall not indicate an approval of an assembly of which the item is a component.

D. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Consultant shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Consultant. The Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

Section 10. Discrimination. In the hiring of employees for the performance of services under this Agreement or any sub-contract hereunder, the Consultant, its sub-contractors, 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 services to which the employment relates.

Section 11. Indemnification. The Consultant shall indemnify the City and its employees, officers, officials and agents from all losses, liabilities, claims (including

claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Consultant's performance of the services contemplated by this Agreement to the extent arising out of the negligent acts or omissions, willful misconduct or breach of this Agreement by the Consultant, its servants, agents and employees. In furtherance of these obligations and only with respect to the City, its officers, officials, employees and agents, the Consultant waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Consultant acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Agreement.

Section 12. Insurance.

A. The Consultant shall 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 performance of the services hereunder by the Consultant, its agents, representatives, employees, sub-consultants or sub-contractors.

B. **No Limitation.** Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Before beginning services on the project described in this Agreement, the Consultant shall provide a Certificate of Insurance evidencing:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles, with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage;

2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate and shall cover liability arising from premises, operations, independent contractors and personal injury, advertising injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and

3. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington; and

4. Professional Liability insurance appropriate to Consultant's profession, which shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.



D. Any payment of deductible or self-insured retention shall be the sole responsibility of the Consultant. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

E. The Consultant's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. The City shall be given thirty (30) days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

F. The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

Section 13. Ownership and Use of Records and Documents. (See section 20) 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.

Section 14. 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 services authorized under this Agreement, the services 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.

Section 15. Compliance with Law. The Consultant, at no expense to the City, shall comply with all applicable 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. The Consultant, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits and similar legal authorizations, and comply with all requirements thereof.

Section 16. 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.

Section 17. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, in the performance of the services hereunder and shall utilize all protection necessary for that purpose. All services 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 for use in connection with the services.

Section 18. Non-Waiver of Breach. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Consultant after the time the same shall have become due nor payment to the Consultant for any portion of the services shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.

Section 19. Assignment and Subcontracting. The Consultant shall not assign or subcontract any of its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Consultant shall incorporate by reference all the terms of this Agreement, except as otherwise provided. The Consultant shall require that all subconsultants comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Consultant from liability under this Agreement, or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment or subcontract. The City shall not assign any of its rights or responsibilities that arise under or related to this Agreement whether during performance or after performance.

Section 20. Errors and Omissions. The Consultant shall be responsible for the professional quality, reasonable technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by or on behalf of the Consultant under this Agreement. The Consultant, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications and/or other Consultant services immediately upon notification by the City.

Section 21. Intellectual Property Rights. All materials and documents prepared by the Consultant in connection with the work are instruments of service created solely for use on this Project and the Consultant shall retain the copyright (including the right of reuse) whether or not the services are completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all

other materials prepared by the Consultant for the City under this Agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code(s), object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the services, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the Project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the Project or any other project, and the Consultant shall have no liability associated with such use or reuse.

The Consultant hereby assigns to the City all rights in any invention, improvement or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Agreement or any subcontract hereunder. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by Consultant that was created or produced separate from this Agreement or was pre-existing material (not already owned by the City), provided that the Consultant has clearly identified in writing such material as preexisting prior to commencement of the services. To the extent that preexisting materials are incorporated into the work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the preexisting material, but only as an inseparable part of the work.

Section 22. Confidentiality. The parties agree that they will not permit duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent or representative) unless such duplication, use or disclosure is specifically authorized in writing or is required by law. Consultant acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW, and if the City receives a request for any information relating to this Agreement that is labeled "Confidential and Proprietary" by the Consultant, that the City shall notify the Consultant that unless the Consultant obtains a court order prohibiting disclosure or seeking an in camera review of the records to determine whether such documents may be disclosed, that the City will disclose such documents to the requestor. Each party shall be required to expend its own attorneys' fees and costs to bar disclosure of any record under the Public Records Act, and if the party does not seek to bar disclosure, it will be assumed that the record may be disclosed.

Section 23. 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 Administrator and the City shall determine the term or provision's true intent or meaning. The City Administrator shall

also decide all questions which may arise between the parties relative to the actual services provided or 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 Administrator'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.

Section 24. 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. 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 in this Agreement or such other address as may be hereafter specified in writing.

City of Gig Harbor  
Attn: Lita Dawn Stanton  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 853-7609

SHKS  
Attn: Jonathan Hartung  
1050 North 38th Street  
Seattle, WA 98103  
(206) 675-9151

Section 25. 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.

Section 26. 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.

Section 27. Negotiated Agreement. The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

Section 28. Remedies Cumulative. Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.

Section 29. Severability. If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 30. Binding Agreement. This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 24 day of June, 2008.

Consultant: SHKS Architects

THE CITY OF GIG HARBOR

By: [Signature]  
Its PRINCIPAL

By: [Signature]  
Mayor

APPROVED AS TO FORM:

[Signature]  
Gig Harbor City Attorney

ATTEST:

[Signature]  
Gig Harbor City Clerk

EXHIBIT A

Basic Services of ARCHITECT and CONSULTANT TEAM

**Description of Project**

The Architect, SHKS are to provide the City of Gig Harbor Plans and Specifications to complete the necessary work for the Eddon Boat Building Restoration Project, as described in the "Request for Qualifications" dated January 31, 2008.

All requirements of the 2007-2009 Washington State Heritage capital projects Grant shall be met and shall specifically include the following:

Restoration of the interior of the boat building

Adaptive reuse of the Brick House Garage for ADA accessible Restrooms

ADA accessible viewing platform in the shop building

**Scope of Services:**

Schematic Design Phase of the project:

SHKS (Architect) shall provide the following:

1. Preliminary Cost (by Haley Consulting)
2. Structural
3. Mechanical (narrative only)
4. Electrical (narrative only)
5. Two team meetings at design phase
6. One meeting with Building Department

Documentation, Bidding and Construction Phase of the project:

SHKS (Architect) shall provide the following:

1. Cost Consulting @ 90% Completion
2. Architectural Plans and Specifications
3. Structural Plans and Specifications
4. Mechanical Plans and Specifications
5. Electrical Plans and specifications
6. Civil plans and specifications as they apply to the specific project
7. Performance Specifications for bidder design fire sprinkler and alarm system
8. One meeting with Building Department resulting in plans approved by the City of Gig Harbor Building Department and Building permit
9. Two team meetings at Documentation phase
10. Twelve team meetings at construction phase

Deliverables to the City of Gig Harbor:

1. 100% Schematic Design; the architect will prepare documents consisting of drawings and other documents illustrating the scale and relationship of project components.
2. 50% documentation; the architect will prepare documents consisting of drawings and other documents describing the size and character of the project.
3. 100% documentation/Bid documents; the architect will prepare documents consisting of Drawings and Specifications setting forth the requirements for the construction of the project.

*Close out shall include review of contractors' AS Built drawings*

SHKS (Architects) (Fee Schedule attached)

*Architectural Consulting (SHKS Architects)* \$ 49,628  
 Services include design, documentation, Bidding, Construction contract administration, project close-out and consultant coordination for the structural, interior, exterior and system improvements to the Eddon Boat building and Brick House.

*Structural (MA Wright)* \$ 16,000  
 Services include design and documentation of structural repairs and upgrades and coordination of the Architect. Services exclude testing structural members for rot.

*Mechanical (Rainbow Consulting)* \$ 6,000  
 Services include design and documentation of mechanical services with the services of the Architect. Fire sprinkler system is bidder design and engineered.

*Electrical Consulting (Travis Fitzmaurice & Associates)* \$ 9,800  
 Services include design and documentation of electrical system up-grades and coordination of electrical services with the services of the architect.

*Independent Cost Consulting (Haley Consulting)* \$ 6,400  
 @ Schematic, 90% Construction Documents and includes a kick-off meeting and one 100% update for each cost plan phase, 100% SD and 90% CD. It is assumed that the consultant will have included all of the City's comments from the 90% review comments.

*Reimbursable Costs to the Design Team* \$ 10,500

*Mark-up on consultant services* \$ 3,820

TOTAL ..... **102,148**

**Optional Fees and scope tasks:**

*If selected by the City of Gig Harbor, SHKS (Architect) shall provide the following as amendments to the contract above:*

*Civil Consulting (WR Consulting Inc)* not to exceed: \$ 7,366  
 Services include design and documentation of site and utility improvements. Services also include normal construction phase services. Services do not included geotechnical services, landscape, or irrigation. Services assume passive water collection and use and no storm drainage detention. Provide drainage incidental to the Boat Building perimeter and downspout drainage and Brick House ADA accessible rest rooms subject to City review of cost breakdown for civil work.

Mark-up on consultants services \$ 737

*Leadership in Energy and Environmental Design* \$ 5,000

TOTAL ..... **\$ 115, 251**



## EXHIBIT B

Snyder Hartung Kane Strauss ArchitectsRate Schedule: 2008C1

Personnel will be charged at the following hourly rates:

Mark Snyder	Principal	\$150
Jonathan Hartung	Principal	\$150
Kevin Kane	Principal	\$150
David Strauss	Principal	\$150
Marc Brown	Project Manager	\$105
Theresa Freeman	Project Designer	\$95
Joshua Brincko	Architect I	\$95
Tristin Pagenkopf	Architect III	\$90
Susan Tillack	Intern Architect I	\$90
Laura Lenss	Intern Architect I	\$90
Stuart Arentzen	Intern Architect II	\$75
Matt Inpanbutr	Intern Architect II	\$75
Chris Armes	Intern Architect II	\$75
Kelly Sommerfeld	Intern Architect II	\$70
David Curran	Intern Architect II	\$70
Derek Stack	Intern Architect II	\$65
Dean Burgess	Intern Architect III	\$65
Adam Shick	Intern Architect III	\$60
Melissa Glenn	Intern Architect III	\$60
Camille Cladouhos	Intern Architect III	\$60
Katie Wolfla	Clerical I	\$65



**Subject: Possession, Use, and Purchase Agreement with SHDP Associates LLC/ Capital Management Group, Inc.**

**Proposed Council Action:**

Authorize the attached Possession, Use, and Purchase Agreement for the Wetland Property needed for the BB16 Interim Improvements.

**Dept. Origin:** Administration

**Prepared by:** Rob Karlinsey

**For Agenda of:** July 28, 2008

**Exhibits:** Attached Agreement and Letter from Dale Pinney.

Initial & Date

**Concurred by Mayor:**

*CLK 7/24/08*

**Approved by City Administrator:**

*PK 7/24/08*

**Approved as to form by City Atty:**

*CD 7/24/08*

**Approved by Finance Director:**

*PK 7/24/08*

**Approved by Department Head:**

*PK 7/24/08*

Expenditure	Amount	Appropriation
Required \$840,000	Budgeted \$11 million	Required \$0

**INFORMATION / BACKGROUND**

At its July 17 special meeting, the City Council approved the wetland purchase from SHDP Associates/Capital Management, with an amendment to add "pro-rata" before "share" in the second paragraph of section 2 on page 3 of the agreement. SHDP/Capital Management does not approve of this change that was made at the Council meeting.

Staff does not believe that including or not including "pro-rata" makes a material difference, and staff therefore recommends approval as attached and as approved by SHDP/Capital Management.

The Wetland Property at the southeast corner of the BB16 Interchange is needed for wetland mitigation for the entire interim improvement project. In the attached agreement, the City agrees to pay the property owner \$124,205 and construct GHN Medical Pavillion frontage improvements and interchange ramp lengthening improvements, up to a value of \$715,795, bringing the total compensation value of \$840,000.

**FISCAL CONSIDERATION**

Funding for this property purchase will come from the budget for the BB16 interim improvements, which will ultimately be paid for by the CERB grant, the Hospital, and Quadrant.

**BOARD OR COMMITTEE RECOMMENDATION**

None.

**RECOMMENDATION / MOTION**

**Move to:** Authorize the attached Possession, Use, and Purchase Agreement for the Wetland Property needed for the BB16 Interim Improvements.

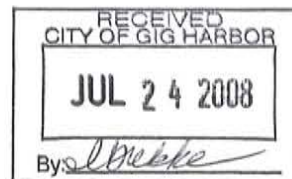
Consent Agenda - 14

**SHDP ASSOCIATES, LLC /**  
**CAPITAL MANAGEMENT GROUP, INC. TIC**

8129 Lake Ballinger Way, Suite 104 Edmonds, WA 98026  
Telephone: (425) 329-0848 Facsimile: (425) 329-0849

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July 23, 2008



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

REFERENCE: Gig Harbor North Medical  
SUBJECT: Original PUPA

Dear Rob:

Attached is an original copy of the Possession, Use and Purchase Agreement. I filled in the report reference and date on the page 2 whereas. We did not include the word "prorata" in front of the word "share" on the bottom of page 3. We feel that this is just a qualifier of what a share could be. The word "share" as it is used can be a prorata share or any other share that the hearing examiner may impose. As it is written it works for all potential cases where we may need to share some cost of something. Of course it is our opinion that we should not share in any of the costs of Quadrants improvements.

Please return a copy signed by the city.

If you have any questions please call.

Sincerely  
SHDP ASSOCIATES, LLC/CAPITAL MANAGEMENT GROUP, INC. TIC

A handwritten signature in blue ink, appearing to read "Dale Pinney".

Dale Pinney,  
Project Manager

cc: Greg Elderkin

**POSSESSION, USE AND PURCHASE AGREEMENT  
BY AND BETWEEN THE CITY OF GIG HARBOR  
AND  
SHDP ASSOCIATES, LLC / CAPITAL MANAGEMENT GROUP, INC. TIC**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of July, 2008, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and a Tenancy-In-Common composed of SHDP Associates, LLC, a Washington limited liability company, and Capital Management Group, Inc. a Washington corporation, hereinafter the "Developer."

**RECITALS**

WHEREAS, the Developer owns the Wetland Property, which is legally described and incorporated herein as set forth in Exhibit A; and

WHEREAS, the City needs the Wetland Property for immediate construction of the Canterwood Boulevard NW Roadway Improvement Project (CSP-0817), which improvements are the subject of a construction development agreement recorded under auditor's file number 200710240323 between the City of Gig Harbor and Franciscan Health System – West; and

WHEREAS, the City affirms that any delay in the Canterwood project would be contrary to the public interest; and

WHEREAS, the Developer is proposing to develop the GHN Medical Pavilion project, which is located at: 10700 Canterwood Drive NW on property legally described in **Exhibit B**; and

WHEREAS, the following events (partial list) have occurred in the processing of the Developer's application for the GHN Medical Pavilion:

- a) The Developer submitted a complete application for site plan review on November 9, 2007;
- b) The City issued an MDNS on April 23, 2008, a revised MDNS on June 11, 2008 and a revised corrected MDNS on June 13, 2008; and
- c) Clarification of the mitigation to be constructed by the Developer as described in the traffic Concurrency Reservation Certificate and these MDNS's was provided to the Hearing Examiner in a memo from the City dated July 8, 2008 and entered into the record on the site plan application before the Hearing Examiner during the open record hearing on July 8, 2008; and

WHEREAS, Section 2B.080 of the City of Gig Harbor's Public Works Standards will require the Developer to construct (a) frontage improvements (the "Frontage Improvements") as part of the project, which Frontage Improvements include all of the improvements and work defined and described in Condition No. 2 of that certain Transportation Concurrency Reservation (the "CRC") issued by the City in a letter to Developer dated August 4, 2006 (collectively referred to herein as "Frontage Improvements"), and (b) certain SR-16 interchange improvements consisting of the widening/extension of the SR-16 westbound and eastbound off ramps (the "Off Ramp Improvements"), which Off Ramp Improvements include the work defined and described in the findings of the CRC (the Frontage Improvements and the Off Ramp Improvements, together with other improvements, are described/shown in Exhibit E, which is attached hereto and incorporated herein by this reference); and

WHEREAS, the City proposed that the Developer convey the Wetland Property to the City in exchange for the City agreeing to construct the Frontage Improvements and the Off Ramp Improvements required for the GHN Medical Pavilion; and

WHEREAS, the City engaged appraiser Robert E. Sternquist of Trueman Appraisal to determine the fair market value of the Wetland Property; and

WHEREAS, the appraiser has prepared a written appraisal report dated June 12, 2008, estimating the fair market value of the Wetland Property at Eight Hundred Thousand Dollars (\$800,000.00) (the Appraisal"); and

WHEREAS, the property is being acquired under threat of condemnation, which usually involves additional cost to the municipality over and above the market value of the property, so the "Compensation Value" of the property may be slightly higher, which the parties have determined to be Eight Hundred Forty Thousand Dollars (\$840,000.00); and

WHEREAS, the cost of such Frontage Improvements has been estimated by DEA in their 5/14/08 report to be \$292,795 and the cost of the Off Ramp Improvements has been established at \$423,000; and

WHEREAS, the Compensation Value of the Wetland Property exceeds the estimated cost of the Frontage Improvements and the Off Ramp Improvements by approximately One Hundred Twenty-Four Thousand Two Hundred Five Dollars (\$124,205.00); and

WHEREAS, a boundary line adjustment (BLA) was approved and recorded for the Wetland Property in Pierce County, Washington under Recording No.200807015008.

NOW THEREFORE, the parties agree as follows:

### **General Provisions**

**Section 1. Immediate Possession and Use.** The Developer hereby grants to the City the exclusive right to possess and use the Wetland Property described in Exhibit A to this

Agreement and described as Parcel B of the BLA. Immediately upon the execution of this Agreement by all parties, the City shall be entitled to exclusive possession and use of the Wetland Property for any and all purposes including but not limited to construction, installation, and mitigation of the wetland impacts associated with the City's BB-16 Interim Improvement Project (CSP-0817). In connection with its possession and use of the Wetland Property under this Agreement, City agrees to and does hereby indemnify and hold Developer harmless from and against any and all losses, costs, expenses, attorneys fees, actions, suits, claims, judgments, liabilities and obligations arising out of or in any way related to the City's possession and use of, and all work and other activities on, the Wetland Property by City and its agents, contractors, employees and invitees. The City shall not indemnify or hold Developer harmless from any losses, costs, expenses, attorneys fees, actions, suits, claims, judgments, liabilities and obligations arising out of or related to the possession and use of, and all work and other activities on, the Wetland Property by Developer and its agents, contractors, employees and invitees.

**Section 2. Compensation.** As compensation for the Developer's conveyance of the Property, the City hereby agrees to (1) pay the developer One Hundred Twenty Four Thousand, Two Hundred Five Dollars (\$124,205.00), on or before the date of the Closing, and (2) to construct the Frontage Improvements and the Off Ramp Improvements for the GHN Medical Pavilion project on behalf of the Developer. The parties agree that the final cost of the Off Ramp Improvements is \$423,000.00 and that any costs in excess of that amount shall be paid by the City. In addition, except as provided in Section 3 below, all costs and expenses associated with construction of the Frontage Improvements shall be paid by the City. The Frontage Improvements are planned to be constructed in 2008 and the Off Ramp Improvements are planned to be constructed in 2009. The City agrees that, in all events, construction of both the Frontage Improvements and the Off Ramp Improvements shall be completed not later than July 1, 2010.

The Hearing Examiner's Decision on the Medical Pavilion Site Plan, or as the same may be modified as a result of any appeal, may or may not include additional transportation mitigation to be performed by the Developer. The following items shall not be considered "additional transportation mitigation" for the purposes of this Agreement: (a) "Pro-rata share" mitigation for transportation impacts, (b) transportation impact fees imposed under chapter 19.12 GHMC; and (c) the Off Ramp Improvements or the Frontage Improvements, or any increase in the cost of any such item. The parties agree that, with the exception of subsection (b), each item described herein is the responsibility of the Developer to construct or pay. Under no circumstances shall the City be required to construct any additional transportation mitigation improvements for the Developer's Site Plan. If the Hearing Examiner requires the Developer to pay any share of the "interim improvements" (i.e., the Quadrant/Hospital improvements) then, at Developer's option, the fixed cost of the Off Ramp Improvements (i.e., \$423,000.00) shall be credited against such share of the "interim improvements" assessed to the Developer. Any portion of such share of the "interim improvements" in excess of \$423,000.00 shall be paid by the Developer. In addition, if the Developer is required to pay a share of the "interim improvements" then neither the City nor the Developer will be required to construct or pay for the Off Ramp Improvements.



**Section 3. Accounting by the Parties for City's Construction Costs and Value of Wetland Property.**

For the purposes of this Agreement, the Compensation Value of the Wetland Property shall be Eight Hundred Forty Thousand Dollars (\$840,000.00). The parties agree to the following arrangement for accounting of the costs associated with the City's construction of the Off Ramp and Frontage Improvements associated with their respective obligations described in Sections 1 and 2 above.

A. If the sum of \$423,000.00 plus the City's actual cost of construction of the Frontage Improvements exceeds \$715,795.00, the Developer agrees to pay the City any such excess amount promptly upon completion of the work and presentation of invoices therefor, and such invoices shall include a reasonable itemization of all such costs. The Developer agrees that any amounts not promptly paid by the Developer shall constitute a lien on the Medical Pavilion Property, which shall be collected in the manner provided by law for the collection for local improvement assessments and shall bear interest at the rate of six percent per annum from the date of the approval of said assessment thereon.

B. If the sum of \$423,000.00 plus the City's actual cost of construction of the Frontage Improvements and the Off Ramp Improvements is less than \$715,795.00, the City will not be required to pay the Developer the difference between \$715,795.00 and the sum of \$423,000.00 plus cost of the Frontage Improvements.

**Section 4.** [intentionally left blank]

**Section 5. Termination.** This Agreement shall expire when all of the obligations of the parties are satisfied, unless otherwise specified.

**Section 6. Conveyance of Wetland Property.** The Developer shall transfer fee title to the Wetland Parcel to the City by statutory warranty deed, which deed shall be executed by the Developer and delivered to the Escrow Agent no later than August 1, 2008. The date of the delivery of such deed shall be referred to herein as the Closing. In the event that this conveyance cannot be closed by the date provided herein due to the unavailability of either party or the Escrow Agent 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 City and the Developer may agree in writing to extend the Closing Date at any time.

**Section 7. Liens and Encumbrances.** Notwithstanding anything to the contrary herein contained, Developer covenants and agrees that at or prior to Closing Developer shall (a) pay in full and cause to be cancelled all loan security documents which encumber the Wetland 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



Wetland Property all mechanics' and contractors' liens which encumber the Wetland Property as of the date hereof or which may be filed against the Wetland Property after the date hereof and on or prior to the Closing Date.

**Section 8. Title Insurance.** Prior to Closing, City may obtain, at City's sole cost and expense, an irrevocable commitment (and/or a title insurance policy) for an Owner's ALTA Extended Coverage policy of title insurance (Form B - 1970) issued by First American Title Insurance Company in the face amount of \$800,000.00, insuring City's title subject to no exceptions other than the standard printed exceptions and the Exceptions set forth in **Exhibit C** hereto. The Parties agree that First American Title Insurance Company will serve as the Escrow Agent for this transaction. All other costs or expenses of escrow shall be paid as follows: (a) the cost of recording the Deed to City shall be paid by the Developer; (b) the escrow fee will be paid ½ by the Developer and ½ by the City; (c) all other expenses shall be paid by the City. Encumbrances to be discharged by Developer to provide clear title shall not be expenses of escrow.

**Section 9. Proration.** Real property taxes, assessments, surface water management charges, utilities, and other expenses of the Wetland Property shall be prorated as of the date of Closing, and City shall pay the real estate excise tax, if any, due at Closing. The parties acknowledge that this transaction is entered into under threat of eminent domain and, therefore, the parties do not anticipate that excise tax will be owed. The parties shall reasonably agree on a final proration schedule prior to Closing and shall deliver the same to Escrow Agent. Based in part on the proration statement, Escrow Agent shall deliver to each party at the Closing a closing statement containing a summary of all funds, expenses and proration passing through escrow.

**Section 10. Expenses.** Any expense amount which cannot be ascertained with certainty as of Closing shall be prorated based upon the parties' reasonable estimation, and shall be reconciled within thirty (30) days of Closing or as soon thereafter as the precise amounts can be ascertained. Either party owing the other party money based upon the final reconciliation shall promptly pay it to the other party, which amount shall bear interest at the rate of 12% per annum from the date 10 days after written demand for such payment is made by the party entitled to such payment.

**Section 11. Developer's Delivery.** At Closing, Developer shall deliver the following:

- (a) Statutory Warranty Deed, in form attached hereto as **Exhibit D**, conveying title to the Wetland Property to City, subject to no encumbrances, claims and defects other than (i) the lien of real estate taxes and assessments not yet due and payable, and (ii) the Exceptions set forth in **Exhibit C** hereto.
- (b) Real Estate Excise Tax Affidavit.
- (c) FIRPTA Affidavit.
- (d) Certificate of Developer's Representations and Warranties (see Section 13(a) below).

**Section 12.** City's Delivery. At Closing, City shall deliver the following:

- (a) A counterpart of the Real Estate Excise Tax Affidavit.

**Section 13.** Contingencies. In addition to the other provisions set forth elsewhere in this Agreement, the obligations of City hereunder are conditioned upon the following:

- (a) Developer's representations and warranties as set forth in Section 14 hereof shall be true, complete and current as of the date of Closing (Developer agrees to provide City with a certificate to such effect at Closing).
- (b) Developer shall have performed all of its obligations under this Agreement.

**Section 14.** Developer's Representations and Warranties. Developer represents and warrants to City that:

14.1 Title. As of the date of Closing, Developer shall have good, marketable, indefeasible title to the Wetland Property free and clear of all liens, claims and encumbrances except for the Exceptions set forth in **Exhibit C**.

14.2 Tenant Leases. With respect to the Tenant Leases:

- (a) To Developer's actual knowledge there are no oral or written leases, rental agreements or other occupancy agreements allowing any person to occupy any portion of the Wetland Property.
- (b) To Developer's actual knowledge no person other than the City of Gig Harbor has any right of possession to any portion of the Wetland Property.
- (c) To Developer's actual knowledge but without investigation, no person has an option or right of first refusal to purchase or lease any interest in the Wetland Property under a Tenant Lease or otherwise.

14.3 [intentionally left blank]

14.4 Personal Property. To Developer's actual knowledge but without investigation, there is no personal property on the Wetland Property. Developer agrees that any personal property left on the Wetland Property after Closing will become the property of the City.

14.5 [intentionally left blank]

14.6 Litigation. There is no claim, litigation, proceeding or governmental investigation pending, or, so far as known to Developer, threatened against or relating to Developer, Developer's properties or business, the Wetland Property, or the transactions contemplated by

this Agreement, or any dispute arising out of any contract or commitment entered into regarding the Wetland Property, nor is there any basis known to Developer for any such action or claim.

14.7 No Defaults. Neither the execution or delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of the terms hereof, will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement or instrument which affects the Wetland Property or to which the Wetland Property is subject or any applicable laws or regulations of any governmental body having jurisdiction over the Wetland Property.

14.8 Mechanics' Liens. To the extent any improvements, repairs or maintenance have been made or will be made to the Wetland Property by Developer or its contractors or other agents prior to Closing which might form the basis of mechanics' and materialmen's liens, Developer agrees to keep the Wetland Property free from liens which might result, and to indemnify, defend, protect and hold City harmless from any and all such liens and all attorneys' fees and other costs incurred by reason thereof.

14.9 [this paragraph was intentionally deleted]

14.10 [this paragraph was intentionally deleted]

14.11 [this paragraph was intentionally deleted]

14.12 [this paragraph was intentionally deleted]

14.13 [this paragraph was intentionally deleted]

14.14 Hazardous Substances.

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.

To the actual knowledge of Developer but without investigation, (i) the Wetland Property does not contain, no activity on the Wetland Property has produced, and the Wetland Property has not been used in any manner for the storage, discharge, deposit or dumping of hazardous substances or toxic wastes, whether in the soil, ground water or otherwise; (ii) the Wetland Property does not contain underground tanks of any kind; (iii) the Wetland Property does not contain and does not produce polychlorinated biphenyls, urea formaldehyde, asbestos or radon gas; (iv) the Wetland Property does not contain toxic mold; (v) there are no outstanding liens or encumbrances against the Wetland Property arising out of the Allocation Agreement listed as exception No. 16 on the Exhibit C; and (vi) there are no surface or subsurface conditions which constitute or with the passage of time may constitute a public or private nuisance. Developer has not undertaken any of the foregoing activities and is not aware that any of the foregoing conditions to exist on the Wetland Property.

Developer hereby agrees to defend, protect, indemnify and hold City harmless from any and all loss, damage, liability or expense, including attorneys' fees and costs, City may suffer as a result of any breach of or any inaccuracy of the foregoing representations and warranties. These representations and warranties shall survive Closing for a period of 24 months, and City must give Developer notice of any alleged breach of a representation or warranty within such 24 month period in order to pursue any claim for such breach.

CITY IS ACQUIRING THE WETLAND PROPERTY "AS IS WHERE IS" IN ITS PRESENT CONDITION. CITY HAS THE OPPORTUNITY TO INSPECT THE PROPERTY AND DOCUMENTATION IN DEVELOPER'S POSSESSION AS PROVIDED HEREIN. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 14 ABOVE AND IN THE CONVEYANCE DOCUMENTS, DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WITH RESPECT TO: (A) THE CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR CITY'S INTENDED USE; (B) ANY APPLICABLE BUILDING, ZONING OR FIRE LAWS OR REGULATIONS OR WITH RESPECT TO COMPLIANCE THEREWITH OR WITH RESPECT TO THE EXISTENCE OF OR COMPLIANCE WITH ANY REQUIRED PERMITS, IF ANY, OF ANY GOVERNMENTAL AGENCY; (C) THE AVAILABILITY OR EXISTENCE OF ANY WATER, SEWER OR UTILITIES, ANY RIGHTS THERETO, OR ANY WATER, SEWER OR UTILITY DISTRICTS; OR (D) ACCESS TO ANY PUBLIC OR PRIVATE SANITARY SEWER OR DRAINAGE SYSTEM. CITY ACKNOWLEDGES THAT CITY IS GIVEN THE OPPORTUNITY UNDER THIS AGREEMENT TO FULLY INSPECT THE PROPERTY AND CITY ASSUMES THE RESPONSIBILITY AND RISKS OF ALL DEFECTS AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUCH DEFECTS AND CONDITIONS, IF ANY, THAT CANNOT BE OBSERVED BY CASUAL INSPECTION.

**Section 15.** Liabilities and Assumption of Obligations. Except as expressly provided herein, City shall not assume or take subject to any liabilities or obligations of the Wetland Property or Developer existing or accrued as of the date of Closing, and Developer shall pay the same as they mature and shall indemnify defend and hold City harmless with respect to all

such liabilities and obligations. Liabilities and obligations of the Wetland Property accruing after the date of Closing shall be the responsibility of City. Each party agrees to indemnify, defend and hold the other party harmless with respect to the liability and responsibility of such party in accordance with this Section 15. This section shall survive Closing or the termination of this Agreement.

**Section 16.** Negotiation and Construction. This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either party.

**Section 17.** Brokers. Each party represents and warrants that it has not contracted with any other broker or finder in connection with this transaction. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith, City, if such claim is based upon any agreement alleged to have been made by City, hereby agrees to indemnify Developer against and hold Developer harmless from any and all damages, liabilities, costs, expenses, and losses (including, without limitation, reasonable attorneys' fees and costs) which Developer may sustain or incur by reason of such claim, and Developer, if such claim is based upon any agreement alleged to have been made by Developer, hereby agrees to indemnify City against and hold City harmless from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which City may sustain or incur by reason of such claim. The provisions of this section shall survive the termination of this Agreement or the Closing.

**Section 18.** Governing Law, Attorneys' Fees. This Agreement shall be construed according to the laws of the state of Washington. If either City or Developer should find it necessary to employ an attorney to enforce a provision of the Agreement or to recover damages for the breach hereof (including proceedings in bankruptcy), the prevailing party shall be entitled to be reimbursed for its court costs and reasonable attorneys' fees, in addition to all damages, through all levels of appeal.

**Section 19.** Default. In the event either party shall fail to perform any covenant or agreement contained herein, the other party may elect to pursue any and all remedies available in law or in equity, including, without limitation (a) specific performance of this Agreement; (b) damages (limited to actual damages only, and excluding consequential damages); or (c) rescission of this Agreement.

**Section 20.** Notices. All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) sent by a nationally recognized overnight delivery service, (c) electronically transmitted with confirmation sent by another method specified in this Section 20 or (d) if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

DEVELOPER: SHDP Associates, LLC

8129 Lake Ballinger Way, Suite 104  
Edmonds, WA 98026  
Attention: Dale Pinney  
Telephone: 425-329-0848  
Facsimile: 425-329-0849  
Email: dale@fwdsinc.com

CITY: The City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335  
Attention: Rob Karlinsey, City Administrator  
Telephone (253) 851-8136  
Facsimile: (253) 851-8563

With a copy to: Jeff Taraday  
Morris & Taraday, P.C.  
1319 Dexter Avenue N., #030  
Seattle, WA 98109  
Telephone: (206) 518-5272  
Facsimile: (206) 518-5273  
Email: jeff@morris-taraday.com

Either party hereto may by proper notice made by the other party designate such other address for giving of notices. All notices shall be deemed given on the day such notice is personally served or transmitted by telephone facsimile or on the third business day following the date such notice is mailed in accordance with this Section.

**Section 21. Successors and Assigns.** This Agreement shall be recorded against the Wetland Property as well as the Medical Office Building Property described in Exhibit B, with the Pierce County auditor, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything to the contrary contained herein, this Agreement shall not encumber (and any such encumbrance shall then be released) the Medical Office Building Property from and after the earlier of (a) the date the Developer has satisfied all obligations that may give rise to a lien on the Medical Office Building Property pursuant to Section 3 and/or Section 7 of this Agreement, or (b) five (5) years after the date of this Agreement.

**Section 22. Entire Agreement.** This Agreement contains the entire understanding between the parties and supersedes any prior agreements between them respecting the subject matter hereof.

**Section 23. Further Assurances.** As and to the extent otherwise contemplated by this Agreement, each party to this Agreement agrees that it will at any time and from time to time after the date hereof, at its sole cost and expense, immediately following the reasonable request of the other party, promptly execute, acknowledge (if necessary) and deliver or cause to be properly executed, acknowledged (if necessary) and delivered, such agreements,

certificates, statements, instruments and documents and promptly take, or promptly cause to be taken, such other and further steps and actions, as may be required by law or as reasonably shall be deemed necessary by the other party in order to more fully effect, evidence or carry out the intent and purposes of this Agreement.

**Section 24. Time.** Time is of the essence of this Agreement and each and every provision hereof. Any extension of time granted for the performance of any duty under this Agreement shall not be considered as an extension of time for the performance of any other duty under this Agreement. In the event the time for performance of any obligation hereunder shall fall on a Saturday, Sunday or a holiday, such time for performance shall be extended to the next business day.

**Section 25. Severability.** If a court of competent jurisdiction invalidates a portion of this Agreement, such invalidity shall not affect the remainder.

**Section 26. 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.

**Section 27. 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.

**Section 28. 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.

**Section 29. Counterparts.** This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below:

**OWNER/DEVELOPER:**

**CITY OF GIG HARBOR**

SHDP Associates, LLC  
By: SHD Associates, LLP

By \_\_\_\_\_  
Its Mayor

By:   
Its: PAZUNER







STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

I certify that I know or have satisfactory evidence that Freg B. Ederkin signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it, as the Vice President of Capital Management Group, Inc., to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal hereto affixed on July 17, 2008.



Janilee A. Jeffery  
(Print name) Janilee A. Jeffery  
Notary Public in and for the State of Washington  
Residing at Auburn, WA  
My appointment expires 6-29-2011

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it, as the \_\_\_\_\_ of the City of Gig Harbor, to be the free and voluntary act and deed of said City for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal hereto affixed on \_\_\_\_\_, 2008.

\_\_\_\_\_  
(Print name) \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

Exhibit A

Wetlands Property Legal Description

Parcel B of Boundary Line Adjustment BLA No. 08-0005 Recorded July 1, 2008 in Pierce County, Washington under Recording No. 200807015008.

Exhibit B

Parcel A of Boundary Line Adjustment BLA No. 08-0005, Recorded July 1, 2008 in Pierce County, Washington under Recording No. 200807015008.

Exhibit C

Title Exceptions

1. Real estate taxes not yet due and payable.
2. Easement, including terms and provisions contained therein:  
Recording Information: November 29, 1922, Recording No. 650239  
In Favor of: Pierce County; For: Transmission line  
Document(s) declaring modifications thereof recorded October 22, 1923 as Instrument No. 686748 of Official Records.
3. City liens, if any, for the City of Gig Harbor.
4. County liens, if any, for the unincorporated area of Pierce County.
5. Easement, including terms and provisions contained therein:  
Recording Information: October 22, 1923 under Recording No. 686748  
In Favor of: City of Tacoma, a municipal corporation  
For: Transmission line
6. Easement, including terms and provisions contained therein:  
Recording Information: May 27, 1946 under Recording No. 1412063  
In Favor of: Peninsula Light Company, Inc.  
For: Transmission and/or distribution line
7. Easement, including terms and provisions contained therein:  
Recording Information: September 4, 1969 under Recording No. 2311215  
In Favor of: Washington Natural Gas Company, a public utility corporation  
For: Pipe line or pipe lines
8. Relinquishment of all existing and future rights to light, view and air, together with the rights of access to and from the State Highway constructed on lands conveyed by document in favor of the State of Washington: Recorded: June 22, 1971; Recording No.: 2397369.
9. The terms and provisions contained in the document entitled Utility Extension and Capacity Agreement, executed by and between City of Gig Harbor and Thompson Properties Four, recorded April 6, 1992 as Instrument No. 9204060663 of Official Records.  
Document(s) declaring modifications thereof recorded January 31, 1995 as Recording No. 9501310259 of Official Records.
10. The terms and provisions contained in the document entitled "Utility Local Improvement District No. 3" recorded June 1, 1994 as Recording No. 9406010223 of Official Records.
11. The terms and provisions contained in the document entitled "Ordinance No. 676"

recorded October 19, 1995 as Recording No. 9510190514 of Official Records.

12. The terms and provisions contained in the document entitled Pre-annexation Agreement, executed by and between City of Gig Harbor, a non-charter, optional municipal code, Logan International Corporation, a Washington corporation, Pope Resources, a Delaware limited partnership and Tucci & Son's, Inc., a Washington corporation, recorded April 4, 1997 as Instrument No. 9704040094 of Official Records.

Document(s) declaring modifications thereof recorded February 9, 2000 and December 4, 2000 as Recording Nos. 200002090450 and 200012040805 of Official Records.

13. The terms and provisions contained in the document entitled Agreement for Dedication of Right-of-Way to the City of Gig Harbor, executed by and between City of Gig Harbor, a municipal corporation, Pope Resources, a Delaware limited partnership and Logan International Corporation, a Washington corporation, recorded May 1, 1997 as Instrument No. 9705010038 of Official Records.

14. The terms, provisions and easement(s) contained in the document entitled "Wetland Easement Agreement" recorded May 8, 2000 as Recording No. 200005080091 of Official Records.

15. The terms and provisions contained in the document entitled Agreement for Dedication of Right-of-Way to the City of Gig Harbor, executed by and between City of Gig Harbor, a Washington municipal corporation and Logan International Corporation, a Washington corporation, recorded May 8, 2000 as Instrument No. 200005080094 of Official Records. Document(s) declaring modifications thereof recorded July 13, 2000 as Recording No. 200007130671 of Official Records.

16. The terms and provisions contained in the document entitled Allocation Agreement, executed by and between Logan International Corporation, Pope Resources, a Delaware limited partnership and Olympia Property Group LLC, a Washington limited liability company, recorded May 17, 2000 as Instrument No. 200005170157 of Official Records.

17. Conditions, notes, easements, provisions contained and/or delineated on the face of the Survey recorded January 27, 2005 under Recording No. 200501275003 , in Pierce County, Washington.

18. Easement for utilities over and across the premises included within the boundaries of Sehmel Drive NW, if any such exists.

19. The terms, conditions and provisions of Boundary Line Adjustment BLA No. 08-0005 recorded July 1, 2008 under Recording No. 200807015008 in Pierce County, Washington.

Exhibit D

Form of Deed

**RETURN ADDRESS:**  
Jeffrey B. Taraday, Esq.  
Morris & Taraday, P.C.  
1319 Dexter Ave. N., #030  
Seattle, WA 98109

---

**STATUTORY WARRANTY DEED**

GRANTOR: SHDP ASSOCIATES, LLC; CAPITAL MANAGEMENT GROUP, INC.

GRANTEE: CITY OF GIG HARBOR

ABBREVIATED LEGAL DESCRIPTION: Parcel B, BLA No. \_\_\_\_\_

ASSESSOR'S TAX PARCEL NO.: \_\_\_\_\_

---

THE GRANTOR, SHDP Associates, LLC, a Washington limited liability company, and Capital Management Group, Inc., a Washington corporation, for and in consideration of \$10.00 and other good and valuable consideration, in hand paid, conveys and warrants to City of Gig Harbor, a non-charter, optional code Washington municipal corporation, the following described real estate, situated in the County of Pierce, State of Washington:

SEE EXHIBIT A ATTACHED HERETO.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2008.

SHDP ASSOCIATES, LLC, a  
Washington limited liability company  
By: SHD Associates, LLP, Manager

CAPITAL MANAGEMENT GROUP  
a Washington corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

On this day, 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 partner of SHD Associates, LLP, the Manager of SHDP Associates, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of such limited liability company for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed on \_\_\_\_\_, 2008.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)  
NOTARY PUBLIC in and for the State of Washington,  
Residing at \_\_\_\_\_.  
My Appointment Expires: \_\_\_\_\_.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

On this day, 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 \_\_\_\_\_ of Capital Management Group, Inc., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of such corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed on \_\_\_\_\_, 2008.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)  
NOTARY PUBLIC in and for the State of Washington,  
Residing at \_\_\_\_\_.  
My Appointment Expires: \_\_\_\_\_.

**EXHIBIT A**

**To Deed**

**Legal Description**

Parcel B of Boundary Line Adjustment BLA No. 08-0005 recorded July 1, 2008 under Recording No. 200807015008 Records of Pierce County, Washington.

Subject To:

1. Real estate taxes not yet due and payable.
2. Easement, including terms and provisions contained therein:  
Recording Information: November 29, 1922, Recording No. 650239  
In Favor of: Pierce County; For: Transmission line  
Document(s) declaring modifications thereof recorded October 22, 1923 as Instrument No. 686748 of Official Records.
3. City liens, if any, for the City of Gig Harbor.
4. County liens, if any, for the unincorporated area of Pierce County.
5. Easement, including terms and provisions contained therein:  
Recording Information: October 22, 1923 under Recording No. 686748  
In Favor of: City of Tacoma, a municipal corporation  
For: Transmission line
6. Easement, including terms and provisions contained therein:  
Recording Information: May 27, 1946 under Recording No. 1412063  
In Favor of: Peninsula Light Company, Inc.  
For: Transmission and/or distribution line
7. Easement, including terms and provisions contained therein:  
Recording Information: September 4, 1969 under Recording No. 2311215  
In Favor of: Washington Natural Gas Company, a public utility corporation  
For: Pipe line or pipe lines



8. Relinquishment of all existing and future rights to light, view and air, together with the rights of access to and from the State Highway constructed on lands conveyed by document in favor of the State of Washington: Recorded: June 22, 1971; Recording No.: 2397369.

9. The terms and provisions contained in the document entitled Utility Extension and Capacity Agreement, executed by and between City of Gig Harbor and Thompson Properties Four, recorded April 6, 1992 as Instrument No. 9204060663 of Official Records. Document(s) declaring modifications thereof recorded January 31, 1995 as Recording No. 9501310259 of Official Records.

10. The terms and provisions contained in the document entitled "Utility Local Improvement District No. 3" recorded June 1, 1994 as Recording No. 9406010223 of Official Records.

11. The terms and provisions contained in the document entitled "Ordinance No. 676" recorded October 19, 1995 as Recording No. 9510190514 of Official Records.

12. The terms and provisions contained in the document entitled Pre-annexation Agreement, executed by and between City of Gig Harbor, a non-charter, optional municipal code, Logan International Corporation, a Washington corporation, Pope Resources, a Delaware limited partnership and Tucci & Son's, Inc., a Washington corporation, recorded April 4, 1997 as Instrument No. 9704040094 of Official Records. Document(s) declaring modifications thereof recorded February 9, 2000 and December 4, 2000 as Recording Nos. 200002090450 and 200012040805 of Official Records.

13. The terms and provisions contained in the document entitled Agreement for Dedication of Right-of-Way to the City of Gig Harbor, executed by and between City of Gig Harbor, a municipal corporation, Pope Resources, a Delaware limited partnership and Logan International Corporation, a Washington corporation, recorded May 1, 1997 as Instrument No. 9705010038 of Official Records.

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15. The terms and provisions contained in the document entitled Agreement for Dedication of Right-of-Way to the City of Gig Harbor, executed by and between City of Gig Harbor, a Washington municipal corporation and Logan International Corporation, a Washington corporation, recorded May 8, 2000 as Instrument No. 200005080094 of Official Records. Document(s) declaring modifications thereof recorded July 13, 2000 as Recording No. 200007130671 of Official Records.

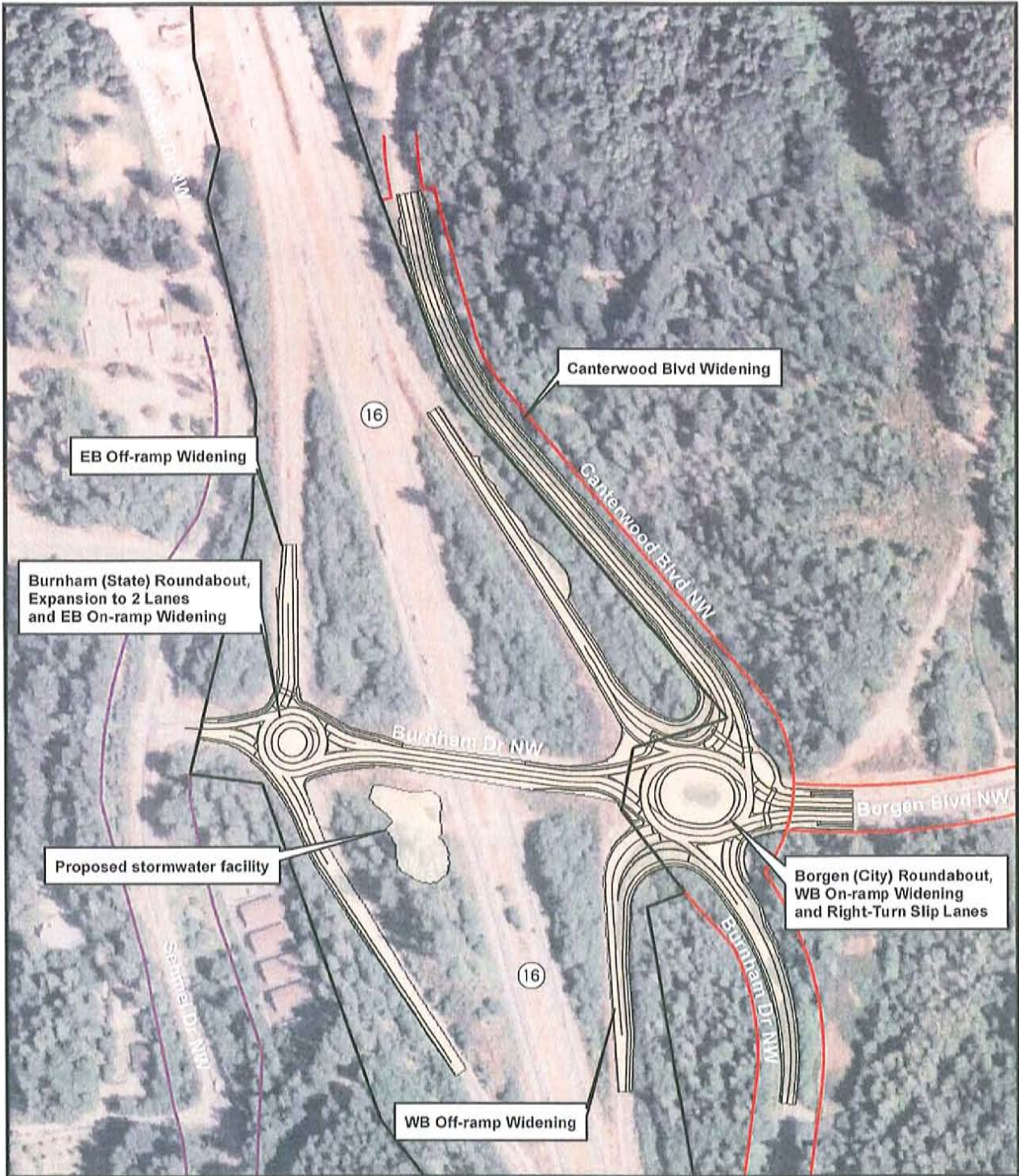
16. The terms and provisions contained in the document entitled Allocation Agreement, executed by and between Logan International Corporation, Pope Resources, a Delaware limited partnership and Olympia Property Group LLC, a Washington limited liability company, recorded May 17, 2000 as Instrument No. 200005170157 of Official Records.



17. Conditions, notes, easements, provisions contained and/or delineated on the face of the Survey recorded January 27, 2005 under Recording No. 200501275003 , in Pierce County, Washington.

18. Easement for utilities over and across the premises included within the boundaries of Sehmel Drive NW, if any such exists.

19. The terms, conditions and provisions of Boundary Line Adjustment BLA No. 08-0005 recorded July 1, 2008 under Recording No. 200807015008 in Pierce County, Washington.

Exhibit E  
Improvements Site Plan



<p> <span style="display: inline-block; width: 20px; height: 10px; background-color: yellow; border: 1px solid black;"></span> Project Footprint  <span style="display: inline-block; width: 20px; border-bottom: 2px solid black;"></span> WSDOT ROW  <span style="display: inline-block; width: 20px; border-bottom: 2px solid red;"></span> City ROW  <span style="display: inline-block; width: 20px; border-bottom: 2px solid purple;"></span> County ROW         </p> <p>           0                      300                      600            Feet         </p> <p> <small>P:\ct\COGH0000032\0600\INFO\GSM\Ex 3 - Project Improvements.mxd Updated: 11/12/07</small> </p>	<p><b>Exhibit E:</b> <b>Proposed Roadway Improvements</b></p>	
<p><b>SR 16/Burnham/Borgen Interchange</b></p>		
	<p>COGH0000-0032</p>	 <small>DAVID EVANS AND ASSOCIATES INC.</small>
<p>November 2007</p>		

**CITY OF GIG HARBOR  
COMMITTEE OUTLINE MINUTES**

City of Gig Harbor Art Commission  
*(Name of Committee, Board, Task Force, Commission)*

Date: July 8, 2008 Time: 7:00 p.m. Location: Engineering/Operations Conf Rm Scribe: Maureen Whitaker

**Commission Members and Staff Present:** Bob Sullivan, Carolyn Scott Arnold, Ron Carson, Michael Jones, Tracy von Trotha, Carola Stark, and Maureen Whitaker, Assistant City Clerk.

**Excused:** Karen Peck, Dale Strickland

**Absent:** Pat Rosenthal

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
<p><b>New Business:</b></p> <p>I. T-Bird Sculpture Presentation -- Mark Hoppen</p>	<p>Mr. Hoppen presented a PowerPoint presentation that characterized an exact 3-D scale model of the original Thunderbird Hull #1, as built by his father, Ed Hoppen.</p> <p>The proposed replica is 11 ft. tall by 3 ft. wide and crafted of stainless steel with a hollow hull. The sculpture will be mounted on a granite plinth to mitigate vandalism. The sculpture weighs approximately 1,250 – 1,500 pounds, plus the weight of the plinth. The plinth is approximately 3.5 – 4 ft. tall.</p> <p>The bronze plaque will have the specifications of Hull #1, a relief of Ed Hoppen and the years that Eddon Boat Co. was in business (1950-1978).</p> <p>The proposed location is somewhere between the sitting area near the sidewalk and at the end of the concrete abutment alongside the driveway.</p>	<p><b>MOTION:</b> Move to approve the design and model of Thunderbird Hull #1 as presented by Mark Hoppen. Carson / Carolyn Scott Arnold – unanimously approved.</p>





**Subject:** Second Reading – Ordinance  
Increasing Water Rates

**Proposed Council Action:** Adopt ordinance

**Dept. Origin:** Finance

**Prepared by:** David Rodenbach

**For Agenda of:** July 28, 2008

**Exhibits:**

Initial & Date

**Concurred by Mayor:**

*CLH 7/21/08*

**Approved by City Administrator:**

*ROK 7/21/08*

**Approved as to form by City Atty:**

*Cam 7/21/08*

**Approved by Finance Director:**

*DR 7/21/08*

**Approved by Department Head:** \_\_\_\_\_

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**INFORMATION / BACKGROUND**

This is the second reading of an ordinance increasing monthly water rates. This increase is recommended pursuant to a 2008 rate study performed by Peninsula Financial Consulting.

The proposed three percent (3%) rate increase is intended to cover increased operational costs due to inflation. This will ensure that adequate revenues are available to meet operating costs, replace aging infrastructure, construct new facilities, and maintain adequate cash reserves.

**FISCAL CONSIDERATION**

The proposed rate increase is expected to provide approximately \$73,000 in additional operating revenues for the water utility in 2009.

Currently, the city’s average residential water bill for one month is \$22.29. With the proposed increase this rate would increase to \$22.96.

**BOARD OR COMMITTEE RECOMMENDATION**

The Finance and Operations Committees have seen this proposal and recommended presentation to the full council. In addition, this proposal was presented to City Council in a June 30 study session.

**RECOMMENDATION / MOTION**

**Move to:** Pass this ordinance.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON INCREASING THE MONTHLY WATER SERVICE RATE TO BE PAID TO THE CITY FOR THE PROVISION OF WATER SERVICES; AMENDING GIG HARBOR CODE SECTIONS 13.04.010 AND 13.04.020, TO BE EFFECTIVE BEGINNING JANUARY 1, 2009.

**WHEREAS**, it is necessary to raise water service rates and charges to meet the increasing cost of providing water services;

**WHEREAS**, the 2008 rate study by Peninsula Financial Consulting supports these rate increases;

**NOW, THEREFORE**, the City Council of the City of Gig Harbor, Washington, **DO ORDAIN AS FOLLOWS:**

Section 1. Section 13.04.010 of the Gig Harbor Municipal Code is hereby amended as follows:

**13.04.010 Water Rates.**

The monthly water service rates shall be set at the following amounts:

<b>Customer Class/Meter</b>	<b>Customer Base Charge (per meter/month)</b>	<b>Commodity Charge (per ccf)</b>
Residential	\$11.34 11.01	\$1.48 1.44
Multi-residential		
5/8" & 3/4"	19.92 19.34	1.38 1.34
1"	27.41 26.61	1.38 1.34
1-1/2"	45.99 44.65	1.38 1.34
2"	68.38 66.39	1.38 1.34
3"	128.02 124.29	1.38 1.34
4"	\$195.17 189.49	\$1.38 1.34
Commercial/Schools		
5/8" & 3/4"	\$16.70 16.21	\$1.44 1.40
1"	22.05 21.41	1.44 1.40
1-1/2"	35.30 34.27	1.44 1.40
2"	51.25 49.76	1.44 1.40
3"	93.81 91.08	1.44 1.40
4"	\$141.71 137.58	\$1.44 1.40

Section 2. Section 13.04.020 of the Gig Harbor Municipal Code is hereby amended as follows:

**13.04.020 Nonmetered residential uses.**

Until a water meter has been installed to measure water consumed by a residential unit or a multiple-residential building, the water service charge applicable to such unmetered unit shall be ~~\$32.66~~ \$33.64 per month per unit.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance 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 Ordinance.

Section 4. This ordinance shall be in full force and take effect January 1, 2009 which shall be at least five (5) days after its publication of an approved summary consisting of the title.

**PASSED** by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of the council held on this 28th day of July, 2008.

APPROVED:

\_\_\_\_\_  
Charles L. Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Molly Towslee, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
Carol A. Morris

Filed with city clerk: 07/09/08  
Passed by city council:  
Date published:  
Date effective:  
Ordinance No.





**Subject:** Second Reading – Ordinance  
Increasing Sewer Rates

**Proposed Council Action:** Adopt ordinance

**Dept. Origin:** Finance

**Prepared by:** David Rodenbach

**For Agenda of:** July 28, 2008

**Exhibits:**

Initial & Date

**Concurred by Mayor:**

*CLH 7/21/08*

**Approved by City Administrator:**

*BRK 7/21/08*

**Approved as to form by City Atty:**

*CAM 7/21/08*

**Approved by Finance Director:**

*DR 7/21/08*

**Approved by Department Head:** \_\_\_\_\_

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
----------------------	---	-----------------	---	------------------------	---

**INFORMATION / BACKGROUND**

This is the second reading of an ordinance increasing monthly sewer service rates. This increase is recommended pursuant to a 2008 rate study performed by Peninsula Financial Consulting.

The proposed rate increase will ensure that adequate revenues are available to meet operating costs, replace aging infrastructure, construct new facilities, and maintain adequate cash reserves.

**FISCAL CONSIDERATION**

The proposed rate increase will allow the sewer utility to cover operating expenses, pay debt service and maintain a sufficient working capital balance.

Currently, the City's average residential sewer bill for one month is \$40.71. With the proposed increase this rate would increase to \$46.82. This increase will provide approximately \$372,000 in additional operating revenues.

**BOARD OR COMMITTEE RECOMMENDATION**

The Finance and Operations Committees have seen this proposal and recommend presentation to the full council. In addition, this proposal was presented to City Council in a June 30 study session.

**RECOMMENDATION / MOTION**

**Move to:** Pass ordinance.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON INCREASING THE MONTHLY SEWER SERVICE RATE TO BE PAID FOR THE PROVISION OF SEWER SERVICES; AND AMENDING GIG HARBOR CODE SECTIONS 13.32.010, 13.32.015, 13.32.020, AND 13.32.025 TO BE EFFECTIVE BEGINNING JANUARY 1, 2009.

WHEREAS, it is necessary to raise sewer service rates and charges to meet the increasing cost of providing sewage collection and treatment services; and

WHEREAS, the 2008 rate study by Peninsula Financial Consulting recommends these rate increases;

NOW, THEREFORE, the City Council of the City of Gig Harbor, Washington, DO ORDAIN AS FOLLOWS:

**Section 1.** Section 13.32.010 of the Gig Harbor Municipal Code is hereby amended as follows:

**13.32.10 Sewer Rates.**

A. The monthly sewer service rate shall be set at the following amounts:

<b>Customer Class</b>	<b>Customer Base Charge (per month)</b>	<b>Commodity Charge (per ccf)</b>
Residential	<u>\$23.63</u> <del>20.55</del>	<u>\$2.90</u> <del>2.52</del>
Multi-Family Residential (per living unit)	<u>18.18</u> <del>15.84</del>	<u>2.90</u> <del>2.52</del>
Commercial/School	<u>55.15</u> <del>47.96</del>	<u>5.12</u> <del>4.45</del>
Dept. of Corrections	<u>\$7,286</u> <del>6,336</del>	<u>\$2.90</u> <del>2.52</del>

\* \* \*

**Section 2.** Section 13.32.015 of the Gig Harbor Municipal Code is hereby amended as follows:

**13.32.015 Sewer Rates – Community Systems.** The monthly sewer service rates for community systems shall be set at the following amounts:

<b>Customer Class</b>	<b>Monthly Charge</b>
Shore Crest System	\$ <u>7.31</u> <del>6.36</del> plus \$ <u>36.00</u> <del>31.30</del> /living unit

**Section 3.** Section 13.32.020 of the Gig Harbor Municipal Code is hereby amended as follows:

**13.32.20 Non-metered uses.** Until a water meter has been installed to measure water flow by a residential unit, multi-residential building, or commercial facility, the sewer service charge for each unmetered unit/facility shall be as follows:

<b><u>Nonmetered Customer Class</u></b>	<b><u>Monthly Charge</u></b>
Residential	\$ <u>43.29</u> <del>37.64</del> /unit
Multifamily residential	<u>31.04</u> <del>26.99</del> /living unit
Commercial	\$ <u>106.29</u> <del>92.43</del> /billing unit

**Section 4.** Section 13.32.025 of the Gig Harbor Municipal Code is hereby amended as follows:

**13.32.025 Sewer Rates – Community systems using flow meters.**

<b><u>Customer Class</u></b>	<b><u>Customer Base Charge (per month) (per ccf)</u></b>	<b><u>Commodity Charge</u></b>
Residential	\$ <u>7.31</u> <del>6.36</del> + \$ <u>16.32</u> <del>14.19</del> /unit	\$ <u>2.90</u> <del>2.52</del>
Multi-Family Residential	\$ <u>7.31</u> <del>6.36</del> + \$ <u>10.87</u> <del>9.45</del> /unit	\$ <u>2.90</u> <del>2.52</del>
Commercial	\$ <u>7.31</u> <del>6.36</del> + \$ <u>47.85</u> <del>41.61</del> /unit	\$ <u>5.12</u> <del>4.45</del>

\* \* \*

**Section 5. Severability.** If any section, sentence, clause or phrase of this Ordinance 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 Ordinance.

**Section 6.** This ordinance shall be in full force and take effect January 1, 2009 which shall be at least five (5) days after its publication of an approved summary consisting of the title.

**PASSED** by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of the council held on this 28th day of July, 2008.

APPROVED:

\_\_\_\_\_  
Charles L Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Molly Towslee  
City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
Carol A. Morris

Filed with City Clerk: 07/09/08  
Passed by City Council:  
Date published:  
Date effective:  
Ordinance No.:



**Subject:** Second Reading – Ordinance  
Increasing Storm Drainage Rates

**Proposed Council Action:** Adopt ordinance

**Dept. Origin:** Finance

**Prepared by:** David Rodenbach

**For Agenda of:** July 28, 2008

**Exhibits:**

Initial & Date

**Concurred by Mayor:**

*CLH 7/21/08*

**Approved by City Administrator:**

*PRK 7/21/08*

**Approved as to form by City Atty:**

*CAM 7/21/08*

**Approved by Finance Director:**

*DR 7/21/08*

**Approved by Department Head:** \_\_\_\_\_

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**INFORMATION / BACKGROUND**

This is the second reading of an ordinance increasing monthly storm drainage fees. This increase is recommended pursuant to a 2008 rate study performed by Peninsula Financial Consulting.

The proposed three percent (3%) rate increase is intended to cover increased operational costs due to inflation.

The proposed rate increase will ensure that adequate revenues are available to meet the new National Pollutant Discharge and Elimination System (NPDES) Citywide Phase 2 program and permitting requirements, operating costs, replace aging infrastructure, construct new facilities, and maintain adequate cash reserves.

**FISCAL CONSIDERATION**

The monthly service charge is currently \$10.80 per month or \$129.60 per year. This ordinance will increase storm fees to \$11.12 per month or \$133.44 per year and will increase annual revenues by about \$53,000.

**BOARD OR COMMITTEE RECOMMENDATION**

The Finance and Operations Committees have seen this proposal and recommend presentation to the full council. In addition, this proposal was presented to City Council in a June 30 study session.

**RECOMMENDATION / MOTION**

**Move to:** Pass this ordinance.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON INCREASING THE MONTHLY STORM DRAINAGE RATE TO BE PAID TO THE CITY BY OWNERS OF PROPERTY WITHIN THE CITY FOR THE PROVISION OF STORM DRAINAGE SERVICES, AMENDING GIG HARBOR CODE SECTION 14.10.050, TO BE EFFECTIVE BEGINNING JANUARY 1, 2009.

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**WHEREAS**, it is necessary to increase the storm drainage service rates and charges to reflect the increased costs of providing those services and to maintain a viable storm drainage system; and

**WHEREAS**, the 2008 rate study by Peninsula Financial Consulting recommends this rate increase; and

**WHEREAS**, the proposed rate increase will ensure that adequate revenues are available to meet the National Pollutant Discharge and Elimination System (NPDES) Citywide Phase 2 program and permitting requirements,

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

Section 1. Section 14.10.050 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**14.10.050 Service charge rates.** In accordance with the basis for a rate structure set forth in GHMC 14.10.020 and 14.10.030, there is levied upon all developed real property within the boundaries of the utility the following service charges which shall be collected from the owners of such properties:

- A. For all detached single-family residences and mobile homes (one equivalent billing unit), the monthly service charge shall be ~~\$11.12~~ 10.80.
- B. Those developed properties that are riparian to the harbor or Puget Sound from which storm and surface waters flow directly into the harbor or Puget Sound, without the aid of any watercourse or natural or artificial drainage facilities, and all developed properties with city-approved detention facilities will be billed at one equivalent billing unit.
- C. Duplexes shall be charged at 1.5 equivalent billing units for the two units.
- D. For all other developed property within the boundaries of the utility, except as set forth in GHMC 14.10.060, the monthly service charge shall be ~~\$\$11.12~~ 10.80 multiplied by the number of equivalent billing units determined by the utility to be contained in such parcel pursuant to GHMC 14.10.030.

Section 2. This ordinance shall be in full force and take effect January 1, 2009 which shall be at least five (5) days after its publication of an approved summary consisting of the title.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance 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 Ordinance.

**PASSED** by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of the council held on this 28<sup>th</sup> day of July, 2008.

APPROVED:

\_\_\_\_\_  
Charles L Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Molly Towslee  
City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
Carol A. Morris

Filed with city clerk: 07/09/08  
Passed by city council:  
Date published:  
Date effective:  
Ordinance No.





Subject: Salary Commission for Elected City Officials.

Dept. Origin: Administration

Prepared by: Rob Karlinsey

Proposed Council Action:

For Agenda of: July 28, 2008
Exhibits: Ordinance

Second Reading: Adopt an ordinance that would establish a salary commission for Mayor and City Council compensation.

Initial & Date

Concurred by Mayor: [Signature] 7/23/08
Approved by City Administrator: [Signature] 7/22/08
Approved as to form by City Atty: [Signature] 7/23/08
Approved by Finance Director: [Signature] 7/23/08
Approved by Department Head: \_\_\_\_\_

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and values TBD.

INFORMATION / BACKGROUND

Due to population growth combined with the City's increasing role as a regional service center and commercial hub, demands on the City's elected officials' time and involvement has increased dramatically. Various meetings, including special Council meetings, Council committee meetings, and other meetings have increased substantially in recent years. Mayor and Council salaries have not been adjusted in 10 years. Therefore, the City Administrator recommends that an independent salary commission be formed to evaluate Mayor and Council compensation. The salary commission will study Mayor and City Council salaries and determine whether and when compensation shall be adjusted.

FISCAL CONSIDERATION

The fiscal impact of this ordinance is not yet known. The salary commission may adjust salaries up or down.

BOARD OR COMMITTEE RECOMMENDATION

The Finance & Safety Committee reviewed an earlier, draft version of this ordinance at their June meeting.

RECOMMENDATION / MOTION

Move to: Second Reading. Adopt an ordinance that would establish an independent salary commission for Mayor and City Council compensation.



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ESTABLISHING AN INDEPENDENT SALARY COMMISSION TO REVIEW THE SALARIES OF THE MAYOR AND CITY COUNCIL MEMBERS, PURSUANT TO RCW 35.21.015, DESCRIBING THE MANNER OF APPOINTMENT, MEMBERSHIP, QUALIFICATIONS, METHOD OF REMOVAL, PROCEDURE FOR ESTABLISHING SALARIES, AND CHANGING EXISTING CODE PROVISIONS RELATING TO THE ADJUSTMENT OF THE MAYOR AND COUNCILMEMBERS' SALARIES TO BE CONSISTENT THEREWITH, ADDING A NEW CHAPTER 2.23 TO THE GIG HARBOR MUNICIPAL CODE; AND AMENDING GHMC SECTION 2.40.010 AND 2.40.020.**

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WHEREAS, under RCW 35A.12.070 and chapter 2.40 GHMC, the Council may adjust the salaries of the councilmembers and the mayor; and

WHEREAS, RCW 35.21.015 was adopted in 2001 to expressly authorize cities to create independent salary commissions to set elected official's salaries; and

WHEREAS, pursuant to RCW 35.21.015, the action fixing the salary by a commission supersedes any other provision of state statute or city ordinance related to municipal budgets or to the fixing of salaries; and

WHEREAS, the City Council should adopt an ordinance consistent with RCW 35.21.015 and repeal any inconsistent sections of the Gig Harbor Municipal Code; and

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

Section 1. A new chapter 2.23 is hereby added to the Gig Harbor

Municipal Code, which shall read as follows:

**Chapter 2.23  
Salary Commission**

**2.23.010 Created.**

There is hereby established a Gig Harbor independent salary commission hereinafter referred to as the "Salary Commission."

**2.23.020 Purpose.**

The purpose of the Salary Commission shall be to review and establish the salaries of the mayor and the councilmembers in accordance with state law and this chapter. "Salary" for the purpose of this ordinance includes wage and benefits.

**2.23.030 Membership.**

A. Number of members. The salary commission shall consist of five members appointed by the mayor and approved by the city council.

B. Compensation. The salary commission shall serve without compensation.

C. Terms. Each member of the salary commission shall serve a term of four years, except that the first five commission members shall be appointed for different terms, as follows: two members to serve for a period of two years, and three members to serve for a period of four years. All members of the salary commission shall serve until their successors are duly appointed by the mayor and approved by the city council.

D. Appointment. The mayor, with the approval of the city council, may appoint alternate independent salary commission members as the need arises. The city council shall annually appoint new members in March to fill the expiring terms on the independent salary commission.

E. Term Limit. No member may be appointed to more than two terms on the salary commission whether or not those terms are held consecutively.

F. Vacancy. If, for any reason, a vacancy occurs during the term of an independent salary commission member, the mayor shall appoint, with the approval of the city council, a new member to fill the unexpired term of that member.

G. Removal. The city council may remove an independent salary commission member at any time for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence.

**2.23.040 Qualifications.**

A. No person shall be appointed to serve as a member or alternate member of the salary commission unless that person is a citizen of the United States and a resident of the city.

B. No city officer, official, or employee of the city or any of their immediate family members may serve on the commission. "Immediate family

member," as used in this section, means the parents, spouse, siblings, children, or dependent relatives of the officer, official, or employee, whether or not living in the household of the officer, official, or employee.

**2.23.050 Operation.**

A. The salary commission shall elect a chair from among its members. The salary commission establish and publish rules of procedure for the efficient and fair conduct of its business, consistent with state law and city ordinance.

B. The city administrator shall appoint appropriate staff to assist the independent salary commission in preparation of its reports and records as are necessary for the proper operation of the commission.

C. The salary commission shall keep a written record of its proceedings, which shall be a public record all in accordance with state law, and shall actively solicit public comment at all meetings which shall be subject to the Open Public Meetings Act pursuant to Chapter 42.30 RCW.

D. The salary commission shall meet at least once in 2008 and in each even year thereafter to consider whether or not to review and/or adjust existing salaries. The first meeting shall occur no later than April 30<sup>th</sup>, in any given year, except for the 2008 calendar year for which December 15<sup>th</sup> shall be the deadline.

E. The commission shall review and, if it so determines, amend and file its schedule of salaries with the city clerk no later than June 30<sup>th</sup>. If necessary, the commission will also meet upon any other call by the chair, the mayor or by the majority vote of the city council.

F. Three members shall constitute a quorum, and the votes of three members shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the independent salary commission.

**2.23.060 Responsibilities.** The independent salary commission shall have the following responsibilities:

A. To study the relationship of salaries to the duties of the mayor and the city councilmembers and to establish a salary by either increasing or decreasing the existing salary for each position by an affirmative vote of not less than three members;

B. To review and file its salary schedules not later than June 30<sup>th</sup>, and every even year thereafter;

C. To submit each salary schedule to the city clerk, who will publish the complete schedule two times, at least one week apart. The second

publication date will be the official filing date. The schedule will become effective 30 days after this date.

**2.23.070 Effective date– Salaries.**

A. Existing salaries for the mayor and councilmembers established by city ordinance and/or city budget shall remain in effect unless and until changed in accordance with the provisions of this chapter.

B. The commission's established or amended salary schedule will become effective in the amounts, at the times, and under the conditions established in the schedule. Once filed, the schedule shall be incorporated into the city budget without further action of the city council or salary commission. Salary increases established by the commission shall be effective as to the mayor and all city councilmembers regardless of their terms of office. Salary decreases established by the commission shall become effective as to incumbents at the commencement of their next subsequent terms of office. The terms and conditions of the commission's adopted salary schedule will remain in effect until amended under the terms and conditions of a new salary schedule filed in accordance with this chapter.

**2.23.080 Salary schedule subject to referendum petition.**

A. The commission's adopted salary schedule shall be subject to referendum petition by the people of the city in the same manner as a city ordinance upon filing of such petition with the city clerk within 30 days after the official filing date of the salary schedule. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by vote of the people.

B. Referendum measures under this section shall be submitted to the voters of the city at the next following general or municipal election occurring 30 days or more after the petition is filed and shall be otherwise governed by the provisions of the State Constitution or other laws generally applicable to referendum measures.

Section 2. Section 2.40.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**2.40.010 Mayor's salary.** The Mayor's existing salary established as of August 1, 2008 shall remain in effect unless and until changed in accordance with the provisions of chapter 2.23 GHMC. ~~The mayor shall receive a salary of \$400.00 per month. Beginning the fiscal year of 1985 and each year thereafter, the mayor's salary shall be adjusted. The adjustment shall be based on the average salary increase of all city employees and shall be expressed as a percentage.~~

Section 3. Section 2.40.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**2.40.020 Councilmember's salary.** The Councilmembers' existing salaries established as of August 1, 2008 shall remain in effect unless and until changed in accordance with the provisions of chapter 2.23 GHMC.

~~A. A councilmember shall receive a salary as follows:~~

- ~~1. 1984, \$40.00 per month;~~
- ~~2. 1985, \$70.00 per month;~~
- ~~3. 1986, \$100.00 per month;~~
- ~~4. 1987, \$125.00 per month.~~

~~B. Beginning the fiscal year of 1988 and each year thereafter, a councilmember's salary shall be adjusted. Such adjustment shall be based on the average salary increase of all city employees and shall be expressed as a percentage.~~

Section 4. 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 5. 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: Temporary on-site sewage holding tanks.**

**Proposed Council Action:**

Second Reading: Consider an ordinance to allow temporary sewage holding tanks. Final reading and consideration will be in Sept.

**Dept. Origin:** Administration

**Prepared by:** Rob Karlinsey

**For Agenda of:** July 28, 2008

**Exhibits:** Ordinance

Initial & Date

**Concurred by Mayor:**

*CLH 7/22*

**Approved by City Administrator:**

*ROK 7/22*

**Approved as to form by City Atty:**

*CAM 7/22/08*

**Approved by Finance Director:**

*SP 7/08*

**Approved by Department Head:** \_\_\_\_\_

Expenditure Required	\$0	Amount Budgeted	\$0	Appropriation Required	\$0
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**INFORMATION / BACKGROUND**

*This is the second but not final reading of this proposed ordinance. Final reading is expected in September after SEPA determination.*

Changes that were discussed during the July 14 City Council meeting are underlined and highlighted in **Yellow** in the attached draft ordinance. Staff seeks further clarification as to the maintenance agreement language. Is Council desiring that it should be pre-paid? See paragraph 6 on page 4 of the proposed ordinance.

As a result of what is being commonly referred to as the "de facto sewer moratorium," an alternative that would allow temporary sewage holding tanks is proposed in the attached ordinance. This proposal would allow developments to move forward through permitting and even construction during this temporary period of no sewer system capacity for new developments. Certain conditions and restrictions are included in the ordinance, such as requiring the development to connect to the sewer system as soon as sewer capacity becomes available (and penalties for not doing so), storage tank pumping requirements, etc.

**FISCAL CONSIDERATION**

Staff time would be required to permit and inspect any potential tanks that would get built, and corresponding fees would be adopted to offset these costs. Given that the completion of the waste water treatment plant expansion and resulting added capacity is less than two years away, it is doubtful that a significant number of these tanks will ever be installed.

**BOARD OR COMMITTEE RECOMMENDATION**

The Operations Committee did not recommend approval of Mr. Freeman's proposal but did recommend that it move forward for full Council discussion. At the April 28, 2008 City Council meeting, the City Council directed staff to draft and bring back a sewage holding tank for Council consideration.

**RECOMMENDATION / MOTION**

**Move to:**      Second Reading: Consider an ordinance to allow temporary sewage holding tanks.



**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO SEWAGE DISPOSAL, ALLOWING THE INSTALLATION AND USE OF TEMPORARY ON-SITE SEWAGE STORAGE TANKS AS A TEMPORARY SEWAGE DISPOSAL ALTERNATIVE FOR NEW CONSTRUCTION WHICH HAS BEEN DENIED A SEWER CONCURRENCY CERTIFICATE AFTER July 1, 2007 THROUGH May 31, 2010, ONLY FOR THE PERIOD DURING THE CITY CONSTRUCTION OF PHASE I OF THE NECESSARY IMPROVEMENTS TO THE WASTE WATER TREATMENT PLANT, ESTABLISHING A REQUIREMENT FOR PROPERTY OWNERS WITH SUCH SYSTEMS TO PHYSICALLY CONNECT TO THE CITY'S SEWER SYSTEM WITHIN 90 DAYS OF THE DATE THE CITY ANNOUNCES THAT SEWER CONCURRENCY IS AVAILABLE, REQUIRING THAT NOTICE BE RECORDED AGAINST THE PROPERTY TO INFORM SUBSEQUENT PURCHASERS OF THEIR OBLIGATIONS UNDER THIS ORDINANCE, AND ADDING A NEW SECTION 13.28.105 TO THE GIG HARBOR MUNICIPAL CODE; REPEALING SECTION 13.28.260.**

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WHEREAS, the City has adopted a concurrency ordinance for water, sewer and transportation; and

WHEREAS, the City's concurrency ordinance allows for the administrative denial of any application for a water, sewer or concurrency certificate, if there is no available capacity; and

WHEREAS, the City's engineering consultants, the Cosmopolitan Engineering Group Inc., issued a memo dated June 8, 2007, on the status of the City's Waste Water Treatment Plant, stating that the WWTP is at its maximum capacity for the maximum month and peak day flows; and

WHEREAS, a Technical Memorandum was prepared, submitted and approved by the Department of Ecology (DOE) on September 23, 2007, which summarized the current WWTP deficiencies and provided an outline of the necessary plant improvements; and

WHEREAS, the lack of capacity prevents the City from approving and reserving sewer concurrency certificates for certain comprehensive plan amendments, project permit applications or utility extension agreements; and

WHEREAS, the City is currently working on the necessary improvements to the WWTP that will provide more operational capacity; and

WHEREAS, completion of the improvements that will provide additional capacity is scheduled for early 2010, but the City cannot predict the exact date that additional capacity will be available; and

WHEREAS, the Tacoma Pierce County Health Department allows for on-site sewage storage tanks in limited circumstances; and

WHEREAS, the City Council desires to establish a temporary sewage disposal alternative that will allow processing and approval of project permit applications, until May 31, 2010, unless earlier repealed, coinciding with the City's wastewater treatment plant expansion continues and until the City announces that sewer capacity is available; and

WHEREAS, in order for the City to ensure proper long-term utilization of its wastewater treatment system, developers must agree to not only install a temporary system at their cost, but then to abandon the temporary system and connect to the City's sewer system when the City announces that sewer capacity is available; and

WHEREAS, in order to ensure that developers and/or property owners actually abandon the temporary systems, an ordinance needs to be adopted that will require imposition of penalties on those who do not connect to the sewer system when sewer capacity becomes available; and

WHEREAS, because there is potential for abuse and non-compliance with on-site sewage tanks, maintenance and operations requirements, as well as associated penalties for non-compliance must be imposed under this ordinance; and

WHEREAS, the City's SEPA Responsible Official issued a threshold determination of non-significance for this Ordinance on \_\_\_\_\_; and

WHEREAS, the City Council held a public meeting and considered this Ordinance during its regular City Council meeting of \_\_\_\_\_ NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Section 13.28.260 of the Gig Harbor Municipal Code is hereby repealed.



Section 2. A new Section 13.28.105 is hereby added) to the Gig Harbor Municipal Code, which shall read as follows:

**13.28.105 Temporary On-Site Sewage Storage Tanks.**

A. Temporary on-site sewage storage tanks limited to multi-family and/or commercial use only. Owners of property zoned commercial may apply for a temporary on-site sewage storage tank under this Section, to be used only for commercial development.

B. Application for sewer concurrency required. In order to apply for a temporary on-site sewage storage tank under this chapter, the applicant must also have submitted a complete application for sewer concurrency under chapter 19.10 GHMC.

C. Complete application for temporary on-site sewage storage tanks. A complete application for a temporary on-site sewage storage tank consists of all of the following:

1. For all permit types: Sewer Hydraulics Report.
2. For all permit types: Preliminary Civil Plans in accordance with the Preliminary Civil Plan Checklist.
3. For Civil Plan Review: Civil Plans in accordance with the Civil Plan Checklist.
4. The applicant shall provide the City with a copy of an approved permit granted by the Pierce County Health Department for the temporary on-site sewage storage tank.

D. Issuance of a permit for a temporary on-site sewage storage tank shall be the responsibility of the Public Works Director.

E. Installation and operational requirements for temporary on-site sewage storage tanks.

1. The temporary tanks must be installed and operational prior to issuance of the Certificate of Occupancy for the building being served. The developer/property owner will pay all costs relating to the installation of a temporary, on-site sewage storage tank.

2. In addition to the installation of an approved temporary on-site sewage storage tank, the property owner must also install a dry sewer connection to the City's sewer main. This

sewer connection will be constructed to connect to the building and NOT to the tank(s). Final connection between the building and the dry sewer connection may only occur if a temporary valve is installed at the perimeter of the building to not allow sewer to flow to the City's sewer main. The valve would remain closed and a sewer test ball will be installed at the property line clean-out until such time the development receives sewer concurrency.

3. The developer must bond for, and/or record against the title to the property, notice to all subsequent owners of a beneficial interest in the property that the temporary sewage storage tank was installed pursuant to this ordinance, and that the owner of the property is required to have the tank decommissioned in a manner acceptable to the City and the Pierce County Health Department after its use. This notice will also state that the installation of a temporary on-site sewage storage tank was optional on the part of the developer/property owner, and that the City will not incur any costs relating to installation or decommissioning. In addition, the notice will state that when sewer capacity becomes available, the property owner will be required to hook up to the City's sewer system and, at that time, the property owner will be required to pay any difference in the connection fee in effect at the time they initially paid the connection fee and the connection fee in effect on the date they connect to the City's sewer system. Reference will be made to the penalties established in this ordinance for noncompliance.

4. The developer must comply with all Tacoma Pierce County Health Department regulations.

5. While the temporary sewage storage tank is operational, no discharge of the effluent may enter the City's sewer or stormwater system.

6. The tank shall be pumped at least once every two weeks, and the property owner shall provide a copy of the holding tank maintenance agreement to the City. (The comment I heard was that the holding tank maintenance agreement should be prepaid. If I heard wrong, then I think we should re-examine this requirement. What if we get a copy of the agreement -- then what? Are we looking at the agreement for some reason -- sufficiency?) The property owner shall bond for the cost of pumping of the tank as such costs are determined by the City Engineer. In addition, the property owner shall record against the title to the property, the requirement to have the tank pumped out based on a schedule and NOT based on calls from an alarm.

7. The tank shall include working, external audible level alarms with a minimum of two levels (high level and extreme high level) as a back-up to the scheduled pumping.

8. The tank shall vent back to the building vents.

9. The tank shall have self-contained pumps for evacuating each tank to the transfer vehicle. Vacuum-type evacuation is prohibited.

10. A two-stage tank system is acceptable (one tank for solids and one tank to pump effluent from).

11. The tank shall include a locking mechanism that can only be opened by either the pumping company or the City.

12. The tank shall be installed, tested, and accepted prior to issuance of either temporary or permanent certificate of occupancy.

13. Tank pumping records shall be logged on site and be available to the City during normal business hours for inspection. These records shall include receipt from the sewer system receiving the effluent.

14. A backup battery shall be provided for the alarm system for emergency situations where electricity at the development has been lost. When pumping is required during periods of power loss, vacuum-powered transfer vehicles would be allowed.

F. Fees. The applicant shall pay the applicable permit, processing, review, monitoring, and inspection fees which will be adopted by a separate resolution.

G. Notice. The notice recorded against the property incorporating the requirements of this Ordinance shall be in a form approved by the City Attorney and include all of the information set forth in Section 13.28.115(E)(3), (6) and (H)(2) herein. This notice shall grant the City a right of entry onto the property in order to abate any problem relating to the temporary sewage tank, or to disconnect the temporary tank when the City provides notice to the property owner that sewage capacity is available to serve the property.

H. Penalties for Non-Compliance.

1. The property owner shall be required to pay the connection fee in place at the time the City notifies the property owner of the availability of sewer capacity, and to hook up to the City's sewer system. If the property owner fails to connect to the City's sewer system within 90 days of the City's notice of sewer availability, the property owner shall be subject to a cumulative civil penalty in the amount of \$250 per day from the date of the notice until connection and payment of the fees. The penalty imposed by this section shall be collected by a civil action brought in the name of the City. The Public Works Director 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 Public Works Director and all appropriate staff persons, take appropriate action to collect the penalty.

2. In addition to the imposition of penalties, the City may abate any problem relating to the temporary sewage tank or to disconnect the temporary sewage tank when sewage capacity is available, by entering the property, and billing the property owner for all related costs. The notice recorded against the property shall provide for the property owner's consent to the City's imposition of a lien against the property for the City's costs relating to such correction and/or abatement, if the property owner does not correct the problem.

3. Failure to pump the storage tanks according to the schedule established in this Section shall result in a \$250 fine for every day past the scheduled pumping date. If the storage tanks have not been pumped ten days after the deadlines established in the schedule, the City may hire a company to enter the property and pump the tank(s), and the City will bill the property owner for any associated costs.

I. Sewer Connection Fees. Nothing in this Section eliminates the requirement for property owners receiving permits for on-site sewage storage tanks under the provisions of this Section to pay sewer utility connection fees once the City provides notice that sewer capacity is available in the City's sewer system.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance 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 Ordinance.

Section 3. 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 City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF GIG HARBOR

\_\_\_\_\_  
CHARLES L. 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:** First Reading of Ordinance  
Heritage Point Rezone (REZ 07-0003)

**Proposed Council Action:** Adopt ordinance  
at this first reading, as allowed by Ordinance  
1088.

**Dept. Origin:** Planning Department

**Prepared by:** Kristin Moerler, Associate Planner *KM*

**For Agenda of:** July 28, 2008

**Exhibits:** Ordinance  
Hearing Examiner's Decision

Initial & Date

**Concurred by Mayor:** *CLH 7/16/08*

**Approved by City Administrator:** *ESK*

**Approved as to form by City Atty:** *Cam 7/17/08*

**Approved by Finance Director:** *CDR 7/14/08*

**Approved by Department Head:** *JK For ID 7/11/08*

Expenditure	Amount	Appropriation
Required 0	Budgeted 0	Required 0

**INFORMATION/BACKGROUND**

Bennett/SFS LLC and the Gig Harbor Peninsula Historical Society requested a site-specific rezone for the parcel located at 4129 Harborview Drive (Assessor's parcel number 0221061060) from Public Institutional (PI) to Single Family Residential (R-1). The subject parcel is located on Harborview Drive just north of the intersection with Austin Street. This amendment is related to the Heritage Point Plat proposal. The site was rezoned to PI from R-1 in 2001 to facilitate the construction of the Historical Society's Museum, which has since been permitted on another site. This will return the site to its original zoning.

The City issued a Mitigated Determination of Nonsignificance on February 8, 2008 for the Heritage Point project, including this amendment. No appeals were filed and the MDNS is final.

The Hearing Examiner (HE) held a public hearing on the site-specific rezone application on June 4, 2008 (the proposed plat will be processed separately as requested by the applicant). The HE approved the rezone on June 13, 2008. The appeal period for this amendment expired on July 7, 2008. As there were no appeals filed, the decision is final. An ordinance is required to change the official zoning map to reflect the approved site-specific amendment.

**POLICY CONSIDERATIONS**

The ordinance is needed to officially amend the City's Zoning Map consistent with the HE decision on the site specific amendment. Ordinances for Site specific rezones may be adopted at first reading as allowed by Ordinance 1088.



**FISCAL CONSIDERATION**

There are no adverse fiscal impacts associated with this map amendment.

**BOARD OR COMMITTEE RECOMMENDATION**

No board or committee was required to review this application.

**RECOMMENDATION / MOTION**

**Move to:** Adopt ordinance at this first reading.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, REZONING 4.23 ACRES OF PI (PUBLIC INSTITUTIONAL) ZONING DISTRICT TO R-1 (SINGLE FAMILY RESIDENTIAL) ZONING DISTRICT, LOCATED AT 4129 HARBORVIEW DRIVE IN GIG HARBOR, WASHINGTON, ASSESSOR'S PARCEL NUMBER 0221061060, AND AMENDING THE OFFICIAL ZONING MAP TO BE CONSISTENT THEREWITH**

---

WHEREAS, Bennett/SFS LLC and the Gig Harbor Peninsula Historical Society, requested a Site Specific Rezone Amendment to rezone for the parcel located at 4129 Harborview Drive in Gig Harbor, Washington, Assessor's parcel number 0221061060; and

WHEREAS, the land use designations in the Comprehensive Plan of the subject site is Residential Low; and

WHEREAS, the existing zoning district on the Official Zoning Map of the City for the subject site is PI (Public Institutional); and

WHEREAS, Bennett/SFS LLC and the Gig Harbor Peninsula Historical Society requested to rezone 4.23 acres of PI zoning on the subject parcel to R-1 zoning to facilitate residential development on the subject site; and

WHEREAS, a SEPA threshold determination of Mitigated Determination of Nonsignificance was issued on February 8, 2008; and

WHEREAS, the SEPA threshold decision was not appealed; and

WHEREAS, the proposed rezone is a Type III action as defined in GHMC 19.01.003(B) for site-specific rezones; and

WHEREAS, A final decision for a Type III application shall be rendered by the Hearing Examiner as per GHMC 19.01.003(A); and

WHEREAS, a public hearing on the proposed rezone was held before the Hearing Examiner on June 4, 2008, at which time the Hearing Examiner heard public testimony on the rezone; and

WHEREAS, the Hearing Examiner approved the proposed rezone in her decision dated June 13, 2008; and

WHEREAS, the appeal period expired on July 7, 2008; and

WHEREAS, no appeals of the decision were filed; and

WHEREAS, rezones must be adopted by ordinance as per GHMC 17.100.070 under the provisions of Chapter 1.08 GHMC; and

WHEREAS, the City Community Development Director forwarded the site-specific rezone proposal to the Washington State Department of Community Development on December 5, 2007 pursuant to RCW 36.70A.106; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading on \_\_\_\_\_; and

WHEREAS, the Gig Harbor City Council voted to \_\_\_\_\_ this Ordinance during the first reading on \_\_\_\_\_; and

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

Section 1. The real property located at 4129 Harborview Drive in Gig Harbor, Washington, Assessor's parcel number 0221061060 and legally described in Exhibit "A", is hereby rezoned from PI (Public Institutional) to R-1 (Single Family Residential).

Section 2. The Community Development Director is hereby instructed to effectuate the necessary changes to the Official Zoning Map of the City in accordance with the designation established by Section 1.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be 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, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF GIG HARBOR

\_\_\_\_\_  
CHARLES L. 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:** Planning Commission Work Program

**Dept. Origin:** Planning Department

**Proposed Council Action:** Move to accept Planning Commission Work Program as proposed

**Prepared by:** Jennifer Kester  
Senior Planner *JK*

**For Agenda of:** July 28, 2008

**Exhibits:** None

Initial & Date

**Concurred by Mayor:**

*CLH 7/24/08*

**Approved by City Administrator:**

*RJK 7/24/08*

**Approved as to form by City Atty:**

*CAM 7/24/08*

**Approved by Finance Director:**

**Approved by Department Head:**

*TD 7/22/08*

Expenditure	Amount	Appropriation
Required 0	Budgeted 0	Required 0

**INFORMATION/BACKGROUND**

The Council last updated the Planning Commission’s work program in January of this year. At the June 16<sup>th</sup>, 2008 Joint City Council / Design Review Board meeting, the Council and the DRB brought up several zoning code requirements that should be reviewed shortly:

- Tree retention standards in residential and nonresidential projects
- Building setbacks in our commercial zones
- Design of residential plats
- DRB required review thresholds (*to be discussed with City Attorney prior to Planning Commission review*)

Most of these items were already included in text amendments on the Planning Commission work program but they had not yet been prioritized or reviewed. The Planning and Building Committee has met and made a recommendation for the Planning Commission work program to incorporate these items.

The Planning Commission has reviewed and made recommendations on the following text amendments. These are no longer on the work program.

- **Nonconforming Uses and Structures Regulations** – ordinance adopted 6/23/08.
- **R-2 Residential Uses** – ordinance adopted 6/9/08.
- **Limiting Office Uses in Waterfront Millville Zone** – tabled by request of applicant until Shoreline Master Program update.
- **Implementation of Neighborhood Design Areas in Design Manual** – discussion had and work has begun on Bujacich Road/NW Industrial NDA

- **Height Restriction Area Special Exception** – After first reading of ordinance at Council, the applicant chose to revise language.
- **Gross Floor Area Definition** – First reading of ordinance to occur this summer.

**BOARD OR COMMITTEE RECOMMENDATION**

After review of all the text amendments, the Planning and Building Committee recommended the work program below. The Council can accept this work program or modify the program.

**Planning Commission Work Program:**

The October/November 2008 work program is intended to allow the Planning Commission to complete three tasks which they were close to finishing before the 2008 Comprehensive Plan amendment process put them on hold.

**3<sup>rd</sup> Quarter 2008:**

- **2008 Comprehensive Plan Amendments**

**October/November 2008:**

- **ED and PCD-BP Intent and Allowed Uses / Suggested changes from Land Use Matrix:** The Planning Commission has held a public hearing on this item and needs to review comments from public before providing their final recommendation to Council. *Projected meetings: 1 work-study session.*
- **Appropriateness of RB-1 zoning district locations and allowed uses in the RB-1 zone:** The Planning Commission has had several work-study sessions on this item. Planning Commission has determined which locations should be evaluated for a rezone. Of the highest priority to the Planning Commission is the possible rezone of the “Spadoni corner” area. Most rezones will require a Comprehensive Plan amendment and therefore the Planning Commission would like to finish review of this item in time to submit Comprehensive Plan amendment applications by February 27, 2009, the 2009 cycle deadline. *Projected meetings: 2 work-study sessions and 1 public hearing.*
- **Removal of Mixed Use District Overlay and determination of appropriate underlying zoning:** Planning Commission has developed two options and has had two public hearings on those options. After the last public hearing on April 17, 2008, the Commission decided a third option was necessary and staff is currently working on a draft proposal. *Projected meetings: 1 work-study sessions and 1 public hearing.*

**Remaining 4<sup>th</sup> Quarter 2008 and 1<sup>st</sup> Quarter 2009:**

- **Residential developments design performance standards – landscaping and native vegetation retention** (*Tree retention standards in residential projects*)
- **Tree retention for nonresidential, including review of “Primary structure near front setback line”** (*Tree retention standards in nonresidential projects and building setbacks in commercial zones*)
- **Residential developments design performance standards – lot layouts** (*Design of residential plats*)

**After 1<sup>st</sup> Quarter 2009:**

- **Review of Design Manual standards for Bujacich Road/NW Industrial neighborhood design area:** The Planning Commission has begun work-study sessions on this item.



This project will take several more work-study sessions before a public hearing can be scheduled.

- **C-1 Height Amendment**
- **Minimum/Maximum Residential Densities**
- **Conversion of RB-2 density bonus from CUP process to performance standard**
- **Zoning Code Definitions Consolidation**
- **Review of Design Manual standards for neighborhood design area to be determined.**
- **Review Affordable Housing study and any recommended text amendments.**
- **Zoning code amendments process**
- **Shoreline Master Program Update**
- **View Basin Sub Area Plan**
- **Suggested Changes to Land Use Matrix**

### **RECOMMENDATION / MOTION**

**Move to:** Accept Planning Commission Work Program as proposed

### **DESCRIPTION OF TEXT AMENDMENTS STILL TO BE REVIEWED**

**Residential developments design performance standards – landscaping and native vegetation retention**, City-sponsored as implementation of 2007 Comprehensive Plan policies: This amendment would include the review of current standards for significant vegetation retention in residential developments and review of perimeter buffer requirements in residential developments. The Planning Commission would develop text amendments for tree retention and landscaping in residential developments.

**Tree retention for nonresidential, including review of “Primary structure near front setback line”**, City-sponsored as implementation of 2007 Design Review Process Improvement Initiative: Review of tree retention standards in nonresidential projects. Review of multifamily and nonresidential requirement for primary structure near front setback line and tree retention in projects. Determine if standards should vary by neighborhood design area.

**Residential developments design performance standards – lot layouts**, City-sponsored as implementation of 2007 Comprehensive Plan policies: Continued discussion and development of text amendments to implement residential development design policies including lot layout, vehicular and pedestrian connections and neighborhood characteristics.

**C-1 Height Amendment**, WWR Properties, Inc., submitted January 25, 2007: The proposed text amendment would increase the allowed height of structures within the C-1 zone from 35 feet to 45 feet. The proposal would not modify the height limitation for those parcels with a C-1 zoning classification in the Height Restriction Area.

**Minimum/Maximum Residential Densities**, City Council-sponsored, submitted January 23, 2006: The Council directed staff to make a recommendation for minimum densities in all residential zones. We currently do not have minimum densities for the following zones which allow residential uses: RLD, R-3, RB-2, DB, B-1, B-2, C-1, PCD-C, PCD-NB, MUD. The

Planning and Building Committee would also like the Planning Commission to review the maximum densities allowed in the zoning districts.

**Conversion of RB-2 density bonus from CUP process to performance standard**, Planning and Building Committee sponsored, submitted July 7, 2008: Currently, the RB-2 zoning district allows an increase in density from 8 dwelling units per net acre to 12 dwelling units per net acre if a conditional use permit is approved. This is the only zone in the City which uses the CUP process for density increase. This amendment would look at the performance-standard process for density increase as is allowed in the RLD, RMD and MUD districts. This process would be separate for the PRD process and the two processes could not be used together.

**Zoning Code Definitions Consolidation**, City Staff-sponsored: A text amendment is needed to consolidate all the definitions used in the Zoning Code into one Chapter. Currently, definitions can be found throughout Title 17. In many cases there are multiple definitions for one term, making application of the development standards difficult for the staff and customers. This amendment is intended to organize, clarify and simplify the zoning code for better customer service.

**Zoning Code Amendments process**: Development of a codified process, similar to the Comprehensive Plan Amendment process, for zoning code amendments. The process for amending the zoning code is not well defined in the zoning code.

**Shoreline Master Program Update**: This is a requirement of the State of Washington. Gig Harbor's current shoreline regulations were developed in the 1970's and need to be revised. The stakeholders group for the master program update will frequently report back to the Planning Commission on its activities and recommendations. Planning Commission will make a recommendation to the Council on late 2009.

**View Basin Sub Area Plan**: Begin the development of a sub-area plan for the downtown and view basin. The stakeholders group for the master plan will frequently report back to the Planning Commission on its activities and recommendations.

**Suggested Changes to the Land Use Matrix**, Planning Commission-sponsored: As a result of their work on the Land Use Matrix, the Planning Commission will review text amendments which make the uses allowed within the City and certain zones more consistent with the intent of the zoning code. Review of the changes will occur with other text amendments with similar content.



**Subject:** 2008 Street Rehabilitation and Resurfacing Project-Change Order #1

**Proposed Council Action:** Approve the execution of Change Order #1 to the 2008 Street Rehabilitation and Resurfacing Project (CSP-0805) in an amount not to exceed fifteen thousand seventy seven dollars and fifty cents (\$15,077.50).

**Dept. Origin:** Public Works  
**Prepared by:** Marcos R. McGraw  
Project Engineer  
**For Agenda of:** July 28, 2008  
**Exhibits:** Endorsed Change Order #1

	Initial & Date
<b>Concurred by Mayor:</b>	<i>CLH 7/24/08</i>
<b>Approved by City Administrator:</b>	<i>RJK 7/24/08</i>
<b>Approved as to form by City Atty:</b>	<i>[Signature]</i>
<b>Approved by Finance Director:</b>	<i>[Signature] 7/24/08</i>
<b>Approved by Department Head:</b>	<i>[Signature] 7/24/08</i>

Expenditure	Amount	Appropriation
Required \$15,077.50	Budgeted \$293,000.00	Required \$0

**INFORMATION / BACKGROUND**

On April 28, 2008 Council awarded the City's 2008 Street Rehabilitation and Resurfacing Project to Woodworth & Company, Incorporated in the amount of \$279,324.82. This project involves repairing overlaying existing asphalt roadways at various locations in the City of Gig Harbor, including a majority of the roadways located in the Fairway Estates neighborhood.

This change order provides for the pavement repair and roadway resurfacing of two additional cul-de-sacs in the Fairway Estates neighborhood that were originally determined to be in an acceptable condition when the contract was originally designed. While repair and resurfacing of these two cul-de-sacs is not necessary for structural integrity and safety purposes, it will address some trench depressions, and in staff's opinion, the work would have to be done within the next five years if not done with the current project. Rather than return at a later date to the same area for just these two cul-de-sacs, staff is recommending that these two additional locations be added to the current street rehabilitation and resurfacing project.

This Change Order would also provide one additional working day in the contract to allow time to perform the additional work.

**FISCAL CONSIDERATION**

The funding summary is shown in the table below.

Original 2008 Street Capital Budget for Project	\$ 293,000.00	
Bid Amount		\$279,324.82
Change Order No. 1		\$ 15,077.50
<b>New Total Contract Amount</b>		<b>\$294,402.32</b>
<b>Additional Amount Required</b>	<b>\$ 1,402.32</b>	

An additional \$1,402.32 to fund this change order would be from savings realized in other projects that came in under budget.

**BOARD OR COMMITTEE RECOMMENDATION**


A presentation to the Operations and Public Projects Committee was held on July 17, 2008. The results from the committee were somewhat mixed. Staff conducted a field visit after the committee meeting and took another look at the issue. Staff's recommendations on this issue are included in the Information/Background section of this Council Bill.

**RECOMMENDATION / MOTION**

**Move to:** Approve the execution of Change Order #1 to the 2008 Street Rehabilitation and Resurfacing Project (CSP-0805) in an amount not to exceed fifteen thousand seventy seven dollars and fifty cents (\$15,077.50).



CITY OF GIG HARBOR  
PUBLIC WORKS DEPARTMENT

Sheet <u>1</u> of <u>2</u> Date <u>07/17/2008</u>	<b>CHANGE ORDER</b>	Change Order Number <u>1</u>
<input type="checkbox"/> ORDERED BY ENGINEER/CITY UNDER TERMS OF SUPPLEMENTARY CONDITIONS SECTION 12.01M. <input type="checkbox"/> CHANGE PROPOSED BY CONTRACTOR. <input checked="" type="checkbox"/> OTHER: CHANGE MUTUALLY AGREED BETWEEN THE CITY AND THE VENDOR.	CONTRACT NO.: <u>CSSP - 0805</u> 2008 Street Rehabilitation and Resurfacing	
ENDORSED BY: <u>Woodworth &amp; Co.</u> <small>COMPANY NAME</small>  <small>SIGNATURE</small> <u>7/17/08</u> <small>DATE</small> TITLE: <u>Project Mgr.</u>	TO: Woodworth & Company, Inc.  1200 East D Street  Tacoma, WA 98421	
Consent Given by Surety (When required): BY: _____ <small>ATTORNEY IN-FACT</small> <small>DATE</small>		

DESCRIPTION OF WORK

THE CONTRACTOR / VENDOR SHALL PERFORM THE FOLLOWING UPON RECEIPT OF AN APPROVED COPY OF THIS CHANGE ORDER:

This change order provides for the following additional work components which were not anticipated at the time of bid. They consist of the following items:

This project includes overlaying existing asphalt streets in the Fairway Estates neighborhood. These streets are 26<sup>th</sup> Avenue Court, 37<sup>th</sup> Avenue, and 39<sup>th</sup> Street and are designated within the project as schedules 12, 13 & 14. The original contract does not direct the contractor to pave the existing cul-de-sac on 26<sup>th</sup> Avenue Court or the existing cul-de-sac on 39<sup>th</sup> Street.

Woodworth & Company, Inc. (Contractor), shall pave these two cul-de-sacs not currently included in the original contract. The Contractor shall feather the edge of the asphalt in these areas to maintain the current storm drainage characteristics of the cul-de-sacs and raise monuments where found.

The quantity of the following bid items and/or lump sum price on Bid Schedule 12 (26<sup>th</sup> Avenue) shall be increased as shown:

- 2. "Flaggers and Spotters": 6 HR
- 3. "Traffic Control Supervisor": 6 HR
- 4. "Other Traffic Control": \$200 LS
- 6. "Pavement Patching": 10 SY
- 8. "Adjust Monument": 2 EA
- 12. "Asphalt Conc. Pavement, Class B": 170 TON

Compensation for the changes described in this change order shall be paid by the unit bid price awarded for Bid Schedule 12 and by the additional price for the lump sum the item as described above.

RECEIVED

JUL 21 2008

CITY OF GIG HARBOR  
ENGINEERING





**Business of the City Council  
City of Gig Harbor, WA**

**Subject: Cushman Trail Phase 2  
Interagency Agreement**

**Proposed Council Action:** Approve the Interagency Agreement between the City of Gig Harbor and Pierce County for the Development and Maintenance of the Cushman Trail.

**Dept. Origin:** Public Works

**Prepared by:** David Stubchaer, P.E.  
Public Works Director

**For Agenda of:** July 28, 2008

**Exhibits:** Interagency Agreement

Initial & Date

**Concurred by Mayor:**

*cut 7/24/08*

**Approved by City Administrator:**

*PK 7/22/08*

**Approved as to form by City Atty:**

*AM 7/22/08*

**Approved by Finance Director:**

N/A

**Approved by Department Head:**

*DS 7/22/08*

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**INTRODUCTION/BACKGROUND**

The Cushman Trail Phase 2 project is awaiting bid award from Pierce County to begin construction in mid-August. Pierce County will be awarding the contract to construct the continuation of the current Cushman trail from the Kimball Drive Park & Ride to 96<sup>th</sup> Street. The proposed section of the trail from 96<sup>th</sup> Street to Borgen Boulevard will depend on the funds available in the 2009.

This Agreement is between the City of Gig Harbor and Pierce County within the guidelines of the TPU permit. The Interagency Agreement is for the purposes of cooperatively designing, permitting, constructing, maintaining and operating the Cushman Trail.

**FISCAL CONSIDERATIONS**

Pierce County is participating financially up to a maximum of \$3,900,000 in the design, permitting and construction of improvements for the trail in 2008. The City of Gig Harbor has agreed to participate up to a maximum of \$664,000 for City permit fees and construction of improvements for the trail in 2008, as identified in Parks Development budget objective #11.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Approve the Interagency Agreement between the City of Gig Harbor and Pierce County for the Development and Maintenance of the Cushman Trail.



**INTERAGENCY AGREEMENT BETWEEN PIERCE COUNTY  
AND THE CITY OF GIG HARBOR FOR THE  
JOINT DEVELOPMENT OF THE  
CUSHMAN TRAIL PHASE 2**

THIS INTERAGENCY AGREEMENT (the "Agreement") is entered into by and between Pierce County ("County"), a municipal corporation and political subdivision of the State of Washington, and the City of Gig Harbor ("City"), a non-charter, optional code municipal corporation, collectively, the "Parties."

**RECITALS**

A. The Parties desire to enter into an agreement for the purposes of cooperatively designing, permitting, constructing, maintaining and operating Phase 2 of the Cushman Trail ("Trail"), on property owned by Tacoma Public Utilities ("TPU"), which property is more specifically described in the attached map and TPU Permit ("Permit") labeled Exhibits "A" through "G" respectively, which are attached hereto and incorporated herein by this reference.

B. This property is also currently developed as the Cushman Power Transmission Lines and related appurtenances. TPU has expressly consented to the use of its property and the activities described in the City of Tacoma Department of Public Utilities Permit and Amendments ("Permit"), recorded against the property under Pierce County Auditor's No. 9606250419, Addendum No. 1 per Auditor's No. 9606250419, Addendum No. 2 per Auditor's No. 9912220460, Addendum No. 3 per Auditor's No. 200006070795 and Addendum No. 4 to Permit No. 1417 per Auditor's No. 200510250377, which are attached hereto as Exhibits "B", "C", "D", "E", "F", and "G" and Addendum No. 5 and Partial Assignment per Auditor's No. \_\_\_\_\_

respectively, and are incorporated herein by this reference. The parties hereby agree that the Permit controls the use of the right-of-way and that TPU would need to review and approve any uses not specifically mentioned in the Permit.

C. The City has authority to permit use of the Trail in cooperation with the County under RCW 67.20.020 and the Permit.

D. The County is authorized by chapters 36.68, 36.89 and 67.20 RCW to establish public parks, trails and a wide range of public recreation activities, and to acquire various interests in real property in connection therewith. The County desires to participate financially, up to a maximum of Three Million, Nine Hundred Thousand dollars (\$3,900,000.00) in the design, permitting and construction of improvements for the Trail in the 2008 fiscal year with a focus on providing educational and recreational opportunities for the general public, including citizens of both incorporated and unincorporated portions of the County.

E. The City has identified the need for additional public trail and park capacity at this site to enhance the City's educational and recreational programs. The City desires to participate financially, up to a maximum of Six Hundred Sixty-Four Thousand dollars (\$664,000.00) for City permit fees and construction of improvements for the Trail in the 2008 fiscal year.

F. The City and the County shall be jointly responsible for the designing, permitting, constructing and improvement of the Trail. The City shall be solely responsible for operating and maintaining the constructed Trail, except during those times in which the County has exclusive use of the Trail.

NOW THEREFORE, for and in consideration of mutual benefits and in further consideration of the general public welfare and of the peculiar and special benefits to accrue therefrom, and in consideration of the performance by the County and City of the covenants, terms, and conditions hereinafter set forth, the County and City agree as follows:

**Section 1. Parties Joint Use Rights.**

The parties agree to each others joint use of the Cushman Trail, for the uses and purposes described in this Agreement. These rights of joint use are based upon the terms, conditions and limitations described in this Agreement and the Amended Tacoma Public Utility Permit attached hereto as Exhibits “B”, “C”, “D”, “E”, “F”, and “G” respectively. The parties’ consideration for this agreement includes the County’s financial participation as more specifically described in Section’s D, E, and F of the forgoing Recitals Section and the City’s financial participation as more specifically described in Sections D, E and F of the forgoing Recitals section all of which are subject to the purposes and subject to the terms and conditions contained in this Agreement and the Permit.

**Section 2. Term.**

This Agreement, and the rights of joint use included herein, shall have a duration of twenty-three (23) years from the date of this Agreement or the duration of the Permit, whichever is longer, unless earlier terminated in accordance with Section 13 of this Agreement, or by mutual written agreement of the Parties. The Parties intend for this Agreement to extend no longer than the expiration date of the Permit or termination date, unless the Parties renew the Permit and renegotiate this Agreement.

**Section 3. Purpose and Use.**

The purpose of this Agreement is to provide the Parties with the joint benefits contemplated by chapter 67.20 RCW and to maximize access to public educational and recreational opportunities equally for the citizens of both the incorporated and unincorporated areas of Pierce County.

**Section 4. Administration.**

A. Joint Board. The parties hereby establish a joint board for the purpose of administering this Agreement. The joint board shall consist of one member from Pierce County and one member from Gig Harbor. Each shall have one vote in all matters described in Section B below.

B. Powers of the Joint Board. The joint board shall have the following responsibilities:

1. Oversee construction, and to address any issues arising during the construction process, (such as adding or deleting items that would adjust the contract labor, materials, price, time frame, etc.) The County shall maintain its position as lead agency with the Joint Board as described in Section 5(c) through construction.

2. Schedule use of the Trail. The Joint Board shall meet, at a minimum, on an annual basis to coordinate calendars and schedules for use of the Trail.

3. Ensure Good Condition of the Trail and Review Complaints.

The parties acknowledge that RCW 4.24.210 affords immunity to the parties for unintentional injuries to the public, as long as the Trail is held open for use by the public without charge, for the reasons set forth in the statute, provided that the immunity is not extended to a known, dangerous artificial latent condition for which warning signs have

not been conspicuously posted. The parties agree to annually review the condition of the Trail, to address any problems as required by law.

**Section 5. Cost, Planning, Design and Construction and Ownership of Improvements.**

A. Improvements. The City and County shall jointly acquire permits for development of the property, but both the parties shall be responsible to make improvements to the Trail as described in Exhibit "A", attached. Identification of the improvements is set forth in the City of Gig Harbor and Pierce County Parks and Recreation Cushman Trail Phase 2 Construction Plans and Specifications and Bid Documents, May 2008, attached hereto and incorporated herein by this reference as Exhibit "H". Costs may include design fees, permitting, labor, materials, construction incidentals, taxes and purchases of goods and services. However, the Parties recognize that the actual costs may be different from those set forth in Sections D, E, and F of the forgoing Recitals Section, and the Parties agree to negotiate an amendment to this Agreement covering the financial responsibilities of the Parties for the improvements.

B. Ownership. The ownership of the underlying property for the Trail shall remain with TPU according to the Permit. After construction of the Trail, the ownership of the surface trail and facilities will belong to the City.

C. Planning, Permitting, Design, Construction Documents, Bidding and Contract Administration. The responsibilities of the parties shall be as follows:

1. The County shall act as the lead agency for all phases of Planning, Permitting, Design, Construction Documents, Bidding and Contract

Administration. However, it is the parties intent that the joint board will address all of the below mentioned issues and in particular the day-to-day contract administration issues.

2. Funding. The funding shall be described in the forgoing Recitals Sections D, E, and F of the Recitals on Pages 2 and 3 of this agreement.

3. County permits. The County shall apply for and obtain all permits for the improvements that will be constructed. However, the City shall be the Lead Agency for SEPA on these permits. The County shall be responsible for all fees associated with such permitting.

4. City permits. The County shall apply for and obtain all permits for the improvements that will be constructed in the City. The City shall be the Lead Agency for SEPA on these permits. The City shall be responsible for all fees associated with such permits.

5. Design Phase. The County shall be designated the lead agency for the design implementation phase of the Project. Before or upon approval of all necessary permits from the agencies with jurisdiction, the County will commence the design phase of the Project, which shall include, but not be limited to, the selection and hiring of a design consultant and administration of the design consultant contract.

6. Bidding of Project Construction. The County shall be designated the lead agency for bidding, contractor selection and project construction. The County shall develop the bid specifications, put the Project out to bid, evaluate the bids and award the contract for the Project.

7. Contract Administration. The County shall be designated the lead agency for all aspects of construction contract administration. The Joint Board may provide input on any decision made by the County, but the County's decision shall be final.

E. Progress Assessments. At least once per month and prior to processing the contractor's monthly pay request for the construction of the Trail, the Joint Board representatives shall visit the site together to determine the progress of the construction and conformance with the approved construction documents. Upon confirmation of the progress and conformance of the construction works to the approved construction documents, the City representative will recommend payment by the City to the County in the pro rata amount of the latest invoice from the County for the approved funding, up to the contract maximum amount.

**Section 6. Rights of Use and Scheduling.** The City shall have the priority right to use and to schedule use of the Trail. Nevertheless, it is the intention of the Parties that the City will, upon request, cooperate with the County in the scheduling of County events which do not unduly interfere with the activities of the City's use rights on the particular requested time and date.

**Section 7. Concessions.** The City shall have the priority right to provide concessions for the Trailhead facilities and to retain concession proceeds. For those County events scheduled according to Section 6 above, the County shall have the right to provide concessions and to retain those concession proceeds. Neither the City nor the County shall permit the sale of alcohol or tobacco products at the Trailhead facilities. The

Permit prohibits concessions along Trail or on TPU right-of-way and that activity shall be limited to the Trailhead facilities owned by the City.

**Section 8. Signs.** Signage for the Trail should be designed to inform the public that the Trail is a cooperative effort between Pierce County, Gig Harbor, and Tacoma Public Utilities. All three parties shall be listed as project partners on a plaque conspicuously located at the completed Trail. If the plaque is located along the Trail or on TPU right-of-way it shall conform to section 6.1 of the Permit.

**Section 9. Sponsorship & Scholarships.** The City and County should endeavor to list each other as co-sponsors for Trail events. If scholarships to low-income or special individuals are provided, they shall be made equally available for all citizens, whether they reside in the incorporated or unincorporated areas of the County.

**Section 10. Maintenance, Capital Repairs and Replacement.** The City shall be solely responsible for maintenance of the Trail, except during such times that the County has exclusive use of the Trail. The County shall be responsible for returning the Trail to the condition it was in prior to the County's exclusive use. After construction of the improvements described in Exhibit "G", the City shall be solely responsible for any Capital Repairs to and Replacement of the Trail.

**Section 11. Security.** The City shall be solely responsible for the security of the Trail, except during such times that the County has exclusive use of the Trail. The County shall be solely responsible for the security of the Trail when it has exclusive use.

**Section 12. Successors to the Agreement.** Subject to applicable law, the County may, at its option, retain its rights to the Trail or it may assign or transfer its rights hereunder to a park and recreation service area, park and recreation district,



metropolitan park district or other municipal corporation. However, any such transfer to a special purpose district shall be effective only upon Gig Harbor's written acceptance of the assignment, which acceptance shall not be unreasonably withheld, and transfer shall be subject to the terms and conditions of this Agreement, the Exhibits, Amended TPU Permits and City and County Permits/approvals and the City's rights hereunder.

Similarly, if the City is merged with another governmental entity, special use district or municipal corporation, the City may, at its option, assign and transfer its rights under this Agreement, so long as the successor accepts that assignment and transfer in writing, subject to the terms and conditions of this Agreement, the Exhibits, Amended TPU Permits and the County's rights hereunder. The County shall not unreasonably withhold such acceptance.

**Section 13. Termination.**

A. **No Termination Until Final Payment Made.** This Agreement shall remain in full force and effect from and after the date of its execution until completion of all improvements identified in Exhibit "A" and final payment of all funds identified in this Agreement.

B. **Termination After Completion.** After completion of the improvements and payment of invoices and funds identified herein, either party may terminate this Agreement upon giving sixty (60) days written notice thereof to and with the written agreement of the other party.

C. **Rights upon Termination.** A party electing to so terminate this Agreement shall not be released from any financial obligation arising under this Agreement, except upon release in writing by the other party.

**Section 14. Indemnification.**

Each Party (including its officers, officials, employees and agents) agrees to indemnify, defend and hold harmless the other Party (including its officers, officials, employees and agents) acting in their official capacity, within the scope of their duties/employment, from all loss, damage, liability or expense (including the expenses of litigation, expert witness fees and reasonable attorneys' fees) resulting to or from any actual or alleged injury to any person, or from any actual or alleged loss of, or damage to any property caused by or resulting from any action or omission of the other Party and its officers, officials, employees and agents.

Each party acknowledges that the Trail shall be open to the public and that no admission shall be charged for use of the Trail by the public, so that the parties will receive the immunity from liability afforded by RCW 4.24.210. The parties agree to take all action required by RCW 4.24.210, as it now exists or may be amended to ensure compliance with the statute.

This Indemnification Section shall survive expiration or termination of this Agreement.

**Section 15. Insurance.** Each party shall be responsible for maintaining adequate insurance or adequate self-insurance to provide for any liabilities that might arise under this Agreement or in the construction, operation and maintenance of the Trail.

**Section 16. Integration.** This Agreement, its Exhibits and the Amended TPU Permits, as they now exist or may be revised in the future, constitute the agreement between the Parties on the subject matter of the Agreement. There are no other documents that modify this Agreement.

**Section 17. Notice** Formal notice and communication between the parties under this Agreement shall be through the persons named below or their successors, or through any other person(s) designated by the Parties in writing to each other:

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

Pierce County  
Director of Parks and Recreation  
9112 Lakewood Drive S.W.  
Lakewood, WA 98499

**Section 18. Resolution of Disputes.**

A. As a means of enabling compliance with the terms of this Agreement, designated representatives of the Parties will meet on an “as needed” basis for the purpose of resolving any disputes that may occur concerning the interpretation or application of the provisions of this Agreement.

B. If no agreement can be reached by the designated representatives, the parties will jointly invite an impartial mediator to assist in the resolution of the dispute.

C. If the parties cannot resolve their dispute after mediation, then jurisdiction of any resulting litigation shall lie with Pierce County Superior Court. The prevailing party in any litigation shall be entitled to be reimbursed for its reasonable attorneys’ fees and costs.

**Section 19. Amendment.** This Agreement may be amended in whole or in part by written agreement, signed by the duly authorized representatives of the Parties.

**Section 20. Limitations on Authority.** The Parties understand that this Agreement does not impose on them any obligation to exercise the authority or to perform the functions of the other; and that neither party is relieved by this Agreement of any obligation or responsibility impressed upon it by law or the TPU Permits, except to

the extent that actual and timely performance thereof is accomplished by the performance by both Parties under this Agreement.

**Section 21. Compliance with Law.** The parties, in the performance of this Agreement, agree to comply with all applicable local, state, and/or federal laws and ordinances applicable to the activities contemplated herein, or as specified in any grant document for the funding of the Project.

**Section 22. Third Party Beneficiaries.** This Agreement is neither expressly nor impliedly intended to be for the benefit of any third party, and is neither expressly nor impliedly enforceable by any third party.

**Section 23. Severability.** Should any part, term or provision of this Agreement be determined by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall not be affected, and the same shall continue in full force and effect.

**Pierce County**  
**Contract Signature Page**  
Cushman Trail Agreement

Contract # \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**PIERCE COUNTY:**

**CITY OF GIG HARBOR:**

Approved as to form only:

By \_\_\_\_\_  
Deputy Prosecuting Attorney      Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

By \_\_\_\_\_  
Budget & Finance      Date

\_\_\_\_\_  
Date

**Approved:**

By \_\_\_\_\_  
Department Director      Date  
(under \$250,000)  
or

By \_\_\_\_\_  
Pierce County Executive      Date  
(\$250,000 or more)

***[ACKNOWLEDGEMENTS APPEARS ON FOLLOWING TWO PAGES]***







**Subject: Cushman Trail  
Permit Assignment**

**Proposed Council Action:** Approve the Permit Assignment between City of Gig Harbor, Pierce County and Tacoma Power for the Cushman Trail Phase 2 Project.

**Dept. Origin:** Public Works

**Prepared by:** David Stubchaer, P.E.  
Public Works Director

**For Agenda of:** July 28, 2008

**Exhibits:** Permit Assignment

Initial & Date

**Concurred by Mayor:**

*CLH-7/22/08*

**Approved by City Administrator:**

*POK 7/22/08*

**Approved as to form by City Atty:**

*CAM 7/22/08*

**Approved by Finance Director:**

*N/A*

**Approved by Department Head:**

*DS 7/22/08*

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**INTRODUCTION/BACKGROUND**

The Cushman Trail Phase 2 project is awaiting bid award from Pierce County to begin construction in mid-August. The Permit Assignment amends the original permit between Tacoma Power and Pierce County. The permit allows use of the Tacoma Power right-of-way as a public non-motorized recreational trail. This assignment memorializes the maintenance and operation benefits and responsibilities for the completed trail before construction begins. The property located within the City limits and current Urban Growth Area of Gig Harbor will be the responsibility of the City of Gig Harbor. Any portion of the trail that remains in unincorporated Pierce County will continue to be the responsibility of Pierce County Parks.

This assignment needs to be in place prior to contract award.

**FISCAL CONSIDERATIONS**

N/A

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Approve the Permit Assignment between City of Gig Harbor, Pierce County and Tacoma Power for the Cushman Trail Phase 2 Project.



## ADDENDUM NO. 5 and PARTIAL ASSIGNMENT

CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
PERMIT NO. 1417  
(ALSO REFERRED TO AS PERMIT NO. 96-7663)

This Addendum No. 5 and Partial Assignment is executed between the City of Tacoma, Department of Public Utilities, Light Division, (herein "Tacoma"), and Pierce County, on behalf of its Parks and Recreation Services Department, (herein "Pierce County"), and the City of Gig Harbor, (herein "Gig Harbor"), (collectively the "Parties").

**W I T N E S S E T H**

**WHEREAS** Tacoma granted and issued Pierce County Permit No. 1417 dated May 2, 1996, (herein "Permit"), to allow the use of an existing roadway for a public non-motorized recreational trail and appurtenant facilities located on real property owned by Tacoma, and

**WHEREAS** Tacoma and Pierce County amended the Permit under Addendum No. 1 dated June 14, 1996, Addendum No. 2 dated December 16, 1999, Addendum No. 3 dated June 1, 2000, and Addendum No. 4 dated September 21, 2005, and

**WHEREAS**, while said Addenda to Permit No. 1417 have also been referred to as Addendums No. 1, 2, and 3 to Permit No. 96-7663, the Parties acknowledge that the subject Permit is in fact Permit No. 1417, and

**WHEREAS** the Parties now desire to amend the Permit in order to assign all rights and responsibilities with respect to property located within the City Limits and or the current Urban Growth Area of Gig Harbor, per attached Exhibit "A", unto Gig Harbor, in consideration for Gig Harbor's agreement to be bound by all terms and conditions of the Permit and all amendments and addenda thereto;

**NOW, THEREFORE**, in consideration of the mutual promises and obligations hereinafter set forth, the Parties agree as follows:

1. The City fully consents to the assignment described in "Addendum No. 5 and Partial Assignment", provided that Gig Harbor shall acquire only those rights possessed by Pierce County pursuant to the Permit and all amendments and addenda thereto.
2. Pierce County hereby assigns to Gig Harbor all rights, responsibilities, and obligations of the Permit and all amendments and addenda thereto, with

respect to the property which is located within the city limits and or current the UGA of Gig Harbor.

- 3. Gig Harbor shall be deemed the Permittee of the Permit as it relates to the property which is located within the city limits and or the current UGA of Gig Harbor, and Gig Harbor shall be subject to all terms and conditions of the Permit and all amendments and addenda thereto, including but not limited to Sections 1- 10 of the Permit; and Sections 6, 7, and 11 of Addendum No. 1 dated June 14, 2006; and Sections 1-8 of Addendum No. 2 dated December 16, 1999; and Section 1 of Addendum No. 3 dated June 1, 2000; and Sections 1-6 of Addendum No. 4 dated September 21, 2005. In addition, Gig Harbor shall be responsible for all future Permit performance which may become due pursuant to the Permit and all amendments and addenda thereto, as well as all corrections or revisions to performances already rendered by Pierce County pursuant to the Permit and all amendments and addenda thereto.
- 4. Pierce County shall continue to be deemed the Permittee of the Permit as it relates to the property which is not located within the City limits and or the current UGA of Gig Harbor. Pierce County shall remain subject to all terms and conditions of the Permit and all amendments and addenda thereto, including but not limited to Sections 1- 10 of the Permit; and Sections 6, 7, and 11 of Addendum No. 1 dated June 14, 2006; and Sections 1-8 of Addendum No. 2 dated December 16, 1999; and Section 1 of Addendum No. 3 dated June 1, 2000; and Sections 1-6 of Addendum No. 4 dated September 21, 2005.
- 5. All other terms and conditions of the Permit and all amendments and addenda thereto shall remain in full force and effect, unaltered by this "Addendum No. 5 and Partial Assignment".

ACCEPTED

Subject to said Terms and Conditions:

Pierce County

Tacoma Power

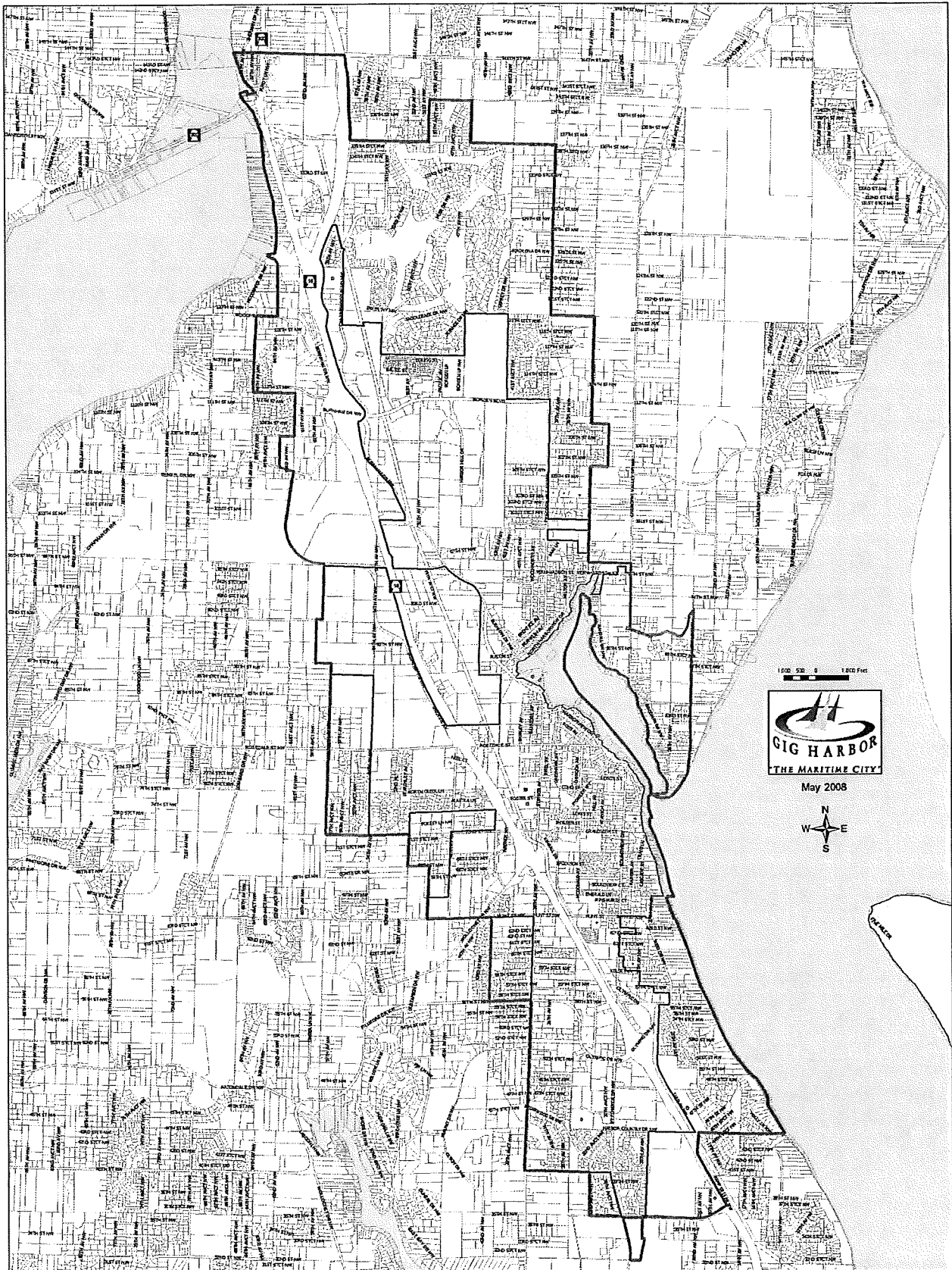
Gig Harbor

\_\_\_\_\_  
Executive

\_\_\_\_\_  
Superintendent

\_\_\_\_\_  
MAYOR

Exhibit A to Addendum No. 5



STATE OF WASHINGTON )  
 ) SS  
 COUNTY OF PIERCE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, 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 person who signed as \_\_\_\_\_ of **CITY OF TACOMA**, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be his/her free and voluntary act and deed and the free and voluntary act and deed of **CITY OF TACOMA** for the uses and purposes therein mentioned; and on oath stated that he/she was authorized to execute said instrument on behalf of the **CITY OF TACOMA**.

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

\_\_\_\_\_  
**NOTARY PUBLIC** in and for the State of Washington

\_\_\_\_\_  
 (Print or stamp name of Notary)

Residing at \_\_\_\_\_

My Appointment Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF PIERCE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, 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 person who signed as \_\_\_\_\_ of **PIERCE COUNTY**, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be his/hers free and voluntary act and deed and the free and voluntary act and deed of **PIERCE COUNTY** for the uses and purposes therein mentioned; and on oath stated that he/she was authorized to execute said instrument on behalf of **PIERCE COUNTY**.

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

\_\_\_\_\_  
**NOTARY PUBLIC** in and for the State of Washington

\_\_\_\_\_  
(Print or stamp name of Notary)

Residing at \_\_\_\_\_

My Appointment Expires: \_\_\_\_\_



Exhibit A

New Business - 8

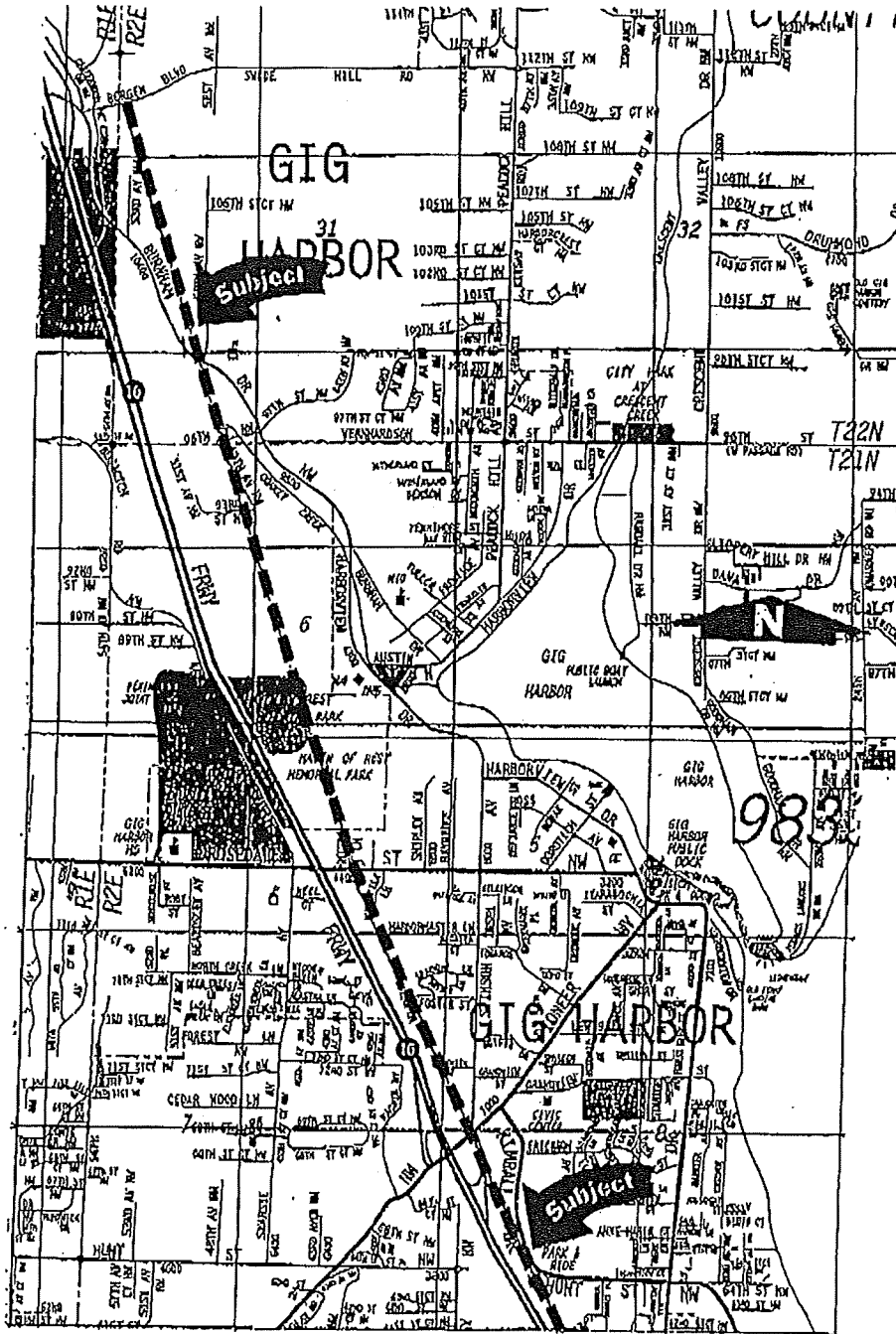
City of Tacoma - Department of Public Utilities - TPU Real Property Services

Date 8/17/06

Tacoma Power Permit No. 1417 Adm No. 4  
Pierce County Parks and Recreation  
Cushman T/L - Hunt St. to Borgen Avenue  
S31, T22N, R2E and S6,7,&8 T21N, R2E W.M

Project No.  
2005-291

Ted Lyons  
TPU Real Property Services



REAL PROPERTY SERVICES ILLUSTRATION

This illustration is not to scale. It is provided as a customer convenience to assist in identifying significant characteristics of the installation. No liability is assumed by reason of reliance hereon.

Exhibit A

# Exhibit B

BK 1240 PG 3421

9606250419

96 JUN 25 AM 10:05

94-312CAB/P1417

RECORDED  
CATHY PEARSALL-STIPEK  
AUDITOR PIERCE CO. WASH

## CITY OF TACOMA DEPARTMENT OF PUBLIC UTILITIES PERMIT

WHEREAS the CITY OF TACOMA, for and on behalf of its Department of Public Utilities, Light Division, hereinafter referred to as the "City", owns or has an interest in property situate in Pierce County, Washington, described as a 100 foot wide corridor from the West side of 14th Avenue N.W. (Reid Drive N.W.) to Kimball Drive, more commonly known as the Cushman Transmission Line Right-of-Way, as located in Sections 7, 8, 17, 20, 21, and 28; Township 21 North, Range 2 East, W. M.

WHEREAS PIERCE COUNTY, through its PARKS AND RECREATION DEPARTMENT, hereinafter referred to as the "Permittee", has requested the right to use said property as shown on Exhibit A, attached hereto and incorporated herein, for the following purposes:

USE OF EXISTING ROADWAY FOR A PUBLIC NON-MOTORIZED RECREATIONAL TRAIL AND APPURTENANT FACILITIES AS AGREED HEREIN

### WITNESSETH:

That the City hereby grants to the Permittee limited, revocable permission to use the above described property for the purposes herein stated beginning upon approval and ending when revoked and subject to the following terms and conditions

1. Ownership

The City owns and controls the above-named Cushman Transmission Line consistent with and as part of a Federal Energy Regulatory Commission (FERC) hydroelectric project. The permission granted herein is subordinate to and subject to the paramount right of the City of Tacoma to use said lands under its federal power license and any extensions of said license.

The real property described above is necessary for the operation, maintenance or improvements of the City. Therefore, Permittee or its agents, employees, or property may be subject to hazards of utility operation which the Permittee hereby assumes.

9606250419

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

DP



# Exhibit B

BK 1240PG3422

- a. The Permittee's facilities, and use of the property, are subject to and subordinate to the City's use of this property, and any licenses applicable to this property.
- b. Permittee shall not damage or interfere with the City's use of the premises, structures or facilities of the City or that of any other entity holding a real property interest on this property, including but not limited to interference or conflict with the City's access road and other uses.
- c. Conditions of the federal power license prohibit exclusive and private structures. Therefore, any structure authorized by this Permit shall be for non-exclusive public use.
- d. Permittee is solely responsible to resolve any and all conflicts with any person, group, or other entity holding a real property interest on this property or adjacent property, and assumes all risk of harm as set forth below.

## 2. Use

The Permittee shall be responsible for acquiring all additional rights for its use of the property as required by local, state, and federal regulations. This Permit shall not prevent the City from using any of the subject property or affect the City's right to full supervision and control over all or any part of the said property, none of which is hereby surrendered. By way of example and not limitation, the City retains the right to close its transmission line right-of-way at any time for the purposes of repair, improvement, maintenance, or any other reason it deems necessary for public or worker safety.

## 3. Indemnification

To the greatest extent allowed by law, Permittee assumes the risk of all damages, loss, cost, penalties and expense and agrees to indemnify, defend and hold harmless the City of Tacoma, from and against any and all liability which may accrue to or be sustained by the City of Tacoma on account of any claim, suit or legal action made or brought against the City of Tacoma for the death of or injury to persons (including Permittee's contractor's and Permittee's employees) or damage to property involving Permittee and its employees or agents, arising out of and in connection with or incident to the permitted property including if the City is found to have a nondelegable duty to see that work is performed with requisite care, except for injuries or damages caused by the sole negligence of the City. In this regard, Permittee recognizes that Permittee is waiving immunity under Industrial Insurance Law, Title 51 RCW. This indemnification

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# Exhibit B

BK 1240PG3423

extends to the officials, officers and employees of the City and also includes attorney's fees and the cost of establishing the right to indemnification hereunder in favor of the City of Tacoma. Provided however, this provision is intended to be applicable to the parties to this agreement and it shall not be interpreted to allow a Permittee's employee to have a claim or cause of action against Permittee.

#### 4. Public Liability Insurance

The following conditions outline the City's insurance needs which are considered reasonable protection for providing access to and use of its property:

The Permittees shall procure and keep effective during the term of this Permit a policy of public liability and property damage insurance which:

- a. Names the City as an additional insured, protecting the City and the Permittee with coverage of not less than \$5,000,000 combined single limit for each occurrence of property damage and/or personal injury including death.
- b. Includes contractual type coverage which will obligate the Permittee's insurance carrier if you, the Permittee, fail to abide by the terms of this Permit.
- c. States that the Permittee's insurance is primary over any insurance or self insurance program the City maintains for its own protection.
- d. States that the City will be provided 30 days' prior written notice in the event of cancellation of policy.

A copy of said policy, including an endorsement naming the City as an additional insured, shall be forwarded to the City for approval and filing.

In the event the Permittee is self insured, a letter shall be sent to the City obligating the Permittee's self insurance fund to the herein above stated responsibilities and said letter shall be signed by a person with appropriate authority to obligate the Permittee.

This Permit is conditioned upon Permittee maintaining these minimal insurance requirements and said Permit shall not become effective until the City has approved the Permittee's insurance. If the insurance lapses or terminates, this Permit is automatically cancelled and the Permittee's right hereunder are terminated.

9606250419

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## Exhibit B

BK 1240PG3424

5. Electromagnetic Fields

Electric devices, including power lines, emit electromagnetic fields (EMF). Some studies have shown that EMF may affect human and/or animal biological systems. Scientific research to date is not clear and further study is needed. It appears that it will take several more years before sufficient scientific research data are available to establish whether EMF affects public health. The Permittee is hereby notified that potential causal connections between EMF and human diseases may exist. The City of Tacoma does not warrant that use of this City of Tacoma real property is without risk of exposure to EMF. In spite of this concern, the Permittee has decided to enter into this real property agreement with the City and expressly assumes all risk of harm as set forth in Paragraph 4.

6. General Terms and Conditions

Notwithstanding the responsibilities assumed by Permittee under this agreement, all of which are hereby acknowledged, Permittee additionally agrees to abide by the following additional terms and conditions in connection with the non-motorized trail:

- a. For the purposes of this Permit, "Public" is defined as the general public and not restricted to any particular group or geographical area.
- b. The Permittee shall not enlarge or change its use of the City's property without the prior written consent of the Director of Utilities.
- c. Complaints or damage occurring on the trail will be referred to Permittee for resolution. The Permittee will be the primary contact and will be solely responsible for inquiries, complaints, disputes, and resolution of all issues arising by and between users of the trail, property owners, and the City.
- d. All trail construction, maintenance, access, facilities, and amenities shall meet the requirements of federal, state, and local laws, rules, and regulations.
- e. Including but not limited to all FERC licensing conditions, Permittee will conduct all activities in a proper manner and in conformance with all local, state, or federal rules, regulations, or laws, and further that the permission granted herein is subject to any lawful rules or regulations now in effect or which hereafter might become effective which are imposed upon said property by any regulating authority.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE,  
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

9606250419

Page 4 of 6

## Exhibit B

BK 1240PG3425

- f. The Permittee shall insure that use of the permitted property does not negatively impact any wetland.
- g. An annual report detailing construction and maintenance work, estimated use of the trail, problem issues, and enforcement activities on the permitted lands shall be provided by the Permittee to the City by January 31 of each year.
- h. A safety plan for trail use and users shall be developed by the Permittee and approved by the City. The Permittee shall, at its own costs, notify all local jurisdictions of the approved plan and coordinate access as necessary. Any costs associated with increased patrols or coverage shall be borne by the Permittee. The City shall not bear any cost involved with increased patrols or coverage.
- i. Advertising and promotion shall acknowledge the City of Tacoma, Light Division, as owner of the land.
- j. This Permit is nonassignable and non-exclusive.

7. Environmental and Cultural Concerns

Surveys for cultural resources shall be conducted on all City property prior to any ground disturbing activities, except those activities involving minor grading within the boundaries of the existing roadbed. The survey shall be performed by an archaeologist who meets at a minimum the professional qualification standards detailed in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation. The findings of the subject survey and proposed mitigation plan, if required, are to be treated as confidential and reports are to be submitted to the City and will remain their property. In addition, any positive findings are to be submitted to the State Historic Preservation Officer for review and approval. This Permit may be revoked if the City determines cultural resource protection is threatened. All costs of the survey work and any mitigation required are the sole responsibility of the Permittee.

Wildlife habitat enhancement and maintenance may be mandated on the described City lands under provisions of future FERC licenses. The Permittee will be solely responsible for mitigating any impacts the trail may have on current or proposed wildlife habitat improvements.

9606250419

Exhibit B

BK 124 OPG 3426

8. Facilities and Maintenance

Permittee shall maintain its facilities, and the property subject to this Permit, in a clean and neat manner. Any improvements that the City may allow the Permittee to install shall become the property of the City and are subject to being torn up by the City's operations. The Permittee assumes the risk of such limited use rights and will be responsible for its own additional costs and expenses in restoring any such areas.

It is the Permittee's sole responsibility to maintain the trail and any improvements associated with this Permit.

- a. The Permittee is responsible for removing debris, litter, or other wastes on the transmission line corridor.
- b. The Permittee is responsible for installation and maintenance of sanitary facilities and litter containers as necessary and shall regularly maintain them.

9. Parking

The Permittee is responsible for arranging off-street, adequate parking for trail users and will ensure continuous access for utility use.

10. Term

This Permit may be terminated by either the City or Permittee upon 180 days' written notice, or sooner if required by FERC or any other agency with authority, mailed by certified mail to the Permittee at 9112 Le Roy Road, N. Sali, Tacoma, WA 98411, or the City at 3828 South 35th Street, P. O. Box 11007, Tacoma, WA 98411, for any reasons stated in said notice.

The Permittee, upon termination of this Permit, shall restore the property to the condition it was in at the beginning of this Permit unless otherwise permitted in writing by the Director of Utilities. It is not anticipated that such restoration will include permanent improvements. Provided, however, it is understood and agreed that in the event of termination or abandonment of this Permit, the terms, conditions, and covenants agreed to herein shall continue to be effective until such time as the use of the City's said property has discontinued and the property has been restored to the satisfaction of the City.

This Agreement may be executed in counterparts. It shall be interpreted and enforced in accordance with the laws of the State of Washington. The Agreement will be interpreted equally

9606250419

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Exhibit B

BK1240PG3427

against all parties. No greater scrutiny will be applied against the City as the drafter of the Agreement.

ACCEPTED subject to said Terms and Conditions:

APPROVED AS TO FORM:

PIERCE COUNTY AND ITS  
PIERCE COUNTY  
PARKS AND RECREATION DEPARTMENT

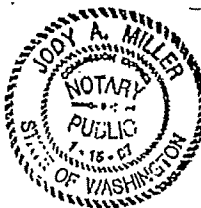
*Francesca McNaair*  
COUNTY EXECUTIVE

*Joseph P. J... ..*  
DEPUTY PROSECUTING ATTORNEY

STATE OF WASHINGTON }  
COUNTY OF Pierce } SS

I certify that I know or have satisfactory evidence that Francesca McNaair is the person(s) who appeared before me, and said person(s) acknowledges that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledges it as the PIERCE COUNTY, DEPARTMENT OF PARKS AND RECREATION to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 2 day of MAY, 1996  
*Jody A. Miller*  
Notary Public and for the State of Washington  
Residing in Velva, WA  
My Commission Expires 1-15-97



9606250419

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Exhibit B

BK 124 0PG 3428

04-312CAB/P1417

Approved;  
CITY OF TACOMA  
Department of Public Utilities

Mark Jenson  
Director of Utilities

Approved:

Edwin  
Light Division Superintendent

Approved as to Form:

(Formal Public Utility Board action is not  
necessary pursuant to Resolution No. U-8228)

Mark Blawie  
Assistant City Attorney

Reviewed:

Paul Whelan  
Natural Resources Manager

Approved:

Sandy Amfield  
Transmission and Distribution Manager

Dated 6/1/96

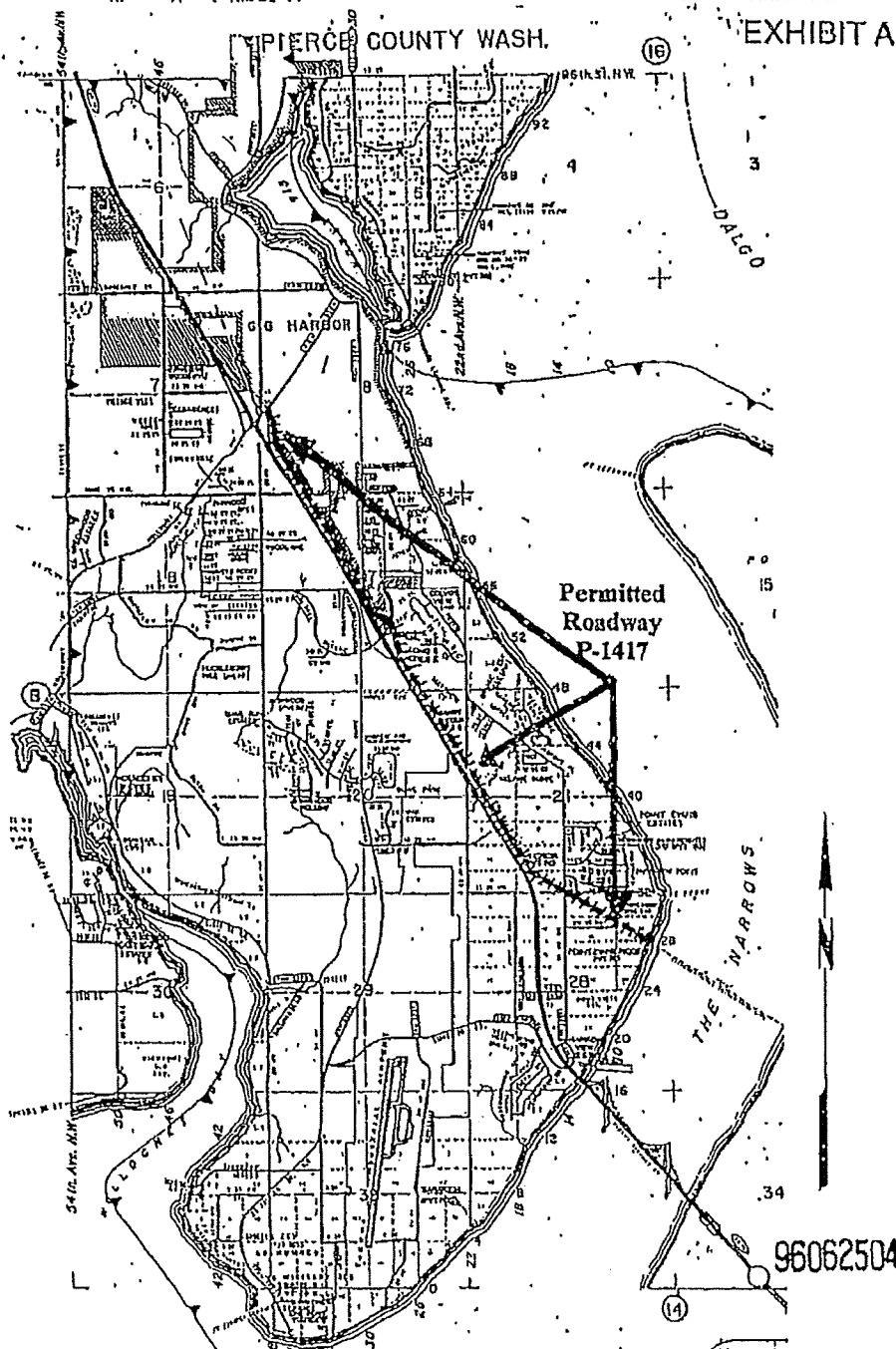
NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE,  
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

9606250419

# Exhibit B



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.



BK 1240P83429

9606250419



Exhibit B

BK 124063430

PERSONAL SERVICE AGREEMENT ADDENDUM #1  
City of Tacoma, Department of Public Utilities

Permit for use of existing roadway for a public non-motorized recreation trail  
Agreement # 96-7663

WHEREAS Pierce County, a legal subdivision of the State of Washington, hereinafter referred to as "County", signed an agreement with City of Tacoma, Department of Public Utilities hereinafter referred to as Contractor, May 2, 1996.

WHEREAS, the parties desire to amend said agreement,

THEREFORE, the County and Contractor agree to amend their professional service agreement as follows:

REVISED:

ADDITIONAL REQUESTS FROM CITY OF TACOMA:

On May 20, 1996, the Parks department received an amendment to Permit No. P1417. Our department has reviewed the amendment and find their additional request in keeping with previous discussions on trail construction and management. See attached letter from City of Tacoma for these additional requests.

This addendum shall be made part of the original Personal Service Agreement dated December 23, 1994.

All other terms and conditions of said agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed, such parties acting by their representatives being thereunto duly authorized.

DATED this 14<sup>th</sup> day of June, 1996.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

per\tpu7663.ad1

9606250419

Exhibit B

PIERCE COUNTY CONTRACT APPROVAL FORM

BK1240PG3431

CONTRACT NAME: City of Tacoma, Department of Public Utilities

CONTRACT # 96-7883-1

IN WITNESS WHEREOF, the parties have executed this Agreement this 14th day of June, 1996

CONTRACTOR:

City of Tacoma, Dept. of Public Utilities  
Full Firm Name

[Signature] 6/21/96  
(Signature) Date

Water Superintendent  
Title of Signatory Authorized by Firm Bylaws

Mailing Address:

3628 South 35th Street  
P.O. Box 11007  
Tacoma, WA 98411-0007

Street Address, if different:

Business Tax ID or Social Security Number:

PIERCE COUNTY:

Recommended:

[Signature] 5-21-96  
Department Director/  
Elected Official Date

Approved as to Form:

[Signature] \_\_\_\_\_  
Deputy Prosecuting Attorney Date

Recommended:

Risk Manager \_\_\_\_\_ Date  
[Signature] 6-12  
Budget & Finance Date

Final Action:

By \_\_\_\_\_ Date  
County Executive  
(\$25,000 or more)

[Signature] 6/14/96  
Executive Director Date

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

9606250419

# Exhibit B

BK 1240PG3432



Mark Crisson  
Director  
3628 South 35th Street  
P.O. Box 11007  
Tacoma, WA 98411-0007  
Divisions  
Light  
Water  
Bell Line

May 20, 1996

Pierce County Parks  
Mr. John Ortgiesen  
9112 Lakewood Drive SW  
Tacoma, WA 98499

Re: Amendment to Trail Permit No. P1417

Dear Mr. Ortgiesen:

The above referenced Permit No. P1417 between the City of Tacoma, Department of Public Utilities, Light Division and Pierce County through its Parks and Recreation Department requires an insurance certificate stating that the City will be given 30 days' cancellation notice, naming the City as additional insured and provided those coverages spelled out in Paragraph 4. The permit is also amended as follows:

**6. General Terms and Conditions:**

- b. The Permittee shall not enlarge or change its use of the City's property without the prior written approval of the Director of Utilities. Permittee shall submit a written request to enlarge or change its use to the Real Estate Management Supervisor at P.O. Box 11007, Tacoma, Washington 98007 for processing. Written request shall include preliminary plans or drawings.

**7. Environmental and Cultural Concerns:**

- a. The Permittee acknowledges that surveys for cultural resources may be required on all City property included in this Permit where ground disturbing activities are proposed. The survey shall be conducted by a Certified Archaeologist, and the City shall coordinate or perform such surveys at the Permittees expense. The Permittee shall pay a \$500 deposit to the City for initiation of such studies. Upon completion of the study, the City shall promptly refund to the Permittee the difference between the deposit and the actual costs of the survey, or the Permittee shall promptly reimburse to the City any and all expenses in excess of the deposit.

NOTICE-IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

9606250419

# Exhibit B

BK 1240PG3433

Results of such surveys shall be communicated to the Permittee; however, all studies, recommendations, and analyses shall remain the sole property of the City. The Permittee may be responsible for further studies and mitigation as required by federal, state, and local laws and regulations. Alternatively, the City may revoke this Permit if, in its sole opinion, cultural resources may be threatened.

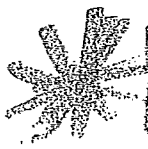
- b. The Permittee shall not adversely impact any wetlands on City property. If construction impacts are unavoidable, mitigation must be approved by City of Tacoma, Light Division, Natural Resources staff. All wetland inspection and mitigation shall be satisfied before construction can begin.
- c. The Permittee agrees that all material such as gravel or fill, that may be placed on the site under the terms of this Permit shall be free of any and all hazardous, toxic, or environmentally sensitive material.

### 11. General Construction Requirements:

- a. The Permittee shall submit preliminary construction plans and drawings to the City for review and preliminary approval. If preliminary construction plans are approved, Permittee shall submit final construction plans and drawings to the City for review and approval at least two weeks prior to planned construction. The Permittee shall not begin construction until all plans and drawings are approved by Tacoma Public Utilities, Light Division and written notice of approval has been delivered to the Permittee.
- b. Inspection of the permitted area may be performed by the City before, during, and after construction to ensure that Permit requirements are met. If such inspections are required, the Permittee agrees to pay the City a \$200 inspection fee.
- c. During the construction phase, a safe distance shall be maintained between construction equipment and tower and/or conductors in accordance with the State of Washington Rules for Electrical Construction as contained in Chapter 130 of Session Laws of 1913; the State of Washington Electrical Construction Code as adopted by the Department of Labor and Industries in August 1956; State Highway Resolution No. 1432 dated April 1964; the National Electric Safety Code; and Light Division Standards. If there are any questions, please contact Tacoma Public Utilities, Light Division, Transmission and Distribution Manager at 206-502-8234.

- d. A minimum clearance of fifty (50) feet from all steel towers, twenty-five (25) feet from all wood poles or guy wires, and five (5) feet from all existing roadways shall be maintained for all excavation. Existing culverts, poles, and improvements to be protected by the contractor.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.



960250419

Exhibit B

BK 1240PG3434

- e. Extreme caution shall be taken during any construction to avoid grounding points and/or cathodic protection.
- f. No blasting shall be done.
- g. The limits of any underground utilities shall be marked with four (4) inch diameter white PVC pipe extending two (2) feet above and below grade so they can be recognized. The four (4) inch diameter marks should be clearly labeled "Utility" or equivalent for easy field identification.
- h. The Permittee shall promptly notify the City when reconstruction of the permitted area is complete. The City shall, within a reasonable period of time, inspect the reconstructed lands and provide written notice to the Permittee upon satisfactory restoration.

Except as specifically set forth above in this amendment, the terms and conditions in Permit No. P1417 remain binding and effective.

ACCEPTED subject to said Terms and Conditions:

*[Handwritten signature]*

STATE OF WASHINGTON )  
COUNTY OF Pierce ) SS

Signed or attested before me on this

14 day of June, 1996

*[Handwritten signature]*  
Notary Public in and for the State of Washington

My Commission Expires 7-25-96

NOTES: THIS DOCUMENT IS FILED WITH THE COUNTY CLERK'S OFFICE AND WILL BE AVAILABLE FOR PUBLIC INSPECTION. IT IS DUE TO THE QUALITY OF THE DOCUMENT.

9606250419

**PERSONAL SERVICE AGREEMENT ADDENDUM #1  
City of Tacoma, Department of Public Utilities**

**Permit for use of existing roadway for a public non-motorized recreation trail  
Agreement # 96-7663**

WHEREAS Pierce County, a legal subdivision of the State of Washington, hereinafter referred to as "County", signed an agreement with City of Tacoma, Department of Public Utilities hereinafter referred to as Contractor, May 2, 1996.

WHEREAS, the parties desire to amend said agreement,

THEREFORE, the County and Contractor agree to amend their professional service agreement as follows:

**REVISED:**

**ADDITIONAL REQUESTS FROM CITY OF TACOMA:**

On May 20, 1996, the Parks department received an amendment to Permit No. P1417. Our department has reviewed the amendment and find their additional request in keeping with previous discussions on trail construction and management. See attached letter from City of Tacoma for these additional requests.

This addendum shall be made part of the original Personal Service Agreement dated December 23, 1994.

All other terms and conditions of said agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed, such parties acting by their representatives being thereunto duly authorized.

DATED this 14<sup>th</sup> day of June, 1996.

PIERCE COUNTY CONTRACT APPROVAL FORM

BK 1260PG3431  
New Business 8

CONTRACT NAME: City of Tacoma, Department of Public Utilities

CONTRACT # 96-7663-1

IN WITNESS WHEREOF, the parties have executed this Agreement this 14<sup>th</sup> day of June, 1996

CONTRACTOR:

City of Tacoma, Dept. of Public Utilities

Full Firm Name

Kenneth J. Murray 6/21/96  
(Signature) Date

Water Superintendent  
Title of Signatory Authorized by Firm Bylaws

Mailing Address:

3628 South 35th Street  
P.O. Box 11007  
Tacoma, WA 98411-0007

Street Address, if different:

Business Tax ID or Social Security Number:

PIERCE COUNTY:

Recommended:

[Signature] 5-21-96  
Department Director/  
Elected Official Date

Approved as to Form:

[Signature] \_\_\_\_\_  
Deputy Prosecuting Attorney Date

Recommended:

[Signature] \_\_\_\_\_  
Risk Manager Date  
[Signature] 6-12  
Budget & Finance Date

Final Action:

By \_\_\_\_\_  
County Executive  
(\$25,000 or more) Date

By [Signature] 6/14/96  
Executive Director Date

9606250419



Mark Crisson  
Director

3628 South 35th Street  
P.O. Box 11007  
Tacoma, WA 98411-0007

Divisions  
Light  
Water  
Belt Line

May 20, 1996

Pierce County Parks  
Mr. John Ortgiesen  
9112 Lakewood Drive SW  
Tacoma, WA 98499

Re: Amendment to Trail Permit No.P1417

Dear Mr. Ortgiesen:

The above referenced Permit No. P1417 between the City of Tacoma, Department of Public Utilities, Light Division and Pierce County through its Parks and Recreation Department requires an insurance certificate stating that the City will be given 30 days' cancellation notice, naming the City as additional insured and provided those coverages spelled out in Paragraph 4. The permit is also amended as follows:

**6. General Terms and Conditions:**

- b. The Permittee shall not enlarge or change its use of the City's property without the prior written approval of the Director of Utilities. Permittee shall submit a written request to enlarge or change its use to the Real Estate Management Supervisor at P.O. Box 11007, Tacoma, Washington 98007 for processing. Written request shall include preliminary plans or drawings.

**7. Environmental and Cultural Concerns:**

- a. The Permittee acknowledges that surveys for cultural resources may be required on all City property included in this Permit where ground disturbing activities are proposed. The survey shall be conducted by a Certified Archaeologist, and the City shall coordinate or perform such surveys at the Permittees expense. The Permittee shall pay a \$500 deposit to the City for initiation of such studies. Upon completion of the study, the City shall promptly refund to the Permittee the difference between the deposit and the actual costs of the survey, or the Permittee shall promptly reimburse to the City any and all expenses in excess of the deposit.

9606250419



Results of such surveys shall be communicated to the Permittee; however, all studies, recommendations, and analyses shall remain the sole property of the City. The Permittee may be responsible for further studies and mitigation as required by federal, state, and local laws and regulations. Alternatively, the City may revoke this Permit if, in its sole opinion, cultural resources may be threatened.

- b. The Permittee shall not adversely impact any wetlands on City property. If construction impacts are unavoidable, mitigation must be approved by City of Tacoma, Light Division, Natural Resources staff. All wetland inspection and mitigation shall be satisfied before construction can begin.
- c. The Permittee agrees that all material such as gravel or fill, that may be placed on the site under the terms of this Permit shall be free of any and all hazardous, toxic, or environmentally sensitive material.

#### **11. General Construction Requirements:**

- a. The Permittee shall submit preliminary construction plans and drawings to the City for review and preliminary approval. If preliminary construction plans are approved, Permittee shall submit final construction plans and drawings to the City for review and approval at least two weeks prior to planned construction. The Permittee shall not begin construction until all plans and drawings are approved by Tacoma Public Utilities, Light Division and written notice of approval has been delivered to the Permittee.
- b. Inspection of the permitted area may be performed by the City before, during, and after construction to ensure that Permit requirements are met. If such inspections are required, the Permittee agrees to pay the City a \$200 inspection fee.
- c. During the construction phase, a safe distance shall be maintained between construction equipment and tower and/or conductors in accordance with the State of Washington Rules for Electrical Construction as contained in Chapter 130 of Session Laws of 1913; the State of Washington Electrical Construction Code as adopted by the Department of Labor and Industries in August 1956; State Highway Resolution No. 1432 dated April 1964; the National Electric Safety Code; and Light Division Standards. If there are any questions, please contact Tacoma Public Utilities, Light Division, Transmission and Distribution Manager at 206-502-8234.
- d. A minimum clearance of fifty (50) feet from all steel towers, twenty-five (25) feet from all wood poles or guy wires, and five (5) feet from all existing roadways shall be maintained for all excavation. Existing culverts, poles, and improvements to be protected by the contractor.

9606250419



Exhibit D

ADDENDUM NO. 2

CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
PERMIT No. 96-7663

This Addendum is executed, in duplicate, between the City of Tacoma, Department of Public Utilities, Light Division, hereinafter referred to as "Tacoma Power," and Pierce County, on behalf of its Parks and Recreation Services Department, hereinafter referred to as "Permittee." Tacoma Power and Permittee are sometimes referenced in this Addendum individually as "Party" and collectively as "Parties."

Witnesseth:

WHEREAS, the Parties have executed a Permit (Permit No. 96-7663-1, dated June 14, 1996) to allow use of an existing roadway for a public non-motorized recreational trail and appurtenance facilities, located on real property owned by Tacoma Power; and

WHEREAS, the Parties amended the Permit on June 14, 1996, through Amendment No. 1; and

WHEREAS, the Permittee wishes to enhance its trail by paving a portion of Tacoma Power's real property; and

WHEREAS, Tacoma Power agrees to the Permittee's request, subject to additional permit provisions which protect Tacoma Power's interests as a real property owner and/or utility operator.

NOW, THEREFORE, The Permit is amended as set forth below:

1) Location & Use.

- A) Tacoma Power hereby grants the Permittee the right to construct, reconstruct, maintain, and operate a paved public non-motorized recreational trail on Tacoma Power's Cushman Transmission Line Right Of Way Corridor (ROW).
- B) The Permittee shall locate the paved trail along the centerline of Tacoma Power's ROW; provided however, the Parties may agree to modify the location of the paved trail during its final design, to accommodate such constraints as topography and location of existing or future facilities owned by Tacoma Power, state, and other area entities. Notwithstanding, the final location of the paved trail is subject to Tacoma Power's review and approval.

To the extent the paved trail deviates from the existing unpaved roadway, Permittee agrees to revegetate and/or otherwise modify the abandoned roadway to minimize impact to natural resources. The Permittee will submit such plans to Tacoma Power for its review and approval.

## Exhibit D

- C) Tacoma Power retains the right to relocate or reroute its facilities, and the Permittee assumes all risk associated with any trail reroutes, relocation, including the cost to repair or replace the paved trail.
- D) The Parties agree that the trail improvement shall be a paved asphalt trail of 16 feet in width. The Permittee shall construct and maintain the paved trail to accommodate use by H-20 loaded vehicles, notwithstanding, Tacoma Power is not liable for any damage to Permittee's paved trail or other facilities caused by the utility related actions of Tacoma Power or its contractors.
- E) Tacoma Power shall have unrestricted access to and on the paved trail at all times and at no cost.

**2) Limitation on Construction in Corridor.**

The Parties recognize that access to a portion of the ROW, located between the crossing axis of 14th Avenue N.W. and the crossing axis of 10th Avenue N.W., is temporarily closed. Tacoma Power shall permit access to the Permittee for construction of a paved trail within this section, when in Tacoma Power's sole opinion this section of the ROW is available for construction access. Tacoma Power shall provide Permittee with written notification when access to the closed portion of the ROW shall be allowed.

**3) Maintenance and Reconstruction.**

Permittee shall provide to Tacoma Power, on an annual basis, a written plan for scheduled maintenance. Permittee shall provide Tacoma Power with telephone notice of routine maintenance. Reconstruction, including grading and repaving, shall require written notice by Permittee, and written approval by Tacoma Power.

**4) Cost Recovery.**

Should the Permittee fail to comply with the terms and conditions of the Permit, Addendum 1, or Addendum 2, or should property damages, if any, to ROW, and/or to the property of Tacoma Power, caused by or resulting from use by the Permittee, and its invitees (e.g. recreational users), occur, then Tacoma Power may at its sole option remediate and/or otherwise repair such damage. Tacoma Power may also demand that Permittee undertake such remediation and/or repairs. Where remediation and/or repairs are undertaken by Tacoma Power, the actual cost of such repairs shall be reimbursed by the Permittee to Tacoma Power within forty-five (45) days of request for payment.

**5) Hazards/Interference.**

Permittee is required to remove and/or abate any hazard or interference caused by Permittee or its invitees that either affects the facilities of Tacoma Power or otherwise affects Tacoma Power's ability to use the premises.

9912220460

Exhibit D

Notice to Public.

Permittee shall notify the recreational public by the use of highly visible and durable posted signs that the trail is located on a working electrical transmission line right of way, and that public recreational users or their property may be subject to hazards of electrical utility operation which the public recreational users hereby completely assume. Permittee shall be responsible for replacement of these signs as they become worn or destroyed.

6) Abandonment.

Permittee shall provide Tacoma Power or its successor at least one hundred eighty (180) days written notice of the Permittee's decision to abandon all or any part of its non-motorized linear park trail.

7) Restoration.

In the event of either abandonment of the trail by the Permittee or Permit revocation by Tacoma Power, whether total or partial, at the sole election of Tacoma Power, Permittee shall either (1) restore the trail corridor to the condition of a graded, unpaved surface and shall dispose of paving debris at no cost to Tacoma Power, or (2) leave the paved trail surface in place.

8) Succession.

This Permit is non-assignable and non-exclusive. In the event of sale or transfer of the ROW by Tacoma Power, the successor to Tacoma Power may revoke this Permit without penalty.

ACCEPTED subject to said Terms and Conditions:

Steve Klein  
Tacoma Power

Superintendent  
Title

12/16/99  
Date

Approved as to form & legality:  
Mr. Blisk  
Chief Asst. City Attorney

Doug Sutherland  
Doug Sutherland 11.06.1999  
COUNTY EXECUTIVE

Pierce County Parks & Recreation  
Director

Jan Wolcott  
Jan Wolcott  
Director  
Title

Approved as to form:

Lloyd P. Fatterly  
Lloyd P. Fatterly

Date:  
11-03-99



200006070795 4 pg  
 6-7-2000 01:23pm \$11.00  
 PIERCE COUNTY, WASHINGTON

**Name & Return Address**  
 Tacoma Public Utilities  
 Real Estate Management  
 PO Box 11007  
 Tacoma, WA 98411-0007

<p>Document Title (Or transaction contained therein)</p> <p>Addendum No. 3 to Permit No. 1417</p>
<p>Grantor(s) (Last name first, then first name, middle name)</p> <p>City of Tacoma, Department of Public Utilities, Light Division</p> <p>___ Additional Names on Page ___ of Document</p>
<p>Grantee(s) (Last name first, then first name, middle name)</p> <p>Pierce County, Parks and Recreation Services Department</p> <p>___ Additional Names on Page ___ of Document</p>
<p>Legal Description (Abbreviated: i.e., lot, block, plat or section, township, range)</p> <p>Complete Legal Description on Page ___ of Document</p>
<p>Auditor's Reference Number(s)</p> <p>9060250419 and 9912220460</p>
<p>Assessor's Property Tax Parcel/Account Number(s)</p> <p>Portions of: 0221083025, 0221172009, 0221172071, 7580001010, 7580000511, 0221174074, 0221201004, 0221212007, 0221213040, and 0221214007</p>
<p>The Auditor/Recorder will rely on the information provided on this cover sheet. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</p>

200006070795

## ADDENDUM NO. 3

CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
PERMIT No. 96-7663

This Addendum is executed, in duplicate, between the City of Tacoma, Department of Public Utilities, Light Division, hereinafter referred to as "City", and Pierce County, on behalf of its Parks and Recreation Services Department, hereinafter referred to as "Permittee". City and Permittee are sometimes referenced in this Addendum individually as "Party" and collectively as "Parties".

Witnesseth:

WHEREAS, THE Parties have executed a Permit (Permit No. 96-7663-1), dated June 14, 1996) to allow use of an existing roadway for a public non-motorized recreational trail and appurtenance facilities, located on real property owned by Tacoma Power; and

WHEREAS, the Parties first amended the Permit on June 14, 1996, through Amendment No. 1, and again amended it on December 16, 1999 through Amendment No. 2; and

WHEREAS, the Permittee now needs the permit to be for a fixed number of years in order to obtain funding for paving said trail; and

WHEREAS, City agrees to the Permittee's request, subject to additional permit provisions, which protect City's interests as a real property owner and/or utility operator.

NOW, THEREFORE, the Permit is amended as set forth below:

1) Term

The first paragraph of Section 10 of the Permit is hereby deleted in its entirety and replaced with the following language;

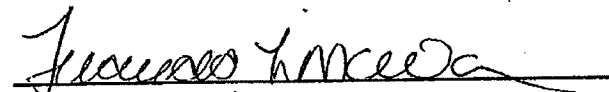
"Subject to City's right to revoke this permit for Permittee's failure to maintain adequate liability insurance, as set forth in paragraph 4, the term of this permit shall be for a minimum of twenty-five years, except that permit may be terminated prior to the passage of said time by either the City or Permittee upon 180 days written notice if termination is required by operational necessity, or sooner than said 180 days if termination is required by FERC, the Public Utility Board, or any other agency with appropriate authority, except that City agrees that it will not cancel said permit during this twenty-five year period for reasons of mere convenience and that it will use good faith efforts to find alternative solutions to revoking said permit should operational necessity require said action. The parties hereto agree that the term "operational necessity" shall include, but is not limited to, any need or decision by City to accommodate new utility facilities, expansions, modifications, renewals, repairs, relocations of utility systems, sale or otherwise transfer of utility facilities or Right of Way Property. At the expiration of said twenty-five year period either the City or Permittee may cancel the permit upon 180 days written notice, or sooner than said 180 days if termination is required by FERC, the Public Utility Board,

or any other agency with appropriate authority." Written notice of termination shall be sent by certified mail to the Permittee at 9112 Lakewood Drive, SW, Tacoma, WA 98499-3998, or the City at 3628 South 35<sup>th</sup> Street, P.O. Box 11007, Tacoma, WA 98411.

ACCEPTED subject to said Terms and Conditions:


Pierce County and its Parks & Recreation Services Department

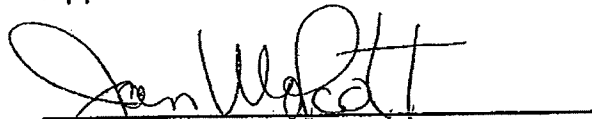
Approved as to form:

  
County Executive  
DEPUTY

  
Deputy Prosecuting Attorney

Approved as to content:

  
Budget & Finance

  
Jan Wolcott, Director  
Pierce County Parks & Recreation Services Department

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that FRANCEA McNAIR is the person who appeared before me, and said person acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledges it as the DEPUTY of Pierce County, Department of Parks and Recreation to be the COUNTY EXECUTIVE



free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 28 day of APRIL, 1992000



*Phyllis Kleist*

Typed/Printed Name: PHYLLIS KLEIST  
Notary Public in and for the State of WA.  
My Commission Expires: 07.25.00

Approved:  
CITY OF TACOMA  
Department of Public Utilities

*Mark Jenson*

Director of Utilities

Approved:

*Steve J. Klein*

Light Division Superintendent

Approved as to Form:

(Formal Public Utility Board action is not necessary pursuant to Resolution No. U-8228)

*Mark Belsnick*

Assistant City Attorney

Reviewed:

*Debbie C. Young*

Natural Resources Manager

Approved as to content:

*Gary Campbell*

Transmission and Distribution Manager

Dated 6/01/00

(lpf5f287.ad)

**Exhibit F**

**WHEN RECORDED RETURN TO:**  
**Tacoma Public Utilities**  
Asset Management  
P.O. Box 11007 • Tacoma, WA 98411

**DO NOT MARK OUTSIDE THE BORDER LINES OF THIS DOCUMENT**

**CITY OF TACOMA**  
**DEPARTMENT OF PUBLIC UTILITIES**  
**ADDENDUM NO. 4**  
**TO**  
**PERMIT NO. 1417**

Reference No.	P2005-291
Grantor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Grantee:	Pierce County, Department of Parks and Recreation
Legal Description:	A portion of the Cushman Transmission Line Right of Way; all located in Section 31, Township 22 North, Range 02 East and Sections 6, 7 and 8, Township 21 North, Range 02 East, W.M.
Tax Parcel Nos.:	022108-302-5, 022107-401-5, 022107-101-6, 022107-106-8, 022106-402-1, 022106-402-3, 022106-102-3, 022106-203-0, 022231-306-1 and 022231-204-0

***DIVISION: Light***

This Addendum No. 4 to Permit 1417 is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), a municipal corporation, hereinafter designated as "Tacoma Power," and Pierce County, Department of Parks and Recreation Services, hereinafter referred to as "Pierce County Parks."

**Exhibit F****Recitals**

**WHEREAS**, Tacoma Power granted and Issued Pierce County Parks Permit No. 1417 dated May 2, 1996, as amended under Addendum No. 1 dated June 14, 1996, Addendum No. 2 dated December 16, 1999, and Addendum No. 3 dated June 1, 2000, authorizing the installation, construction and maintenance of a public trail system on its Cushman Transmission Line Right of Way, commonly known as the Cushman Trail; and

**WHEREAS**, while said Addenda to Permit No. 1417 have also been referred to as Addendums No. 1, 2 and 3 to Permit No. 96-7663, the Parties acknowledge that the subject Permit is in fact Permit No. 1417; and

**WHEREAS**, the first phase of the Cushman Trail has been completed and extends along the said transmission line from 14<sup>th</sup> Avenue northwesterly to Hunt Street, all in Gig Harbor, Washington; and

**WHEREAS**, pursuant to a grant from the Interagency for Outdoor Recreation, Pierce County Parks has proposed to construct Phase II of the public trail system, which will extend said system from Hunt Street northwesterly to Borgen Avenue, Gig Harbor, Washington, and has requested an amended Permit from Tacoma Power for this purpose; and

**WHEREAS**, Tacoma Power is willing to approve the expanded Permit and requested installation of the public trail system subject to certain conditions insuring that said trail system will be compatible with Tacoma Power's Federal Energy Regulatory Commission operating license, will not impact Tacoma Power's core mission of producing electricity, and will benefit Tacoma Power ratepayers.

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties HEREBY AGREE to amend Permit No. 1417 under this Addendum No. 4 as follows:

**PREMISES**

Tacoma Power, for and in consideration of the mutual benefits and covenants herein contained, does hereby grant to the Permittee limited, revocable permission to use the following described real property:

That portion of the Cushman Transmission Line Right of Way lying between Hunt Street and Borgen Avenue, Gig Harbor, Washington; said portion being 16 feet wide with 3 foot slopes and shoulders and

**Exhibit F**

generally located in the center of the Cushman Transmission Line Right of Way. Specific locations shall be determined in the field, depicted in engineering drawings to be provided by Pierce County Parks, and formally approved by Tacoma Power prior to any actual construction thereon.

**PURPOSE**

Tacoma Power permits the above described real property (the "Premises") to the Permittee for the express purpose of:

**INSTALLING, CONSTRUCTING, OPERATING AND MAINTAINING  
A PUBLIC TRAILS SYSTEM CONSISTING OF A PAVED NON-  
MOTORIZED PUBLIC RECREATIONAL TRAIL 16 FEET WIDE  
WITH 3 FOOT WIDE ABUTTING SLOPES AND SHOULDERS.**

Permittee agrees to make no other use of the subject Premises or enlarge its use thereof without the prior written consent of Tacoma Power.

**TERMS AND CONDITIONS**

This permission is further granted to the Permittee under the following terms and conditions:

**1. PERMIT PERIOD**

The period (term) of this Addendum shall be for a minimum of 25 years following the completion of construction of the said Phase II of the public trail system. At the end of each twenty-five year period, Pierce County Parks will have the opportunity to renew the herein Permit. Tacoma Power reserves the right to modify or terminate the permitted use on January 30, 2030 or 25 years from the said trail completion, whichever occurs first, as previously specified in Addendum No. 3 (paragraph 1 – Term) to the Permit.

**2. PROCESSING AND USE FEES**

The subject public trails system is considered mutually beneficial to the Parties and, therefore, no further consideration that might otherwise be required by Tacoma Power for processing this Permit or for use of the Premises is required.

**3. AUTHORIZED USE AND IMPROVEMENTS**

Pierce County Park's use and/or improvement of the Premises shall be limited as follows:

## Exhibit F

- a. Authorized Improvements. Permittee shall be allowed to install, construct, reconstruct, operate and maintain a paved non-motorized public recreational trail being 16 feet in width with 3 foot slopes and shoulders on either side of said trail.
- b. Construction Requirements. Construction standards shall be pursuant to Permit No. 1417, as amended by Addendum No. 2 thereto.

#### 4. SPECIAL CONDITIONS/ADDITIONAL PROVISIONS

Pierce County Parks agrees that the approval for said Phase II Cushman Trail shall be subject to the following terms and conditions in addition to those addressed in Permit No. 1417, as previously amended:

- a. Phase II of the Cushman Trail shall be placed in the center of the Right of Way a minimum distance of 25 feet from each utility pole. If construction requires the trail to come within 25 feet of such a utility pole, then Pierce County Parks must obtain approval from Tacoma Power prior to construction.
- b. At all points where the Phase II trail system exits the Premises, Pierce County Parks and Recreation shall acquire access rights sufficient to allow Tacoma Power vehicles to access the trail and utilize same for access to Tacoma Power transmission line facilities located thereon.
- c. All access routes to the Phase II trail system shall be gated or have bollards installed to restrict public vehicle traffic. Public vehicle access onto the trail from public roads must be restricted at all locations.
- d. Should existing guy wires need to be adjusted or relocated, Pierce County Parks agrees to be responsible for all costs and provide a Work Order to Tacoma Power for such adjustment or relocation.
- e. Third party use of the subject trail system shall be approved by Tacoma Power. Pierce County Parks is responsible for providing gate/bollard keys to third parties (i.e. state/county agencies or fire or police) that require and are entitled to access.
- f. Pierce County Parks is responsible for the removal of any existing gates now located on the Phase II trail system Premises for retention by Tacoma Power. Said gates shall be delivered to Tacoma Power in a clean condition.

**Exhibit F**

- g. Pierce County Parks agrees to provide trail shoulder rock as needed to ensure Tacoma Power service vehicles can exit the trail to gain access to their facilities.
- h. The trail system design shall provide Tacoma Power the ability for its service vehicles to utilize the trail for convenient access to the transmission line and provide the ability for these vehicles to gain access to all utility poles located on transmission line right of way along the Phase II trail area.
- i. Pierce County Parks agrees to remove all trees from the Cushman Transmission Line that are damaged during trail construction and/or determined to be a threat to the transmission line and/or trail.
- j. It is required that construction contract specifications for the trail expansion identify Tacoma Power as one of the Utilities in the transmission line corridor.
- k. All fences within the trail system shall remain at least 10 feet away from Tacoma Power utility poles.
- l. Pierce County Parks shall seed and mulch all old road segments within the Premises that are not necessary in the future due to the trail construction.
- m. Pierce County Parks shall provide signage at each entry point on the said Phase II trail system which shall inform users that the trail system is built on Tacoma Power's Right of Way and warn users that the trail system is restricted to "Official, Utility and Emergency Vehicles Only." Any acknowledgements to the City of Tacoma, Department of Public Utilities, Light Division should refer as "Tacoma Power."
- n. Where roads intersect Tacoma Power's transmission lines within the trail system, curbs and gutters shall be constructed to allow utility trucks easy entry.
- o. The width of the pavement shall be no wider than 16 feet, exclusive of abutting 3 foot slopes and shoulders.
- p. Any wetland mitigation located on Tacoma Power property shall be prior approved by Tacoma Power.
- q. Pierce County Parks agrees to be responsible for any and all costs associated with Phase II of the Cushman Trail, including increases (if any) in storm water assessments; and shall be responsible for acquiring all trail-associated permits.

**Exhibit F**

**5. ELECTROMAGNETIC FIELDS**

Some studies have shown that electromagnetic fields (EMF) may affect human and/or animal biological systems. Although a National Academy of Sciences Committee has concluded that "the findings to date do not support claims that EMF fields are harmful to a person's health," Pierce County Parks is hereby notified that potential causal connections between EMF and human diseases may exist. Tacoma Power does not warrant that use of the real property (the Premises) is without risk of exposure to EMF. In spite of this concern, Pierce County Parks has decided to enter into this real property agreement with Tacoma Power and expressly assumes all risk of harm as set forth herein. This paragraph refers to electric devices and power lines which emit electromagnetic fields.

**6. PERMIT NO. 1417**

Except as specifically modified herein, all other terms and conditions of the Parties' original Permit No. 1417, as amended by Addendums No. 1, 2 and 3 thereto, shall remain in full force and effect.

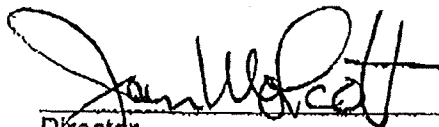
IN WITNESS WHEREOF, the parties have executed this instrument on behalf of Pierce County Parks and Recreation Services and the City of Tacoma Department of Public Utilities, Light Division (d.b.a. Tacoma Power), said parties having caused their corporate names to be hereunto subscribed and affixed and these presents to be executed by its officers thereunto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

ACCEPTED

Subject to said Terms and Conditions:

Pierce County Parks  
and Recreation Services

Tacoma Power

  
\_\_\_\_\_  
Director

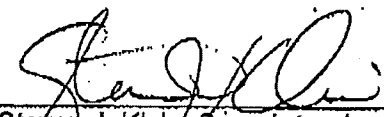
  
\_\_\_\_\_  
Steven J. Klein, Superintendent





Exhibit F

P2005-291/P1417A4

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Formal Public Utility Board action is not necessary pursuant to Resolution No.U-8228.

Reviewed:

*for any*  
John Lawrence Armfield *210*  
T&D Manager *CHRW*

Reviewed:

OC Yang  
Natural Resource Manager

FORM APPROVED:

Ward Jones *1006*  
Assistant City Attorney