

# **Gig Harbor City Council Meeting**

**February 9, 2009  
6:00 p.m.**



**AGENDA FOR  
GIG HARBOR CITY COUNCIL MEETING  
February 9, 2009 – 6:00 p.m.**

**CALL TO ORDER:**

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

1. Approval of the Minutes of City Council Meeting of Jan. 26, 2009.
2. Receive and File: a) Operations & Public Projects Committee Meeting Minutes;  
b) Boards & Commission Candidate Review Minutes 01/26/09.
3. Liquor License Application: St. Anthony's Hospital.
4. Pierce County Fire District 5 Fire Inspection Services Contract.
5. Skansie Maritime Pier Permit Feasibility Study.
6. Proclamation: Toastmaster's Week.
7. Appointment to the Planning Commission.
8. Water Rights Assistance – Amendment to Agreement for Attorney Services.
9. Franciscan Health System – Right-of-Way Easement Agreement.
10. 2009 Traffic Model Update and 2008 Capacity Availability Report.
11. Kenneth Leo Marvin Memorial Park & 50<sup>th</sup> St Ct Improvements, Ph. 1 - Contract Change Orders 1-6 (Credit Amount \$77,802.05).
12. Assigned Counsel Agreement - Pierce County.
13. Main Street Program Agreement.
14. Courtsmart Contract.
15. Declaration of Restrictive Covenants for Conservation – BB16 Wetland Mitigation Property.
16. Guild Contracts.
17. Gig Harbor Arts Commission - Recommendation for 2008 Grant Awards.
18. Approval of Payment of Bills for Feb 9, 2009: Checks #60101 through #60266 in the amount of \$963,790.39.
19. Approval of Payroll for the month of January: Checks #5337 through #5371 and direct deposits in the total amount of \$526,855.05.

**PRESENTATIONS:** Toastmaster's Week.

**OLD BUSINESS:**

1. Public Hearing – Latecomers Agreement – Olympic Property Group.
2. Second Reading of Ordinance – Gross Floor Area Definition.
3. Second Reading of Ordinance - Acceptance of the 96<sup>th</sup> Street Annexation.

**NEW BUSINESS:**

1. Public Hearing and First Reading of Ordinance – Joint Use Parking in Mixed Use Developments.

**STAFF REPORT:**

**PUBLIC COMMENT:**

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

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. Operations and Public Projects Committee – Thursday, Feb. 19<sup>th</sup> at 3:00 p.m. in Public Works Conf. Room.
2. Boards & Commissions Candidate Review – Mon. Feb. 23<sup>rd</sup> at 4:30 p.m.
3. GH North Traffic Options Committee – Wednesday, Feb. 25<sup>th</sup> at 9:00 a.m. in Community Rooms A & B.
4. Planning & Building Committee – Monday, Mar. 2<sup>nd</sup> at 5:15 p.m.

**ADJOURN:**

**GIG HARBOR CITY COUNCIL MEETING OF JANUARY 26, 2009**

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

**CALL TO ORDER:** 6:01 p.m.

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

1. Approval of the Minutes of City Council Meetings: a) Jan. 12, 2009; b) Jan. 15, 2009.
2. Receive and File: a) Municipal Court Year-End Report; b) GHPD Monthly Report for December; c) Quarterly Finance Report.
3. Liquor License Renewals: a) El Pueblito; Albertson's; Hy lu Hee Hee; and Olympic Drive Mart; b) Liquor License Application: Forza Coffee.
4. Third Amendment to Agreement – Gig Harbor Peninsula Historical Society.
5. Eddon Boat Building Restoration – Consultant Service Contract for Construction Testing and Inspection Services.
6. Resolution No. 783 – Surplus Equipment.
7. Award of Official Newspaper Bid.
8. Approval for Hotel Motel Contracts: a) Tacoma Regional Convention & Visitors Bureau; b) Kitsap Visitors & Convention Bureau.
9. Appointment for Lodging Tax Advisory Committee 2009.
10. Addendum to Agreement for Legal Services – Morris & Taraday, P.C.
11. Gig Harbor Senior Estates: Release of Encumbrances.
12. WWTP Outfall Extension – US Coast Guard Easement for Sewage Outfall Pipeline.
13. Pierce County Stormwater Mapping Inventory Service Agreement – Amendment No. 1.
14. Canterwood Boulevard – Change Order No. 2.
15. SR-16 Burnham/Borgen Interchange Supplemental Agreement No. 3 Local Agency Standard Consultant Agreement – Interchange Traffic Modeling & IJR Document.
16. Approval of Payment of Bills for Jan. 26, 2009: Checks #59932 through #60100 in the amount of \$2,135,406.53.

**MOTION:** Move to approve the Consent Agenda as presented.  
**Kadzik / Ekberg** – five voted in favor. Councilmember Franich voted no.

**PRESENTATIONS:** Community Hero Award – Gary Glein.

Mike Davis, Chief of Police, reported on Mr. Glein's heroic efforts to provide assistance to a motorist in an overturned vehicle until emergency response could arrive. He presented Mr. Glein with the city's Community Hero Award, a Police Department Hat and mug, thanking him for his exemplary efforts.

**OLD BUSINESS:** None scheduled.

**NEW BUSINESS:**

1. Public Hearing and First Reading of Ordinance – Gross Floor Area Definition. Tom Dolan, Planning Director, presented the background information on this ordinance.

Mayor Hunter opened the public hearing at 6:09 p.m. No one came forward to speak and the public hearing closed.

Mr. Dolan addressed Council questions and said that this ordinance will return for a second reading and adoption at the next meeting.

2. First Reading of Ordinance - Acceptance of the 96<sup>th</sup> Street Annexation. Tom Dolan presented this ordinance to accept the 96<sup>th</sup> Street Annexation.

Councilmembers Franich and Malich voiced concern with the large amount of RB-2 zoning designation, saying they would prefer to see more R-1. Mr. Dolan explained that the zoning designation for this area was set several years ago and that the applicants began the annexation process with that expectation. This will return for a second reading at the next meeting.

3. Olympic / 56<sup>th</sup> Improvement Project – Change Orders. David Stubchaer, Public Works Director, explained that Change Order No. 7 had been negotiated with Ceccanti after the agenda packet was printed, adding that they had accepted the final amount. He said that the Changes Order items were necessary for completion of construction on the project and recommended approval.

**MOTION:** Move to authorize the Mayor to execute contract change orders No. 4, 5, 6, and 7 for Ceccanti, Inc. in the amount of \$420,352.49.  
**Kadzik / Ekberg** – unanimously approved.

4. Wastewater Treatment Plant Phase 1 Improvements – Construction Contract Award/Prospect Construction. David Stubchaer presented the contract award. He said that the bid came in lower than the Engineer’s Estimate of 15 million; a good savings.

David Rodenbach clarified that currently, the city has approximately 11 million dollars for this project. Though the bid came in at 10.88 million, an additional 4 million has been estimated for contract management costs. Councilmembers and staff discussed options for funding the shortfall. Council was advised that they may be asked to begin considering alternate financing in August, and to accept a financing plan for the remaining amount on a tight schedule.

David Stubchaer answered questions regarding the preliminary draw schedule proposed by the contractor. He clarified that these costs do not include inspection or testing costs.

**MOTION:** Move to award and execution of the construction contract for the Wastewater Treatment Plant Phase 1 Improvements Project to Prospect construction, Inc. for their bid in the amount of ten million, eight hundred eighty-three thousand nine hundred forty nine dollars and zero cents (\$10,883,949.00) including retail sales tax and authorize the Mayor to execute the same.  
**Kadzik / Conan** – unanimously approved.

Mayor Hunter stressed to staff the need to be very careful to control cost on this project.

5. Wastewater Treatment Plant Phase 1 Improvements – Consultant Services Contract for Construction Testing Services/CTL, Inc. Mr. Stubchaer presented the information for this contract for construction testing and answered questions regarding the choice of this consultant.

**MOTION:** Move to authorize the award and execution of the contract for the Wastewater Treatment Plan on-site construction testing services to Construction Testing Laboratories, Inc. for the amount not to exceed \$53,612.00.  
**Malich / Conan** – unanimously approved.

**STAFF REPORT:**

1. Affordable Housing Needs Report – Jim Carney. Tom Dolan introduced Jim Carney and Emily Terill, PMC Inc., consultants hired by the city to perform the affordable housing needs report. Mr. Carney gave a brief introduction to the report and asked Ms. Terill to come forward to narrate the PowerPoint Presentation outlining the information gathered for the report. She discussed the following topics:

- National and Regional Trends Affecting Housing
- The Planning Context
- Demographic Information
- Housing Affordability in Gig Harbor
- Implementation of Gig Harbor’s Housing Policies and Programs

At the end of the presentation, Mr. Carney answered questions about the report and what tools the city could use to move forward and address affordable housing needs here.

2. Lobbying Update / Intergovernmental Affairs Committee Report. Rob Karlinsey gave a brief overview of the lobbying issues and efforts on both the Federal and State levels.

3. Canterwood Annexation. Rob Karlinsey explained that due to the complexity of the issues it would take longer than anticipated to gather the data requested by Council. He requested to delay action for six months. This will allow the other two annexations to be completed before allocating staff time to the Canterwood Annexation.

Councilmembers Ekberg and Franich concurred, asking Mr. Karlinsey to contact Russell Tanner at Canterwood to relay this information.

**PUBLIC COMMENT:** None.

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

Councilmember Franich said that he voted against the Consent Agenda because of the SR-16 Burnham/Borgen Interchange Supplemental Agreement No. 3 Local Agency Standard Consultant Agreement – Interchange Traffic Modeling & IJR Document. He voiced concern with the fees: labor (\$30,000), overhead (\$50,000), and fixed (\$8,000) costs. He said the engineer said this cost was negotiated down, but it is a ridiculous amount to approve.

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. Planning & Building Committee – Monday, Feb. 2nd, at 5:15 p.m. in Planning & Building Conf. Room.
2. Joint LTAC / City Council Meeting: Mon. Feb. 2<sup>nd</sup> at 6:00 p.m.
3. GH North Traffic Options Committee – Wednesday, Feb. 25<sup>th</sup>, at 9:00 a.m. in Community Rooms A & B.

**EXECUTIVE SESSION:** To discuss potential litigation per RCW 42.30.110(1)(i); property acquisition per RCW 42.30.110(b) and Guild Negotiations per RCW 42.30.140(4)(a).

**MOTION:** Move to adjourn to Executive Session at 7:26 p.m. for approximately fifty minutes to discuss potential litigation per RCW 42.30.110(1)(i); property acquisition per RCW 42.30.110(b) and Guild Negotiations per RCW 42.30.140(4)(a).  
**Franich / Malich** – unanimously approved.

**MOTION:** Move to go back into regular session at 8:25 p.m.  
**Conan / Kadzik** – unanimously approved.

**ADJOURN:**

**MOTION:** Move to adjourn at 8:25 p.m.  
**Conan / Kadzik** – unanimously approved.

CD recorder utilized:  
Tracks 1001 – 1021

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Derek Young, Mayor Pro Tem

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Molly Towslee, City Clerk

**CITY OF GIG HARBOR  
COMMITTEE OUTLINE MINUTES**

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

Date: Thursday, January 15, 2009      Time: 3:00 p.m.      Location: Public Works Conf Rm      Scribe: Maureen Whitaker

**Commission Members and Staff Present:** Councilmember Steve Ekberg and Jim Franich; David Stubchaer; Jeff Langhelm; Emily Appleton; Wayne Matthews; Marcos McGraw; Melanie Fletes; and Maureen Whitaker.

**Others Present:** Yoshihiro Monzaki, Pace Engineering; John Chadwell, OPG

**Absent:** Councilmember Tim Payne

<b>Topic / Agenda Item</b>	<b>Main Points Discussed</b>	<b>Recommendation/Action Follow-up (if needed)</b>
<p>1. Truck Route Ordinance— David Stubchaer</p>	<p>This item was delayed from the December meeting due to a snow storm. David Stubchaer presented a copy of the draft Ordinance. Councilmembers Ekberg and Franich wanted more time to review the draft language and asked to keep this on the agenda for the next Operations meeting on Feb. 19<sup>th</sup>. The current Gig Harbor Municipal Code does not contain any language that designates truck routes within City limits. The following streets are proposed as truck routes:</p> <ol style="list-style-type: none"> <li>1. Olympic Drive from Hollycroft St. to 38<sup>th</sup> St.</li> <li>2. Borgen Blvd. from SR-16 to Harbor Hill Dr.</li> <li>3. Burnham Dr. from SR-16 to Harborview Dr.</li> <li>4. Bujacich Rd./54<sup>th</sup> Ave. NW from 90<sup>th</sup> St. NW to the northerly City limits.</li> </ol> <p>Exemptions include: Pick-up trucks, campers, motor homes, recreational vehicles and vehicles licensed for 12,000 pounds gross, or less are excluded. Further exemptions include:</p> <ol style="list-style-type: none"> <li>1. Emergency vehicles may be operated off truck routes.</li> </ol>	<p>David to look into appropriate signage.</p>



Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
<p>2. BB16 IJR Proposal and Path to Completion -- Emily Appleton</p>	<p>2. School buses may be operated off truck routes.                      3. Motor trucks or other oversized vehicles may be operated off truck routes when transporting perishable commodities.                      4. Motor trucks or other oversized vehicles may be operated off truck routes when installing, repairing or maintaining a public utility that is accessed from streets not designated as a truck route.                      5. Motor trucks or other oversized vehicles may be operated off truck routes when making pickups or deliveries to businesses or residences that are accessed from streets not designated as a truck route.                      6. Motor trucks or other oversized vehicles may be operated off truck routes when servicing construction sites accessed from streets not designated as a truck route.                      7. Garbage and recycling collection motor trucks may be operated off truck routes when providing services to premises accessed from streets not designated as a truck route.                      The thought is motor trucks and other oversized vehicles covered by this exemption shall restrict their travel upon other public streets with the City to be over the shortest practicable route between the destination and the nearest entrance or exit to a designated truck route.                      The only weight restriction in the Ordinance applies to trucks with 3 or more axles which are more than 6,000 pounds unladen weight from traveling on Pioneer Way.</p>	<p>Emily gave an overview for completion of the Interchange Justification Report (IJR) that is required by WSDOT for the recommended Locally Preferred Alternative. The date to submit to WSDOT for their review is sometime in</p>

Next Meeting: Thursday, February 19, 2009.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
<p>3. Harborview/Judson/Uddenberg Streets - Scope of Work – David Stubchaer</p>	<p>the Fall of 2009. If a contract amendment is approved by Council on Jan. 26<sup>th</sup>, H.W. Lochner will assist with the interchange traffic modeling and IJR document. She stated that the City is preparing the Assumptions Document. Emily stressed that just because the Locally Preferred Alternative has been selected and recommended to WSDOT, it is within their jurisdiction to require additional analysis if they so chose.</p> <p>Pioneer/Harborview Intersection: David described the issues surrounding the improvements to the bottom of Pioneer and Harborview intersection and the City's design of the brick planter that was involved in the vehicular accident last Fall. He further explained that the improvements at this intersection are in-line with the master plan and construction costs are estimated at approximately \$100,000 which exceeds the limits that can be done in-house and will have to be advertised on the Small Works Roster. The design includes steel reinforced concrete at a height of approximately 42" plus small plantings. The design also includes moving the crosswalk, and construction of new curb, gutter and sidewalk in front of the Harbor Inn. The proposed sidewalk will have scored concrete, tinted a light gray color.</p> <p>There was further discussion about widening the sidewalks in this area that would connect with Skansie Brothers Park. This would include a retaining wall on the west side of the Harbor Inn property where the grade slopes down to the little shops parking area. Councilmember Franich asked what the costs would be to do this and felt that the remaining budget monies should be spent for pedestrians that walk up to the post office and shops in the QFC lot.</p>	<p>Councilmember Ekberg asked if the sight distance was compromised by the height of the brick planter for vehicles and pedestrians that cross the street behind the planter. He would like to see an analysis of the proposed design and one with rotating the planter wall back a little.</p> <p>Councilmembers Ekberg and Franich both were in agreement that Uddenberg Lane needed to be improved. They further stated that better pedestrian access was needed to the Post Office/QFC parking lot.</p> <p>Councilmember Ekberg stated</p>

Next Meeting: Thursday, February 19, 2009.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
<p>4. Stormwater Comp Plan Draft CIP list – Jeff Langhelm</p>	<p>There was a good discussion about relocating the post office mail boxes that doesn't involve acquiring Key Bank right-of-way. Councilmember Franich asked if anyone from the City had talked to anyone from Key Bank's real estate office. David explained that Mayor Hunter suggested crosswalks in the Pioneer/Judson area and improving the condition of roadway on Uddenberg Lane. David stated that he needed to investigate the site further and Councilmember Franich asserted that he would like to attend this site visit. Councilmember Franich expressed that he wanted a better idea of all of the costs proposed to realize the best output of City funds.</p>	<p>that for pedestrian safety it was a greater priority to have sidewalks on Judson Street rather than from the brick planter to the park. David Stubchaer commented that final plans for the planter on Harborview at the end of Pioneer would be drawn up by next month and before the next Operations meeting.</p>
	<p>Jeff introduced Yoshihiro Monzaki, from Pace Engineering, hired in 2008 to assist with the required Stormwater Comprehensive Plan Update. A Capital Improvement Plan (CIP) Project List with corresponding map and a Trunkline Model Basin map was distributed. Seven basins were being modeled and zoning with full build-out conditions were analyzed. Mr. Monzaki noted that this analysis identified some problem areas that had capacity issues caused by inadequate pipe size. Other projects on the CIP list were from the 2001 Stormwater Comp Plan and other Capital Facilities Elements as noted. Aquifer recharge areas were discussed, specifically at the headwaters at Donkey Creek. Jeff noted that this area was identified as a likely potential as a mitigation site for water rights. A financial analysis was to be performed. Councilmember Ekberg asked if any emergency areas existed. Mr. Monzaki said that the culvert at 38<sup>th</sup> from 56<sup>th</sup> past Briarwood has some erosion</p>	<p>The Council Committee did not have much time to discuss this information. They were interested in how the CIP will be prioritized and budgeted.</p>

Next Meeting: Thursday, February 19, 2009.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
Meeting adjourned at 5:04 p.m.	<p>and sediment issues. Councilmember asked if there was a timeline for completion for this update and Jeff explained that the City could possibly make this happen one of two ways: If the City decided to adopt this stormwater element of the full 2009 Comp Plan, it would have to be included in the 2009 Comp Plan process, with the due date of Feb. 27<sup>th</sup>. Jeff stated that there is a possibility that the Stormwater element could be adopted separately; he will seek further clarification.</p>	
	<p>Respectfully submitted: _____ Maureen Whitaker</p>	

Next Meeting: Thursday, February 19, 2009.

## OUTLINE MINUTES

### Boards and Commissions Candidate Review Committee

Date: January 26, 2009      Time: 4:30 p.m.      Location: Executive Conference Room      Scribe: Molly Towslee, City Clerk

Members Present: Councilmembers Ekberg, Kadzik, and Malich

Others Present: Harris Atkins, Chair, Planning Commission

<b>Topic</b>	<b>Recommendation/Action</b>	<b>Follow-up (if needed)</b>
Review Candidate Applications for Planning Commission Vacancy:	<p>The committee asked the applicants, Michael Fisher and Steve Lynn to come in for a brief interview.</p> <p>The group discussed the applicants' background and experience and agreed that either one would serve the Planning Commission well.</p> <p>Councilmember Ekberg, Councilmember Kadzik and Harris Atkins voiced a preference for Steve Lynn. Councilmember Malich preferred Michael Fisher.</p>	Forward their recommendations to the Mayor to make a recommendation for Council approval at the February 9 <sup>th</sup> Council meeting.



**NOTICE OF LIQUOR LICENSE APPLICATION**

**Consent Agenda - 3**

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

TO: MOLLY TOWSLEE, CITY CLERK  
RE: NEW APPLICATION

DATE: 1/22/09

UBI: 278-002-934-001-0001

License: 404350 - 1U County: 27  
Tradename: ST ANTHONY HOSPITAL  
Address: 11567 CANTERWOOD BLVD  
GIG HARBOR WA 98332

APPLICANTS:  
  
FRANCISCAN HEALTH SYSTEM

Phone No.: 253-530-2250 RON HAMAKAWA

Privileges Applied For:  
SERVE EMPLOYEES & GUESTS

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

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

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



**Subject: Fire Dist. 5 Annual Insp. Agreement**

**Dept. Origin: Building/Fire Safety**

**Proposed Council Action: Approve the Interlocal Agreement between the City and PCFD#5/Gig Harbor Fire & Medic One for fire inspection services as outlined in the agreement.**

**Prepared by: D. Bower**

**For Agenda of: February 9, 2009**

**Exhibits:**

Proposed Inter-local Agreement

Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** DBK 1/27/09

**Approved as to form by City Atty:** DBB/AB 12/20/08

**Approved by Finance Director:** CP 1/27/09

**Approved by Department Head:** DB

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**INFORMATION / BACKGROUND**

For several years the City has partnered with PCFD#5/Gig Harbor Fire & Medic One for fire prevention activities including annual commercial fire safety inspections, school programs, fire extinguisher training, and business emergency planning under an interlocal agreement involving payment of a fee approaching \$70,000.00 per year. With the City's recent general fund revenue shortfall, payment for this program was dropped from the 2009 budget.

Because the annual inspection program is essential to the fire departments ability to maintain its WA Survey and Rating Bureau public protection grade within the City, the department has offered to continue to conduct annual inspections for a period of 6 months at no charge to the City. The agreement further provides for a reevaluation of the City's finances at the end of 6 months to determine the City's ability to resume compensating the Department for inspection services. At that time the agreement may be modified, terminated or extended as the parties see fit.

This agreement contains a number of changes from previous agreements that should be noted. First, several editorial changes have been made as a result of the change in scope and duration of the agreement. Second, the program described in this agreement is for annual

inspections of commercial occupancies only. School fire drills, fire extinguisher training, and emergency planning under the IFC will no longer be included in the fire prevention activities provided under the agreement. Third, as stated above the term of the agreement is 6 months at which time the agreement will be reviewed by both parties and either extended, modified or terminated at the discretion of the Council. Finally, the agreement reflects that the Department will be providing the inspection services at no charge to the City for the duration of the agreement.

**FISCAL CONSIDERATION**

Under the terms of this agreement there will be no charge for inspections for the first 6 months of 2009, which is consistent with the City's budget. The City will continue funding administration of the Interlocal Agreement and inspection follow-up as necessary to gain compliance with existing staff under the Building/Fire Safety Departments normal budget.

**BOARD OR COMMITTEE RECOMMENDATION**

The Fire District's Board of Commissioners approved the Interlocal Agreement presented at their January 26, 2009 meeting. The agreement has not been reviewed by any other board or committee.

**RECOMMENDATION / MOTION**

**Move to: Approve the Interlocal Agreement between the City and PCFD#5/Gig Harbor Fire & Medic One for fire inspection services as outlined in the agreement.**



**INTERLOCAL AGREEMENT  
FOR FIRE INSPECTION SERVICES  
BETWEEN THE CITY OF GIG HARBOR  
AND PIERCE COUNTY FIRE DISTRICT NO. 5**

THIS AGREEMENT is made and entered into by and between the City of Gig Harbor, Washington, a Washington municipal corporation (hereinafter the "City"), and Pierce County Fire Protection District No. 5, a Washington municipal corporation (hereinafter the "District").

**WITNESSETH:**

WHEREAS, the City has been annexed to the District, and the District provides fire protection to the City, pursuant to chapter 52.04 RCW; and

WHEREAS, the City and the District have the authority to contract for the provision of fire inspection services, pursuant to chapter 39.34 RCW and RCW 52.12.031(3); and

WHEREAS, in the District's performance of such Fire Inspection Services, the District is required to use the International Fire Code, as adopted by the City of Gig Harbor (pursuant to RCW 52.12.031(6)) and Gig Harbor Municipal Code Section 15.06.020 D; and

WHEREAS, both the City and the District have the authority to perform fire inspections, pursuant to IFC Sec. 106.2; and

WHEREAS, the District acknowledges that nothing in this Interlocal Agreement or Title 52 RCW grants code enforcement authority to the District (see, RCW 52.12.031(6)); and

WHEREAS, the City desires to contract with the District for the provision of fire inspection services within the City, for the purpose of ascertaining and causing to be corrected any conditions which would reasonably tend to cause fire or contribute to its spread, or any violation of the purpose or provisions of the International Fire Code, as adopted by the City, and of any other law or standard affecting fire safety; and

WHEREAS, the District desires to provide such fire inspection services for the consideration described herein;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Purpose. The purpose of this Interlocal Agreement is to describe the terms and conditions under which the parties will cooperate in fire inspection services within the City of Gig Harbor.

Section 2. Services to be provided by District. The District agrees to provide the following services within the City of Gig Harbor:

**A. Inspections.**

1. Schedule. Qualified District personnel will inspect buildings and structures in the City, in accordance with the inspection schedule attached hereto as Exhibit A, provided that all buildings except single family, up to four-plex in size with adjacent garage or other accessory structure shall be inspected at least once annually.

2. Inspection Notices. The District shall be responsible for issuance of inspection notices to property owners and occupants.

3. Property Owner's Refusal to Allow Inspection. The District shall notify the City of any response it receives from a property owner/occupant refusing to permit the necessary inspection. The District shall take no action to attempt an inspection without permission of the City, if it receives any refusal from a property owner/occupant for a building/structure inspection.

4. Correction Notices. If the District discovers the presence of any condition which would reasonably tend to cause fire or contribute to its spread, or any violation of the purpose or provisions of the International Fire Code, as adopted by the City, the District shall issue a Correction Notice. Such Correction Notice shall be provided to the property owner in writing within seven (7) days after the inspection. The District agrees to notify the City Fire Marshal in writing when timely compliance with such correction notices is not achieved. If any condition exists, which in the opinion of the District inspector, warrants immediate action to protect the public health and safety, the Emergency Correction Notice shall be provided to the property owner within 24 hours of the inspection. The District

agrees to notify the City Fire Marshal within 24 hours of any inspection warranting an emergency Correction Notice.

5. Noncompliance with Correction Notice. If violations are noted during the annual inspection, a correction notice shall be presented to the occupant/owner of the premise. At that time 30 days will be allowed to bring the premise into compliance. If after re-inspection, compliance is still not achieved, the District shall notify the City Fire Marshal in writing. After such notification by the District, the City shall be responsible for taking any further action to enforce the City's code.

6. The City will provide the District a copy of all preliminary and final utility and street improvement plans, subdivision plans, site plans and building plans of all new construction (except single family homes up to and including four unit dwellings) for review and comment by the District at least one week, (five working days) prior to the date required for comments. The District will forward comments to the City within one week or five working days after receipt of such plans.

Section 3. Annual Reports. The District shall provide the City with an annual report of all its activities under this Agreement, on or before the fifteenth day of January. This annual report shall include the following information:

- A. Name and position of inspector(s).
- B. Identification of all properties inspected.
- C. Identification of all Correction Notices issued;
- D. Identification of all Emergency Correction Notices issued;

Section 4. Financial Consideration(s). Due to City budget constraints, the District has agreed to provide the fire inspection program described in this agreement at no cost to the City for a period of 6 months beginning January 1, 2009 and ending July 1, 2009. This agreement will be revisited at that time to re-evaluate the City's ability to compensate the district for the inspection program. Should the City's financial situation remain constrained, the District and City may extend this agreement to a mutually agreeable date. Should the City's financial outlook improve to the extent that compensation to the District, in light of the City's other competing budget priorities, is

fiscally possible, the District and City may agree to negotiate a mutually agreeable fee for continuation of the inspection program.

Section 5. Term.

A. **Expiration.** This Interlocal Agreement shall expire on July 1, 2009.

B. **Extension of Interlocal Agreement.** Prior to July 1, 2009, the parties will review and analyze the performance, cost effectiveness and efficiency of the District's provision of fire inspection services within the City and the City's financial situation, and the parties may agree to extend this Interlocal Agreement, under the same or different terms and conditions. This contract may be modified by either party with agreement of the other party prior to the expiration of the term.

C. **Termination.** The parties may terminate this Interlocal Agreement for any reason, by providing the other party three (3) months prior written notice.

Section 6. Relationship of Parties. In contracting for the services described in this Interlocal Agreement, the District and City are deemed for all purposes to be acting within their governmental capacities. (RCW 52.12.031(3).) No agent, employee, representative, officer or official of the District shall be or shall be deemed to be the employee, agent, representative, official or officer of the City. None of the benefits the City provides to its employees, including, but not limited to, compensation, insurance and unemployment insurance are available from the City to the employees, agents, representatives, officers or officials of the District. The District will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives, officials and officers during the performance of this Agreement.

Section 7. Discrimination. In the hiring of employees for the performance of work under this Interlocal Agreement or any subcontract hereunder, the District, or any person acting on behalf of the District, shall not, by reason of race, religion, color, sex, marital status, sexual orientation, 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.

Section 8. Indemnification. The District 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 or damages caused by the sole negligence of the City. In the event of liability for negligence for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the District and the City, its officers, officials, employees, agents and volunteers, the District's liability hereunder shall only be to the extent of the District's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the District's waiver of immunity under Industrial Insurance, Title 51 RCW, or any other applicable insurance available to District employees, including, but not limited to LEOFF, chapter 41.26 RCW or PERS, chapter 41.40 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The District's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the District's employees made directly against the District.

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

Section 9. Insurance.

A. The District shall procure and maintain for the duration of this Interlocal Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the District's provision of fire inspection services, including the work of the District's employees, agents, officials and officers.

B. Before beginning work under this Interlocal Agreement, the District 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 \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$500,000 per occurrence with a \$500,000 aggregate.

C. The District is responsible for the payment of any deductible or self-insured retention that is required by any of the District's insurance policies.

D. The City of Gig Harbor shall be named as an additional insured on the District'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 described in subsection B of this section. The City reserves the right to receive a certified and complete copy of the District's insurance policies.

E. It is the intent of this Interlocal Agreement for the District's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to the City. Additionally, the District'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 District shall request from its 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 thirty (30) days in advance of any cancellation, suspension, or material change in the District's coverage.

Section 10. Ownership and Use of Records. Original documents, inspection reports, correction notices, emergency correction notices and other reports developed under this Interlocal Agreement shall belong to and become the property of the District. The City shall have the right to inspect the District's records at all reasonable times, after providing the District with at least five (5) days advance notice. Copies of the documents shall be timely provided to the City as provided in this Interlocal Agreement, or if such documents are not specifically mentioned in this Interlocal Agreement, at the City's cost for such copies. City agrees to provide similar access to existing historical records on all existing occupancies to show previous agreements or violations, and otherwise assist District in performing the inspection services.

Section 11. District's Agreement to Provide Services Consistent with Law. The District agrees to comply with all federal, state and local codes and ordinances that are now effective or become applicable to the performance of the fire inspection services described in this Interlocal Agreement. The District acknowledges that it is required by law to use the International Fire Code, as adopted by the City of Gig Harbor (chapter 15.12 GHMC), pursuant to RCW 52.12.013(6).

Section 12. Inspections Performed at District's Own Risk. The District shall take all precautions necessary and shall be responsible for the safety of its employees, agents, officers and officials in the performance of the work described in this Interlocal Agreement, and shall utilize all protection necessary for that purpose. All inspections shall be performed at the District's own risk.

Section 13. Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

Section 14. Venue and Attorneys' Fees. Jurisdiction of any litigation brought by either party to enforce the terms of this Interlocal Agreement shall be in Pierce County Superior Court, Pierce County Washington or the U.S. District Court for the Western District of Washington. This Interlocal 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 Interlocal Agreement shall pay the other party's expenses and reasonable attorneys' and expert witness fees.

Section 15. Written Notice. All communications regarding this Interlocal Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified in writing 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 addresses listed on the signature page.

Section 16. Assignment and Modification. Any assignment of this Interlocal Agreement by the District without the written consent of the City shall be void. If the City shall give its consent to any assignment, this section shall continue in full force and effect and no further assignment shall be made without the City's consent. No waiver, alteration or modification of any of the provisions of this Interlocal Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the District.

Section 17. Entire Agreement. The written provisions and terms of this

Interlocal Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer, official or employee 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 Interlocal Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Interlocal Agreement and any Exhibits attached hereto.

Section 18. Severability. If any section, sentence, clause or phrase of this Interlocal Agreement is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, cause or phrase of this Interlocal Agreement.

Section 19. Effective Date. This Interlocal Agreement shall not be effective until signed by the duly authorized representative of the governing body of the parties and all of the following events occur:

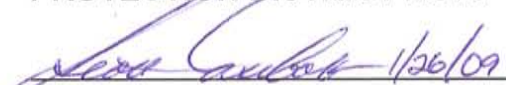
- A. Filing of the Interlocal Agreement with the Pierce County Auditor; and
- B. Filing of the Interlocal Agreement with the Gig Harbor City Clerk.
- C. Filing of the Interlocal Agreement with the District Secretary.


IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement on the date below written:


**THE CITY OF GIG HARBOR**

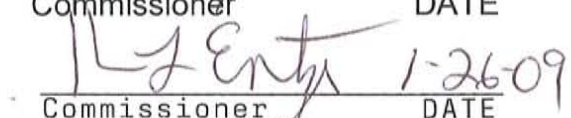
By \_\_\_\_\_  
Charles Hunter, Mayor      DATE


**PIERCE COUNTY FIRE PROTECTION DISTRICT NO. 5**

  
Chairman      1/26/09  
DATE

  
Commissioner      DATE

  
Commissioner      1/26/09  
DATE

  
Commissioner      1-26-09  
DATE

  
Commissioner      1/26/09  
DATE

Notice shall be sent to:



The City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335

Attn: Rob Karlinsey, City Administrator

ATTEST:

\_\_\_\_\_  
Molly Towslee  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Angela S. Belbeck  
City Attorney

Pierce County Fire District No. 5  
10222 Bujacich Rd. NW  
Gig Harbor, WA 98332-8540

Attn: Fire Chief

  
\_\_\_\_\_  
District Secretary

\_\_\_\_\_  
Fire District Attorney

EXHIBIT "A"

**Inspection Schedule**

In accordance with this contract and under the authority of Gig Harbor Municipal Code, Title 15 Buildings and Construction, the Fire District will perform annual fire safety inspections on all buildings and occupancies except residential structures of less than 4 dwelling units (R-3 dwelling units) and their non-commercial accessory structures.

**Exception:** Any Group A or B Occupancy having, upon inspection, no noted fire code violations for a period of three years will be allowed a one year grace period prior to its next fire code inspection. They will be sent a letter expressing the District's and City's gratitude for providing a fire safe occupancy and will be placed in the next years regular rotation for inspections. Inspections for that occupancy will be scheduled on a biannual basis thereafter provided no fire code violations are noted during scheduled inspections and the occupancy does not suffer a fire incident.

**Exception:** City owned buildings and facilities. Such buildings and facilities will be inspected on an annual basis by the City fire marshal.



**Subject:** Skansie Maritime Pier Permit  
Feasibility Study Consultant Services  
Contract

**Proposed Council Action:**  
Approve contract with Spearman Engineering,  
PS in an amount not to exceed \$4,950.00

**Dept. Origin:** Planning

**Prepared by:** *PK* Peter Katich, Planning  
Department

**For Agenda of:** February 9, 2009

**Exhibits:** Contract

Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** *POK 1/30/09*

**Approved as to form by City Atty:** *approved per council*

**Approved by Finance Director:** *CDP 1/30/09*

**Approved by Department Head:** *TD 1/30/09*

Expenditure		Amount		Appropriation	
Required	\$4,950.00	Budgeted	\$5,000.00	Required	0

**INFORMATION / BACKGROUND**

Skansie Brothers Park was purchased in 2002. In 2003 and more recently in 2008, a Skansie Ad Hoc Committee was formed to consider future uses and development for the park. Recommendations from the Committee included the appointment of a Skansie Pier Feasibility Committee to investigate the feasibility of constructing a Maritime Pier at Skansie Brothers Park, an extension of Jerisich Dock and a Seasonal Float at Jerisich Dock. The Feasibility Committee has selected Spearman Engineering, PS to prepare a Permit Feasibility Study to address the permit, design and cost issues associated with a proposal. Spearman Engineering has extensive experience in the field of marine and structural engineering and in environmental review and permitting. It was one of two firms interviewed for the contract and proposed an approach that will fully explore and identify the construction related issues associated with the proposal.

**FISCAL CONSIDERATION**

The price for doing the Permit Feasibility Study identified in the attached contract is \$4,950. The total budgeted for the study is \$5,000, as identified in objective #4 in the Park Development Fund of the 2009 adopted budget.

**BOARD OR COMMITTEE RECOMMENDATION**

The Skansie Pier Feasibility Committee recommends the selection of Spearman Engineering, PS for the project.

**RECOMMENDATION / MOTION**

**Move to:** Approve contract with Spearman Engineering for consulting services associated with the preparation of a Permit Feasibility Study for the Skansie Park Maritime Pier and associated marine improvements.

**RECOMMENDATION / MOTION**

**Move to:** Approve contract with Spearman Engineering for consulting services associated with the preparation of a Permit Feasibility Study for the Skansie Park Maritime Pier and associated marine improvements.

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
SPEARMAN ENGINEERING, PS**

---

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Spearman Engineering, PS, a corporation organized under the laws of the State of Washington (the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the review and evaluation of a new fixed pier and gangway that will provide commercial vehicle and pedestrian access to a floating dock at Skansie Park, the extension of the existing floating dock at Jerisich Park, and the permanent installation of two currently temporary floats on a permanent basis to serve both parks and desires that the Consultant perform services necessary to provide the following consultation services; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work 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**

1. **Retention of Consultant - Scope of Work.** The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. **Payment.**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed \$4,950.00 for the services described in Section 1 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. The Consultant's staff and billing rates shall be as described in **Exhibit A**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**, unless the parties agree to a modification of this Contract, pursuant to Section 18 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.

**3. 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 subconsultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or subconsultant 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 subconsultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants 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.

**4. 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.

**5. Termination.** The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

**6. Non-Discrimination.** The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The

Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

**7. Indemnification.**

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. 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.

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

**8. 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, subconsultants or subcontractors.

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 coverages 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 upon request.

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.

**9. 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.

**10. Ownership and Use of Work Product.** Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

**11. 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.

**12. Records.** The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

**13. 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 subconsultants 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.

**14. 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.

**15. Resolution of Disputes and Governing Law.**

A. 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.

B. 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

prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

**16. Written Notice.** All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT:  
Spearman Engineering, PS  
ATTN:  
Jay Spearman, P.E.  
P.O. Box 4069  
Bremerton, WA 98312

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

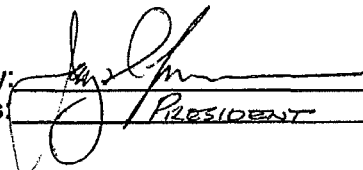
**17. Subcontracting or Assignment.** The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City

**18. Entire Agreement.** This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CONSULTANT

CITY OF GIG HARBOR

By:   
Its: \_\_\_\_\_  
PRESIDENT

By: \_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST:

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

APPROVED AS TO FORM:

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

**SPEARMAN ENGINEERING, PS**

P. O. Box 4069  
Bremerton, WA 98312  
Phone: 360-377-1630 Toll Free 1-877-777-1630 Fax: 360-377-1636

• MARINE  
• STRUCTURAL  
• ENVIRONMENTAL PERMITS

December 10, 2008

08-34

Mr. Peter Katich  
**City of Gig Harbor**  
3510 Grandview Street  
Gig Harbor, Washington 98335

*Subject: Jerisich Park Improvements*

Gentlemen:

Thank you for the opportunity to present this proposal for a permit feasibility study, specific to subject site and the three improvements presently under consideration.

***SCOPE OF PROPOSED SERVICES***

This proposal is limited to preparation of a permit feasibility report. This document contains the following elements:

- Preliminary project drawing, suitable for conversations with agency regulators. These drawings constitute preliminary project definition. They will be vetted with the client.
- Identification of key agency concerns about the proposal.
- Identification of required permits.
- Identify possible mitigations. Recommendations for project alterations or mitigations to facilitate permitting.
- Comments regarding probable permit timing.
- Identification of probable permit fees.
- Statement of Engineer's probable construction cost.
- Attend up to three meetings with committee, including review of findings and recommendations.
- Coordinate and attend possible pre-application conference with multiple agencies on site.

Allowance for the process of public participation is not included.

***TIMING***

Research will begin upon receipt of the authorization to proceed. If a fatal flaw is identified, our services will pause and notification will be provided as soon as possible thereafter. Timing will be influenced by agency staff availability over the holidays.

EXHIBIT "A"

Mr. Peter Katich  
City of Gig Harbor; Jerisich Park Improvements  
December 10, 2008

*Spearman Engineering, PS*  
Project No.: 08-34  
Page 3

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

(print name)

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

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

P/O No.: \_\_\_\_\_

(FileServer1\Administrative\proposals\COGH.prp)

# PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, the ability to speak effectively in a clear manner is a powerful and important skill that can help to overcome many barriers to effective performance in virtually every endeavor and line of work; and

WHEREAS, two Toastmasters clubs in Gig Harbor offer the opportunity to learn effective communication skills. A special eight-week session Speechcraft Program is occurring as part of the Toastmaster week activities as well as open houses; and

WHEREAS, by assisting in the development of essential communication skills, Toastmasters Clubs perform a valuable service for their members, and for the community; and

WHEREAS, Toastmasters Clubs have grown to over 10,500 in number with more than 200,000 members in approximately 90 countries worldwide. This remarkable expansion is a direct result of the enhanced knowledge and experience that Toastmasters provide to their members and clients; and

WHEREAS, there are four Toastmaster Groups in the Gig Harbor area: Gig Harbor Club; Peninsula Toastmasters; Chit Chatter Club; and the Sounding Board Toastmasters;

NOW, THEREFORE, I, Derek Young, Mayor Pro Tem of Gig Harbor, do hereby proclaim the week of February 16, 2009 through February 23, 2009 as:

## **“TOASTMASTERS WEEK”**

in Gig Harbor, and encourage all citizens to recognize the many accomplishments and opportunities in communication and public speaking that this outstanding organization provides for people everywhere.

\_\_\_\_\_  
Derek Young, Mayor Pro Tem

\_\_\_\_\_  
Date



**Subject: Appointment to the Planning Commission**

**Proposed Council Action:**

A motion for the appointment of Michael Fisher to serve the remainder of the vacant term on the Planning Commission that expires June, 2013.

**Dept. Origin:** Administration

**Prepared by:** Molly Towslee, City Clerk *MT*

**For Agenda of:** Feb. 9, 2009

**Exhibits:** Application Packages Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** PK 2/3

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

**Approved by Finance Director:** \_\_\_\_\_

**Approved by Department Head:** \_\_\_\_\_

Expenditure	Amount	Appropriation	
Required \$0	Budgeted \$0	Required	\$0

**INFORMATION / BACKGROUND**

Two applications were submitted for the vacant position on the Planning Commission from Michael Fisher and Steve Lynn.

**FISCAL CONSIDERATION**

N/A

**BOARD OR COMMITTEE RECOMMENDATION**

The Boards and Candidates Review Committee interview both candidates. They agreed that either application would serve the Planning Commission well.

Councilmember Ekberg, Councilmember Kadzik and Harris Atkins voiced a preference for Steve Lynn. Councilmember Malich preferred Michael Fisher. The commission forwarded this recommendation to the Mayor for consideration.

**RECOMMENDATION / MOTION**

**Move to:** A motion for the appointment of Michael Fisher to serve the remainder of the vacant term on the Planning Commission that expires in June, 2013.



**Subject:** Water Rights Assistance –  
Amendment to Agreement for Attorney  
Services

**Proposed Council Action:** Authorize the  
amendment to the agreement for attorney  
services with Law Office of T. D. Mortimer for  
legal assistance related to the acquisition of  
additional water rights for the City.

**Dept. Origin:** Public Works Department

**Prepared by:** Jeff Langhelm *AL*  
Senior Engineer

**For Agenda of:** February 9, 2009

**Exhibits:** Amendment to Agreement for  
Attorney Services, Scope and  
Fee

Initial & Date

**Concurred by Mayor:** \_\_\_\_\_

**Approved by City Administrator:** *RJK*

**Approved as to form by City Atty:** *approved via email*

**Approved by Finance Director:** *DP 2/3/09*

**Approved by Department Head:** *AB 2/2/09*

Expenditure	Amount	Appropriation
Required \$20,000	Budgeted \$20,000	Required \$0

**INFORMATION / BACKGROUND**

To meet the future water demands of the City's water system, both the 2008 and 2009 City budgets have included items for two new water sources, Well No. 9 and Well No. 10. These two budget items are related to the installation of two new wells based on recommendations in the City's draft Water System Plan.

In connection with these two new sources the City contracted in 2008 with the Law Office of T. D. Mortimer for attorney services for assistance with completing the existing August 2000 water right application for Well No. 9 and starting a new water right application for Well No. 10. During 2008 Mr. Tom Mortimer, in conjunction with the City's hydrogeologic consultant (Robinson, Noble, and Saltbush, Inc.), assisted in scoping, preparing, and submitting a new water right application for Well No. 10 and prioritizing the water right applications for Wells No. 9 and 10. This work has required meetings with City staff and consultants, Department of Ecology, and state representatives.

The proposed work in 2009 should finalize the Well No. 10 water right application and further the processing of the Well No. 9 water right application. This work will continue to require resolution to the detailed regulatory, technical, and legal issues surrounding the processing and issuance of the City's water rights applications.



This Amendment further defines the scope provided in the original agreement, updates the rates charged by Mr. Tom Mortimer, and revises the contract to be automatically renewed at the end of each year unless otherwise terminated in writing.

**FISCAL CONSIDERATION**

The 2009 Water Capital Fund has allocated \$20,000 for this project under Objective No. 5.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Authorize the amendment to the agreement for attorney services with Law Office of T. D. Mortimer for legal assistance related to the acquisition of additional water rights for the City.

**AMENDMENT NO. 1  
TO  
AGREEMENT FOR ATTORNEY SERVICES**

THIS AMENDMENT NO. 1 to that certain Agreement for Attorney Services dated March 24, 2008 (the "Agreement"), is entered into by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), and the LAW OFFICES OF T.D. MORTIMER (the "Attorney"), collectively referred to as the "parties".

WHEREAS, the parties desire to amend the services, costs, duration and contact information set forth in the Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained in the Agreement and this Amendment, the parties hereto agree as follows:

**TERMS**

SECTION 1. Section 2 of the Agreement, Scope of Services, is hereby amended to read as follows:

Attorney agrees to provide legal services as requested by the City Council in connection with water rights permitting and processing assistance, as further described in Attachment "A-1". In the event of any conflict between the language in the Attachment "A-1" and this Agreement, the language in this Agreement shall control.

SECTION 2. Section 3 of the Agreement, Compensation, is hereby amended to read as follows:

The City hereby agrees to pay Attorney for legal services for the work described in Attachment "A-1" at the rate of two hundred ten dollars (\$210.00) per hour, up to an amount not-to-exceed \$20,000. Attorney agrees to use every appropriate method to contain his fees on these matters.

The attorney authorized to work on the matters described above is Tom Mortimer. The charge for legal services provided will be based on actual time or based on increments which are no greater than 6 minutes.

The Attorney may bill for travel time at two-thirds of the above hourly rate, but for no more than two (2) hours from portal to portal during one day. No separate charges shall be paid for such office expenses as the following ordinary costs of doing business: local and long distance telephone costs and charges, postage, meals, clerical staff work, supplies, and word processing. The City agrees to reimburse the extraordinary

expenses incurred by Attorney, at cost with no mark-up as follows: legal messenger services, photocopies prepared by the Attorney's office shall be reimbursed at a rate of \$0.10 per page, photocopies prepared by outside reproduction service shall be reimbursed at the cost; computerized legal research over and above the Attorneys' monthly fee shall be reimbursed at cost but only when approved in advance by the City Attorney; and mileage shall be reimbursed at the prevailing IRS rate.

SECTION 3. Section 7 of the Agreement, Duration, is hereby amended to read as follows:

This Agreement shall be effective until December 31, 2009, unless extended by amendment in accordance with Section 18 of this Agreement.

SECTION 4. Section 13 of the Agreement, Notices, is hereby amended to substitute the following contact information for the City Attorney:

Angela S. Belbeck  
Ogden Murphy Wallace, P.L.L.C.  
1601 Fifth Avenue, Suite 2100  
Seattle, WA 98101

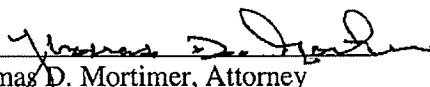
EXCEPT AS EXPRESSLY MODIFIED BY THIS AMENDMENT NO. 1, ALL TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF GIG HARBOR**

**LAW OFFICES OF T.D. MORTIMER**

By: \_\_\_\_\_  
Mayor Charles L. Hunter

By:   
Thomas D. Mortimer, Attorney

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
City Clerk Molly Towslee

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
Angela S. Belbeck

LAW OFFICES  
THOMAS D. MORTIMER, JR.  
940 PUGET SOUND PLAZA  
1325 FOURTH AVENUE  
SEATTLE, WASHINGTON 98101  
PHONE: (206) 447-9036  
FAX: (206) 447-9105

**RECEIVED**

JAN 20 2009

CITY OF GIG HARBOR  
ENGINEERING

January 16, 2009

Mr. Jeff Langhelm  
Senior Engineer  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

**RE: New Groundwater Right Project**

Dear Mr. Langhelm:

Thank you for retaining my legal services to assist the City of Gig Harbor (City) secure a new, additive groundwater right to meet its future municipal water demand needs and undertake other tasks. This letter has been prepared to update my scope of work and shall serve as our letter of agreement for attachment to the City's (amended) professional service contract.

**I. Project Understanding:**

- A. **Contract Reimbursement:** The City of Gig Harbor (City) submitted an application for a new groundwater right approximately three (3) years ago to the Department of Ecology (Ecology) SWRO. Thus far, Ecology has taken no action on the application and has provided no affidavit of publication to the City. Further, it would appear that absent agreeing to pay for processing of the new application pursuant to Ecology's Cost Reimbursement Process, Ecology SWRO will take no action to advance the City's application. Should the application be advanced, its processing is likely to raise hydraulic continuity issues with fish-bearing streams and creeks in the area, and potentially trigger Puyallup Tribe interest and objections. Mortimer has been retained to address and resolve where possible, all regulatory, technical, and legal issues relating to the permitting of the new water right in a manner that meets the interests of the City.
  
- B. **Water Resource Policy/Advisory Issues:** The City of Gig Harbor is in the process of updating its Water System Plan (WSP) and securing approval of same. Mortimer shall assist in securing approval of the WSP from county and state authorities, if required. Mortimer shall also advise and assist the City

address issues relating to service area adjustments, regulatory and legal developments that may affect the status of its municipal water rights, legislation affecting municipal water rights, tribal related challenges to the City's water rights, and related tasks as assigned/authorized by the City.

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JAN 20 2009

CITY OF GIG HARBOR  
ENGINEERING

## II. Tasks/Scope of Work

- Review and analyze all existing/relevant documents, plans, groundwater/surface water studies, water rights, and legal authority/materials pertaining to the City of Gig Harbor's water rights, related ground/surface water sources, local environmental conditions, and other appropriate and instructive documents.
- Analyze all appropriate information and advise the City of Gig Harbor of the legal status of the existing/acquired water rights. Advise appropriate City officials of potential regulatory issues and processes (Ecology), additional technical/study requirements, potential legal risks, and recommended regulatory/technical strategy.
- Recommend technical consultants and/or technical studies necessary to support the new application. Meet and/or communicate as necessary with City of Gig Harbor consultants regarding project issues, studies, technical information, and other issues related to the new additive water right application.
- Analyze/prepare water right development (and mitigation) strateg(ies) to address project-based hydraulic, hydrogeologic, and fishery issues that arise pursuant to technical studies, Ecology comments, Tribal comments, and other sources.
- Advise City officials regarding the scope of work, costs, and implementation of the Ecology Cost Reimbursement Process (CR). Assist the City define and negotiate an acceptable CR scope of work and cost agreement with Ecology.
- Consult with and coordinate with City hydrogeology firm (Robinson, Noble, Saltbush) to develop necessary hydrogeologic analysis to support the new application, assess impacts on surface water systems, the proposed scope of the Cost Reimbursement study area (re: processing of senior applications/changes), and provide peer review/comment on Ecology CR contractor work product(s).
- Prepare application cover letter to Ecology SWRO re: the City intentions and approach to proceed with new additive right application, and to negotiate scope/costs of the CR process. Provide/discuss all appropriate information to advance the application.
- Attend meetings/participate in conference calls with City of Gig Harbor officials as appropriate to discuss project issues, reports, strategy, and regulatory actions/issues/conditions.

- Represent the City of Gig Harbor as appropriate and/or as directed in meetings and/or communications with Ecology, WA. State Dept. of Health, Puyallup Tribe, and other regulatory agencies and local jurisdictions. Directly communicate as appropriate with regulatory agencies regarding application issues and processing.
- Negotiate to the extent possible with Ecology, the terms of the final report of examination (ROE) and permit for the new application. Review and edit draft ROEs from Ecology – consult with City/consultants re: agreement re: final permit text.
- Assist the City of Gig Harbor under other tasks as allowed by budget and expressly directed by the City of Gig Harbor.
- Track/advise on the status/developments related to municipal water law litigation and potential impacts on City water rights and water system planning.
- Advise on service area adjustments and provide necessary legal advice and process assistance in amendments to plans and documents.
- Assist the City secure approval of its water system plan update with state/local government agencies.
- Other tasks as expressly authorized by City officials.

Note: This scope of work and budget does not include tasks and costs regarding the potential litigation of an appealed and/or denied water right application.

### III. Project Timeline

Mortimer estimates that the timeline to complete project tasks, including the Well 10 project, municipal water law litigation, and water system plan approval, will require approximately 2.5 - 3 years to complete.

Factors affecting the project timeline may include Department of Ecology responsiveness, Gig Harbor Consultant technical product development, Cost Reimbursement contractor performance, Tribal intervention and issues, and negotiations with stakeholders/Ecology re: project issues, mitigation, and efforts, consultants, and other

### IV. Project Budget/Fees/Expenses

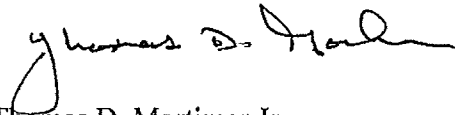
Mortimer's billing rate for 2009 shall be \$210.00 an hour. Invoices describing work performed shall be submitted each month to the City Finance Director. Expenses that may be charged include mileage at the prevailing IRS rate at time of billing, copies at .10 cents a copy, and long distance phone. Travel time shall be billed at a rate of 2/3rds of actual travel time recorded, but shall not exceed 2.5 hours for any specific travel time occasion, irrespective of actual travel time.

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JAN 20 2009  
CITY OF GIG HARBOR  
ENGINEERING

Based on the limited Gig Harbor project information available, and comparable project experience over the estimated 2.5 -3 year project term, Mortimer estimates a total project budget of \$61,500. This amendment pertains to year two of the project scope first described in 2008.

Thank you for retaining me to assist in this very important project. I look forward to working with you. If you have any questions or comments, please do not hesitate to contact me at (206) 447-9036 or [mortwater@earthlink.net](mailto:mortwater@earthlink.net).

Sincerely,



Thomas D. Mortimer Jr.  
Attorney at Law

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JAN 20 2009

CITY OF GIG HARBOR  
ENGINEERING





AFTER RECORDING RETURN TO:

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

**WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM**

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

Right-of-Way Easement

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

Franciscan Health System

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

City of Gig Harbor

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

Section 25, Township 22, Range 01, Quarter 40

**Assessor's Property Tax Parcel or Account Number:** 3001140010 and 3001140020

**Reference Number(s) of Documents assigned or released:** \_\_\_\_\_

**RIGHT-OF-WAY EASEMENT**

THIS EASEMENT, executed this date by FRANCISCAN HEALTH SYSTEM, a non-profit corporation organized under the laws of the State of Washington whose mailing address is 1717 South J Street, Tacoma WA, 98405, as the "Grantor" herein:

**WITNESSETH:**

WHEREAS, Grantor owns a fee simple interest in the following real property, commonly known as Saint Anthony Hospital, located at 11567 Canterwood Blvd NW, Gig Harbor, Washington, 98332 and legally described in **Exhibit A** attached hereto and incorporated herein (the "Property"); and

WHEREAS, in order to satisfy a condition of a land use permit received by Grantor in connection with the construction of Saint Anthony Hospital, Grantor desires to grant to the City of Gig Harbor (the "City") an easement consisting more or less of a thirty (30) foot strip of land (including two irregular indentations) along the southern property line of parcel numbers 3001140010 and 3001140020 to be utilized for Right-of-Way and utility purposes;

NOW, THEREFORE, Grantor hereby grants and conveys to the City, a perpetual, nonexclusive easement, to erect, construct, install, lay and thereafter use, operate, inspect, repair, maintain, improve, replace and remove Right-of-Way and utilities under, over, through and across that portion of the Property described in **Exhibit B** attached hereto and incorporated herein (the "Easement"). The location of the Easement is shown on the Easement Location Map attached hereto as **Exhibit C** and incorporated herein.

The City shall be responsible for the maintenance of the Easement and any and all improvements constructed by it on the Easement. The City shall indemnify and hold Grantor, its successors and assigns, harmless from and against any damage, loss or liability from injuries to persons or property to the extent caused by the negligent acts of the City, its employees, contractors and agents in the exercise of the rights granted hereunder.

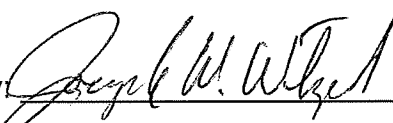
[Remainder of page intentionally left blank.]

This Easement shall be recorded in the records of the Pierce County Auditor Grantor and shall constitute a covenant running with the land for the benefit of the City, its successors and assigns.

IN WITNESS WHEREOF, the Grantor has caused this Easement to be executed this 29th day of January, 2009.

**GRANTOR:**

**FRANCISCAN HEALTH SYSTEM**

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

Its: President/CEO \_\_\_\_\_

Print Name: Joe Wilczek \_\_\_\_\_

**ACCEPTED:**

**CITY OF GIG HARBOR**

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

Its: Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

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

DATED: \_\_\_\_\_

\_\_\_\_\_  
Printed: \_\_\_\_\_  
Notary Public in and for Washington,  
Residing at \_\_\_\_\_  
My appointment 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 THE CITY OF GIG HARBOR, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Printed: \_\_\_\_\_  
Notary Public in and for Washington,  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**EXHIBIT A  
PROPERTY LEGAL DESCRIPTION**

LOTS 1 AND 2 OF THAT CERTAIN ST. ANTHONY HOSPITAL BINDING SITE  
PLAN RECORDED APRIL 1, 2008 UNDER RECORDING NO. 200804015001,  
RECORDS OF PIERCE COUNTY, WASHINGTON.

**EXHIBIT B  
EASEMENT LEGAL DESCRIPTION**

**30' RIGHT-OF-WAY LEGAL DESCRIPTION  
ST. ANTHONY HOSPITAL**

THAT PORTION OF LOT 1 OF THAT CERTAIN ST. ANTHONY HOSPITAL BINDING SITE PLAN RECORDED APRIL 1, 2008 UNDER RECORDING NO. 200804015001, RECORDS OF PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1, SAID SOUTHEAST CORNER BEING THE TRUE POINT OF BEGINNING;  
THENCE NORTH 86°06'11" WEST, ALONG THE SOUTH LINE OF SAID LOT 1, 291.30 FEET;  
THENCE CONTINUING ALONG SAID SOUTH LINE SOUTH 33°23'57" WEST 34.46 FEET;  
THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 86°06'11" WEST 188.04 FEET;  
THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 03°53'57" EAST 30.00 FEET;  
THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 86°06'14" WEST 409.41 FEET TO A POINT ON THE EASTERLY MARGIN OF CANTERWOOD BOULEVARD N.W. AS CONVEYED TO PIERCE COUNTY BY DEEDS RECORDED JANUARY 11, 1994 UNDER RECORDING NUMBERS 9401110666, 9401110667 AND 9401110668;  
THENCE CONTINUING ALONG SAID EASTERLY MARGIN NORTH 16°00'56" WEST 16.32 FEET;  
THENCE CONTINUING ALONG SAID EASTERLY MARGIN SOUTH 73°58'55" WEST 22.98 FEET TO A POINT ON A CURVE, CONCAVE TO THE WEST HAVING A RADIUS OF 715.00 FEET, A RADIAL LINE THROUGH SAID POINT BEARS SOUTH 78°17'30" WEST,  
THENCE NORTHERLY CONTINUING ALONG SAID EASTERLY MARGIN 23.24 FEET THROUGH A CENTRAL ANGLE OF 01°51'44";  
THENCE SOUTH 86°06'11" EAST 929.18 FEET TO A POINT ON THE WESTERLY MARGIN OF THE 100 FOOT RIGHT OF WAY AS APPROPRIATED BY THE CITY OF TACOMA IN PIERCE COUNTY SUPERIOR COURT CAUSE NO. 51234;  
THENCE ALONG SAID WESTERLY MARGIN SOUTH 13°50'11" EAST 31.50 FEET TO THE TRUE POINT OF BEGINNING;

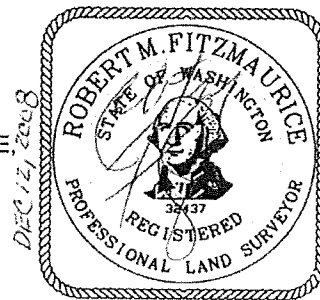
SAID PORTION CONTAINS 33,514 SQUARE FEET MORE OR LESS

TOGETHER WITH THAT PORTION OF LOT 2 OF THAT CERTAIN ST. ANTHONY HOSPITAL BINDING SITE PLAN RECORDED APRIL 1, 2008 UNDER RECORDING NO. 200804015001, RECORDS OF PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

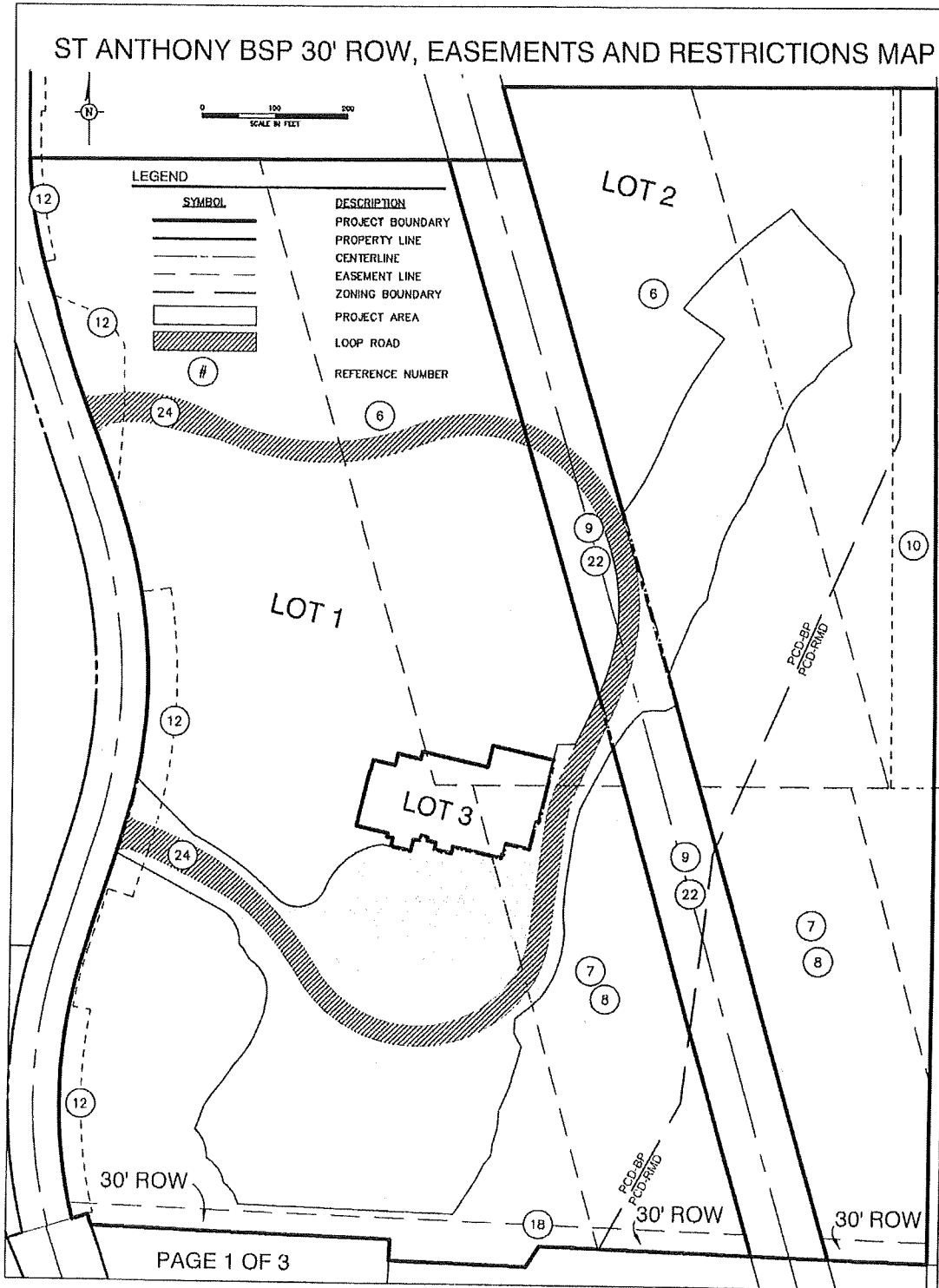
COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 2, SAID SOUTHEAST CORNER BEING THE TRUE POINT OF BEGINNING;  
THENCE NORTH 86°06'11" WEST ALONG THE SOUTH LINE OF SAID LOT 2 137.34 FEET TO A POINT ON THE EASTERLY MARGIN OF THE 100 FOOT RIGHT OF WAY AS APPROPRIATED BY THE CITY OF TACOMA IN PIERCE COUNTY SUPERIOR COURT CAUSE NO. 51234;  
THENCE NORTH 13°50'11" WEST ALONG SAID EASTERLY MARGIN 31.50 FEET;  
THENCE SOUTH 86°06'11" EAST 145.90 FEET TO THE EAST LINE OF SAID LOT 2;  
THENCE SOUTH 01°54'57" WEST, ALONG THE EAST LINE OF SAID LOT 2, 30.02 FEET TO THE TRUE POINT OF BEGINNING;

SAID PORTION CONTAINS 4,249 SQUARE FEET MORE OR LESS

ALL SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.



### EXHIBIT C EASEMENT LOCATION MAP





**Subject:** 2009 Traffic Model Update and 2008 Capacity Availability Report - PTV America, Inc. - Consultant Services Contract

**Proposed Council Action:**

- A. Authorize the award and execution of the Consultant Services Contract with PTV America Inc. for the 2009 Traffic Model Update and 2008 Capacity Availability Report for an amount not to exceed \$14,000.00; and,
- B. Authorize the Public Works Director to Approve expenditures of up to \$1,400 for extra Services of PTV America that may result from necessary changes in the scope of work.

**Dept. Origin:** Engineering Division

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

**For Agenda of:** February 9, 2009

**Exhibits:** Consultant Services Contract

Initial & Date

**Concurred by Mayor:** \_\_\_\_\_

**Approved by City Administrator:** PSK

**Approved as to form by City Atty:** approved via email

**Approved by Finance Director:** DP 2/3/09

**Approved by Department Head:** DB 2/2/09

Expenditure	Amount	Appropriation
Required \$15,400	Budgeted \$20,000	Required 0

**INFORMATION / BACKGROUND**

To meet the requirements of the Gig Harbor Municipal Code Chapter 19.10, Concurrency Management, the City has developed a traffic model, commonly called the "Concurrency Model", to document and track available transportation capacity. The model is used to document the issuance of transportation capacity reservation certificates for proposed development within the City limits. The model currently in use is based on traffic data gathered in 2005 and corresponding "pipeline" development projects. Periodically, it is necessary to update the model by removing the pipeline projects that have been completed or are no longer being contemplated, updating the planned transportation improvement projects using the current 6-year TIP and proposed private mitigation projects, and calibrating the network distribution with updated traffic counts. This contract will update the model so it is current and available for future transportation concurrency runs and provide the City with a 2008 Transportation Capacity Availability Report.

**FISCAL CONSIDERATION**

The 2009 Budget includes a line item "Capacity Availability Report" with \$20,000 shown as the adopted amount (Account No. 101-017-543-30-41-56). This amount is sufficient to fund the work necessary to update the traffic model and provide the report.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A



**RECOMMENDATION / MOTION**

**Move to:**

- A.** Authorize the award and execution of the Consultant Services Contract with PTV America for the 2009 Traffic Model Update and 2008 Capacity Availability Report for an amount not to exceed \$14,000.00; and,
- B.** Authorize the Public Works Director to approve expenditures of up to \$1,400 for extra services of PTV America that may result from necessary changes in the scope of work.

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
PTV America, Inc.**

---

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and PTV America, Inc., a corporation organized under the laws of the State of Washington (the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in (CS&P 0905) 2009 Traffic Model Update and 2008 Capacity Availability Report and desires that the Consultant perform services necessary to provide the following consultation services; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work 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**

1. **Retention of Consultant - Scope of Work.** The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. **Payment.**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed \$14,000 (fourteen thousand dollars and no cents) for the services described in Section 1 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. 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 18 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.

3. **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 subconsultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or subconsultant 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 subconsultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants 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.

4. **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, 2009; provided however, that additional time shall be granted by the City for excusable days or extra work.

5. **Termination.** The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. **Non-Discrimination.** The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman,

{ASB714519.DOC;1/00008.900000/}

because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

**7. Indemnification.**

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. 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.

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

**8. 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, subconsultants or subcontractors.

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 coverages 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 upon request.

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.

9. **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.

10. **Ownership and Use of Work Product.** Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

11. **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.

12. **Records.** The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

13. **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 subconsultants 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.

14. **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.

15. **Resolution of Disputes and Governing Law.**

A. 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.

B. 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 Public Works Director 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 prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

16. **Written Notice.** All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

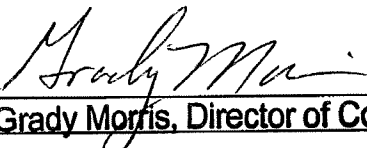
CONSULTANT: PTV America, Inc.  
ATTN: Robert Shull or Ed Hayes  
1145 Broadway Plaza, Suite 605  
Tacoma, WA 98402-3583  
(253) 272-4440

City of Gig Harbor  
ATTN: Stephen T. Misiurak  
Public Works, Engineering  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 851-6170

17. **Subcontracting or Assignment.** The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. Any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

18. **Entire Agreement.** This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CONSULTANT  
By:   
Its: Grady Morris, Director of Contracts

CITY OF GIG HARBOR  
By: \_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST:

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

APPROVED AS TO FORM:

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



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**Exhibit A**  
**SCOPE OF WORK**  
City of Gig Harbor – Update Model and Capacity Analysis  
January 2008

The documentation task is described at the end of this section. However, this task is intended to be ongoing throughout the project. It is anticipated that we will work closely with City of Gig Harbor staff to maximize the technology transfer and to insure that staff provides input on and is aware of all model assumptions.

**Project Parameters**

The goals of this agreement will be discussed with City of Gig Harbor staff at the beginning of the project. These are currently understood to update the travel demand model for the City of Gig Harbor, Washington and measure certain performance indicators using the updated model. The specific tasks to achieve these goals include:

1. recalibration of the travel demand model using VISUM with updated vehicle counts, pipeline projects, recent improvements, and transportation improvement program (TIP)
2. develop 2008 Capacity Availability Report

**Develop Updated Model & Scenario Evaluation**

The model will be updated as necessary to reflect changes in land use and transportation facilities.

Recalibrate and validate the baseline model with new vehicle count and/or travel survey data, as requested. This may require an update of trip generation rates may be revised during the actual calibration according to the results of the calibration runs. The external traffic counts, PSRC model, and previous Gig Harbor model will be used as the starting place for the evaluation and updating of external traffic, as requested. Validation will match the limits imposed by graphs on allowable screenline calibration errors and allowable link calibration errors in NCHRP 255 (pp 41, 49).

*(estimated effort: 12 hours Principal, 24 hours Project Manager, 40 hours Associate)*

Assist with scenario evaluation, including graphic layouts and data input and output of the model for both base and forecast years

*(estimated effort: 6 hours Associate and 2 Project Manager per scenario)*

Documentation of findings into 2008 Capacity Availability Report and the modeling process will be documented by PTV and all quantification of assumptions will be summarized for requested efforts. Documentation provided will allow a knowledgeable VISUM modeler to repeat all the processes undertaken and to run alternative scenarios based on the information it contains along with the set of computer files. Capacity evaluations needed by the City during the contract period may be included in the Capacity Availability Report, and funded under separate agreements. For budget and scope purposes these additional capacity evaluations are not considered in the hours and costs for the model update and pipeline scenario.

*(estimated effort: 16 hours Project Manager and 6 hours Principal)*

PTV staff is available to attend project meetings and meet with City of Gig Harbor staff on modeling related tasks as a part of the on-call agreement. Direct expenses in addition to the hourly rate would be billable under this task.

*(estimated effort: variable as requested by the city, but not to exceed 6 hours at Project Manager rate for this effort)*

Exhibit B

City of Gig Harbor – Update Model and Capacity Analysis  
January 2008

The proposed budget for this project is presented in the following table. Work will be billed monthly based upon time and materials with a budget not to exceed \$14,000 for professional transportation demand model consulting services, and the tasks completed within 60 days of receiving all vehicle counts and necessary inputs (transportation facility improvement definition, etc.) for updating the baseline model. The understanding is that the model and data are available now and this effort is a priority with the city. The budget does not include capacity evaluations that would be funded under separate contracts.

Invoices will be submitted monthly per the contract. The estimated budget is shown in the following table and will be billed at actual PTV America, Inc. WSDOT audited government rates. The intention is that the effort outlined in this scope of work will be conducted by PTV America Inc. staff in the Tacoma office.

Gig Harbor VISUM recalibration and capacity analysis - January  
2009

PTV America

Task	Principal	Project Manager	Associate	Total Hrs.	Estimated Cost
Rate	\$ 223	\$ 120	\$ 70		
<b>Update Model Network</b>					
Recalibrate and validate baseline model	4	40	42	86	\$ 8,632
Run Model and Evaluate/Summarize Results	1	2	8	11	\$ 1,023
<b>Documentation/Admin</b>					
Documentation	4	16	6	26	\$ 3,232
Administration	0	2	0	2	\$ 240
Meetings/Presentations	0	6	0	6	\$ 720
<b>Total Labor</b>	<b>9</b>	<b>66</b>	<b>56</b>	<b>131</b>	<b>\$ 13,847</b>
Estimated Direct Expenses					\$ 75
<b>Total</b>					<b>\$ 13,922</b>



Subject: Kenneth Leo Marvin Veteran's Memorial Park (CPP0814) and 50th Street Court Improvements, Phase I (CSP0806) - Contract Change Orders 1-6

Proposed Council Action:

Authorize the Mayor to execute Contract Change Order Nos. 1, 2, 3, 4, 5 and 6 with Stan Palmer Construction, Inc. in the CREDIT amount of -\$77,802.05.

Dept. Origin: Engineering Division

Prepared by: Emily Appleton, Senior Engineer

For Agenda of: February 9, 2009

Exhibits:

- Construction Contract Summary 1-21-09
Change Order Summary 1-21-09
Change Orders 1-6 with attachments

Concurred by Mayor: [Signature]
Approved by City Administrator: [Signature] 1/30/09
Approved as to form by City Atty: [Signature]
Approved by Finance Director: [Signature] 1/30/09
Approved by Department Head: [Signature] 1/30/09

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and a final 0 value.

INFORMATION / BACKGROUND

On August 11, 2008, Council authorized award of the Kenneth Leo Marvin Veteran's Memorial Park and 50th Street Court Improvements, Phase I construction contract to Stan Palmer Construction, Inc. in the amount of \$989,154.88. The proposed contract change orders 1-6 are the final change orders for the project and represent work items that were or were not necessary to complete the improvements. All work contained within the change orders was completed by the contractor as of January 27, 2009. The following change orders 1-6 are proposed:

Change Order No. 1: Upgrade electrical service from 100 amp to 200amp (\$1,399)
The contract called for the installation of a 100 amp service. In order to ensure that sufficient power would be available for future park uses and street lighting, and at the recommendation of the Parks and Operations staff, the contractor was directed to install an upgraded service.

Change Order No. 2: CREDIT for irrigation pump that was not installed (-\$6,320)
The contract called for the installation of an irrigation pump. When the irrigation system was installed, the water pressure was tested and City staff found the system operated sufficiently without the pump. The contractor was directed to not install the irrigation pump.

Change Order No. 3: Electrical service connection fee reimbursement (\$3,283.67)
The original contract documents did not contain sufficient information for the contractor to obtain an accurate estimate from Peninsula Light for the electrical service connection fee.

The contractor estimated the fee to be \$1,000. Once the service connection information was obtained via field meetings after the contract was awarded, the contractor found the actual fee was \$4,283.67. This additional amount represents the fee minus \$1,000 that the contractor included in the bid price.

**Change Order No. 4: Additional trash rack (\$261)**

The original contract documents did not include a trash rack at the storm drainage pipe in the southwest corner of the park. The pipe needed to have a trash rack to ensure that trash would not cause a maintenance issue.

**Change Order No. 5: Fence for park safety (\$11,020.10)**

The original contract documents did not include a fence at the west side of the field nor in the vicinity of the storm pond. After the grading was completed, the City's park safety inspector determined that the fences would be necessary for the safety of the park users due to the slopes at the west side of the field and storm pond.

**Change Order No. 6: Adjustment for final quantities CREDIT (-\$87,445.82)**

This amount adjusts the contract to reconcile the original contract quantities with the final quantities required for project completion. Additional detail regarding each bid item is included as an attachment to this change order.

<b>Changer Order Summary</b>	
Original Contract Amount:	\$ 989,154.88
Amount of Change Orders 1-6:	\$ (77,802.05)
Final Contract Amount including Change Orders 1-6:	\$ <b>911,352.83</b>

The attachments provide details regarding how the contract and change orders were split between the two projects.

**FISCAL CONSIDERATION**

The final contract amount is less than the original contract amount so no funds are required for this action. There is \$77,802.05 that was planned to be spent on this contract that is not needed to complete the contract.

**BOARD OR COMMITTEE RECOMMENDATION**

None.

**RECOMMENDATION / MOTION**

Staff recommends that these change orders be authorized to fairly complete the contract.

(CSP 0814) KLM Veteran's Memorial Park  
 (CSP 0806) 50th Street Improvements Phase I  
 CONSTRUCTION CONTRACT SUMMARY

January 21, 2009

Description	Schedule A (Park)	% of contract	Schedule B (50th Street)	% of contract	Total Contract	% of contract
<b>ORIGINAL CONSTRUCTION CONTRACT AMOUNT</b>	\$769,723.88		\$219,431.00		\$989,154.88	
CCO#1 Upgrade 100 Amp Electrical Service to 200 Amp	\$519.63	0.1%	\$879.37	0.4%	\$1,399.00	0.1%
CCO#2 Credit for Irrigation Pump	(\$6,320.00)	-0.8%	\$0.00	0.0%	(\$6,320.00)	-0.6%
CCO#3 Additional Electrical Service Connection Fees (Pro-rata share with 50th)	\$1,219.65	0.2%	\$2,064.02	0.9%	\$3,283.67	0.3%
CCO#4 Trash Rack - required, not included in original contract	\$261.00	0.0%	\$0.00	0.0%	\$261.00	0.0%
CCO#5 Vinyl Coated Fence with Wood Rails and Posts for Park and Split Rail Fence for Storm Pond	\$7,096.40	0.9%	\$3,923.70	1.8%	\$11,020.10	1.1%
CCO#6 Sum of quantity overruns and underruns	(\$37,273.72)	-4.8%	(\$50,172.10)	-22.9%	(\$87,445.82)	-8.8%
<b>Subtotal Change Orders:</b>	(\$34,497.04)	-4.5%	(\$43,305.01)	-19.7%	(\$77,802.05)	-7.9%
<b>FINAL CONTRACT AMOUNT</b>	\$735,226.84	95.5%	\$176,125.99	80.3%	\$911,352.83	92.1%

(CSP 0814) KLM Veteran's Memorial Park  
 (CSP 0806) 50th Street Improvements Phase I  
 CHANGE ORDER SUMMARY

Schedule A - KLM Veteran's Park	Unit	Quantity	Unit Price	Extension
A-CCO#1 Upgrade 100 Amp Electrical Service to 200 Amp (Pro-rata share with 50th)	LS	0.37	\$1,399.00	\$519.63
A-CCO#2 Credit for Irrigation Pump	EA	1.00	-\$6,320.00	(\$6,320.00)
A-CCO#3 Additional Electrical Service Connection Fees (Pro-rata share with 50th)	LS	0.37	\$3,283.67	\$1,219.65
A-CCO#4 Trash Rack - required, not included in original contract	EA	1.00	\$261.00	\$261.00
A-CCO#5 Vinyl Coated Fence with Wood Rails and Posts for Park	LF	226.00	\$31.40	\$7,096.40
<b>Subtotal A-CCO#1-5:</b>				<b>\$2,776.68</b>
A-CCO#6 Bid Item Final Quantity Overruns				\$26,048.51
A-CCO#6 Bid Item Final Quantity Underruns (includes deleting AA#4)				(\$63,322.23)
<b>Subtotal A-CCO#6:</b>				<b>(\$37,273.72)</b>
<b>TOTAL CHANGE ORDER AMOUNT for PARK (Schedule A):</b>				<b>(\$34,497.04)</b>

Schedule B - 50th Street Improvements Phase I	Unit	Quantity	Unit Price	Extension
B-CCO#1 Upgrade 100 Amp Electrical Service to 200 Amp (Pro-rata share with Park)	LS	0.63	\$1,399.00	\$879.37
B-CCO#3 Additional Electrical Service Connection Fees (Pro-rata share with Park)	LS	0.63	\$3,283.67	\$2,064.02
B-CCO#5 Split Rail Fence for Storm Pond	LF	246.00	\$15.95	\$3,923.70
<b>Subtotal B-CCO#1,3,5:</b>				<b>\$6,867.09</b>
B-CCO#6 Bid Item Final Quantity Overruns				\$2,830.00
B-CCO#6 Bid Item Final Quantity Underruns				(\$53,002.10)
<b>Subtotal B-CCO#6:</b>				<b>(\$50,172.10)</b>
<b>TOTAL CHANGE ORDER AMOUNT for 50th Street (Schedule B):</b>				<b>(\$43,305.01)</b>

Pro-Rata Share Calculation for Electrical System Upgrade:		
Schedule A Electrical System (BID)	\$13,000.00	37.14%
Schedule B Illumination System (BID)	\$22,000.00	62.86%
<b>TOTAL</b>	<b>\$35,000.00</b>	<b>100.00%</b>

CITY OF GIG HARBOR  
PUBLIC WORKS DEPARTMENT

Sheet 1 of 1  
Date 1 / 27 / 09

CHANGE ORDER

Change Order Number 1

- ORDERED BY ENGINEER/CITY UNDER TERMS OF SECTION 1-04.4 OF THE STANDARD SPECIFICATIONS.
- CHANGE PROPOSED BY CONTRACTOR.
- OTHER: CHANGE MUTUALLY AGREED BETWEEN THE CITY AND THE VENDOR.

CONTRACT NO.: CPP-0814/CSP-0806  
KLM Veterans Memorial Park & 50<sup>th</sup> St Ct Improvements Project Phase I

ENDORSED BY: Stan Palmer Construction, Inc.  
COMPANY NAME  
\_\_\_\_\_  
SIGNATURE  
1-27-09  
DATE  
TITLE: Vice President

TO: City of Gig Harbor

Consent Given by Surety (When required):  
BY: \_\_\_\_\_  
ATTORNEY IN-FACT DATE

DESCRIPTION OF WORK

Change electrical service from 100 amp to 200 amp. See attached email quote dated 12-2-08 and previous quote and breakdown dated 9-29-08 and 11-20-08 (updated in 12-2-08 email).

Amount: \$1,249 plus 12% markup equals \$1,399.00

ALL WORK, MATERIALS, AND MEASUREMENTS SHALL OTHERWISE BE IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT AS APPLICABLE.

ORIGINAL CONTRACT AMOUNT	CURRENT CONTRACT AMOUNT	NET CHANGE THIS ORDER	CONTRACT TOTAL AFTER CHANGE
\$ <u>989,154<sup>88</sup></u>	\$ <u>989,154<sup>88</sup></u>	\$ 1,399.00	\$ <u>990,553<sup>88</sup></u>
<input type="checkbox"/> APPROVAL RECOMMENDED: _____ CITY ENGINEER	<input type="checkbox"/> APPROVED: _____ DATE	<input type="checkbox"/> APPROVAL RECOMMENDED: _____ CITY ADMINISTRATOR	<input type="checkbox"/> APPROVED: _____ DATE
<input type="checkbox"/> APPROVED: _____ MAYOR		DATE: _____	

Note: Amounts include applicable Washington State Sales Tax. Final payment amount will vary from contract amount, and will be as set forth in the Final Progress Estimate and Reconciliation of Quantities.

**Appleton, Emily**

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**From:** Olsen, Jeffrey  
**Sent:** Tuesday, December 02, 2008 1:06 PM  
**To:** Appleton, Emily  
**Subject:** FW: 200 AMP Change Order

**Jeff Olsen**  
**Construction Inspector**  
**City of Gig Harbor**  
**253-851-6170**  
*olsenj@cityofgigharbor.net*

---

**From:** Tom Abplanalp [mailto:toma@stanpalmerconstruction.com]  
**Sent:** Tuesday, December 02, 2008 11:55 AM  
**To:** Olsen, Jeffrey  
**Subject:** RE: 200 AMP Change Order

Jeff,

Here is the revised Change Order amount from MB Electric. His breakdown is below. The new total for the change order is \$1,399.00, this includes the 12% markup.

Tom Abplanalp  
Stan Palmer Construction, Inc.  
Project Manager  
(360) 674-2100  
fax (360) 674-7190

---

**From:** Mardy Betschart [mailto:mardy@mbelectricllc.com]  
**Sent:** Tuesday, December 02, 2008 11:55 AM  
**To:** Tom Abplanalp  
**Subject:** RE: 200 AMP Change Order

Tom

In my changes I had the same length of runs, So I was able to credit back more on the existing 100 amp service. The credit back for materials is \$980.00 plus mark up is \$1176.00 and labor is 21 hours at \$71.00 = \$1491.00. Total for existing 100 amp service is \$2667.00.

The 200 amp service at 200 ft is \$3916.00 credit \$2667.00 and revised change is \$1249.00 instead of the \$2344.00. *+ 12% markup*

There only is 5 hours difference in labor, the labor rate is more for 200 amp larger pipe and wire than 100 amp plus additional cost even though it's less distance. I'm not aware of there being to services. We only had a service in the A bid item and street lights being fed off of that or into existing circuit. So I have no credit on that.

Hope this helps and sorry for inconvenience.

1/27/2009



**Consent Agenda - 11**

Mardy

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**From:** Tom Abplanalp [mailto:toma@stanpalmerconstruction.com]  
**Sent:** Tuesday, December 02, 2008 10:56 AM  
**To:** mardy@mbelectricllc.com  
**Subject:** FW: 200 AMP Change Order

Mardy,

Here is the response on the breakdown for the change order. Please respond and I will pass it on.

Thanks,

Tom Abplanalp  
 Stan Palmer Construction, Inc.  
 Project Manager  
 (360) 674-2100  
 fax (360) 674-7190

---

**From:** Olsen, Jeffrey [mailto:OlsenJ@cityofgigharbor.net]  
**Sent:** Monday, December 01, 2008 3:36 PM  
**To:** Tom Abplanalp  
**Cc:** Appleton, Emily  
**Subject:** RE: 200 AMP Change Order

Tom,

Thank you for the change order price break down. I do have some questions.

1. The new service was 200LF. The as designed service was 300 LF. How does it take 6 hours longer to install 100 LF less of conduit?
2. We are installing 100 LF less of wire. How does it take twice as long to install the wire?
3. We deleted one of the services to the site. How does it cost the City more to delete a service?

If the City is paying \$13,000 for the service to the park in schedule A and \$22,000 for the service and street lights in Schedule B and we delete one of the services (presumably to the park). How do we get a change order for \$2,344.00?

The reason I ask these questions is I need to defend this in front of the City Council. And if the change order immediately raises questions to me, I need to know the answers.

Please feel free to call.

**Jeff Olsen**  
**Construction Inspector**  
**City of Gig Harbor**  
**253-851-6170**  
*Olsenj@cityofgigharbor.net*

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**From:** Tom Abplanalp [mailto:toma@stanpalmerconstruction.com]  
**Sent:** Monday, December 01, 2008 10:26 AM  
**To:** Olsen, Jeffrey; Appleton, Emily  
**Cc:** John Brunson

1/27/2009

**Subject:** 200 AMP Change Order

Jeff,

Here is the breakdown for the 200 amp service change order.

Tom Abplanalp  
Stan Palmer Construction, Inc.  
Project Manager  
(360) 674-2100  
fax (360) 674-7190

CITY OF GIG HARBOR  
PUBLIC WORKS DEPARTMENT

Sheet <u>1</u> of <u>1</u>	<b>CHANGE ORDER</b>	Change Order Number <u>2</u>
Date <u>1 / 27 /09</u>	CONTRACT NO.: <u>CPP-0814/CSP-0806</u> KLM Veterans Memorial Park & 50 <sup>th</sup> St Ct Improvements Project Phase I	
<input type="checkbox"/> ORDERED BY ENGINEER/CITY UNDER TERMS OF SECTION 1-04.4 OF THE STANDARD SPECIFICATIONS. <input type="checkbox"/> CHANGE PROPOSED BY CONTRACTOR. <input type="checkbox"/> OTHER: CHANGE MUTUALLY AGREED BETWEEN THE CITY AND THE VENDOR.	TO: City of Gig Harbor	
ENDORSED BY: <u>Stan Palmer Construction, Inc.</u> <small>COMPANY NAME</small>  _____ 1-27-09 <small>SIGNATURE DATE</small> TITLE: <u>Vice President</u>	Consent Given by Surety (When required):	
BY: _____ <small>ATTORNEY IN-FACT DATE</small>		

DESCRIPTION OF WORK

Credit for irrigation pump not installed: \$6,320.00

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ALL WORK, MATERIALS, AND MEASUREMENTS SHALL OTHERWISE BE IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT AS APPLICABLE.

ORIGINAL CONTRACT AMOUNT \$ <u>989,154<sup>88</sup></u>	CURRENT CONTRACT AMOUNT \$ <u>990,553<sup>88</sup></u>	NET CHANGE THIS ORDER \$ <u>-6,320.00</u>	CONTRACT TOTAL AFTER CHANGE \$ <u>984,233<sup>88</sup></u>
<input type="checkbox"/> APPROVAL RECOMMENDED: _____ <small>CITY ENGINEER</small>	<input type="checkbox"/> APPROVED: _____ <small>DATE</small>	<input type="checkbox"/> APPROVAL RECOMMENDED: _____ <small>CITY ADMINISTRATOR</small>	<input type="checkbox"/> APPROVED: _____ <small>DATE</small>
<input type="checkbox"/> APPROVED: _____ <small>MAYOR</small>		<input type="checkbox"/> APPROVED: _____ <small>DATE:</small>	

Note: Amounts include applicable Washington State Sales Tax. Final payment amount will vary from contract amount, and will be as set forth in the Final Progress Estimate and Reconciliation of Quantities.

CITY OF GIG HARBOR  
PUBLIC WORKS DEPARTMENT

Sheet 1 of 1	<b>CHANGE ORDER</b>	Change Order Number <u>3</u>
Date <u>11 / 24 / 08</u>	CONTRACT NO.: CPP-0814/CSP-0806 KLM Veterans Memorial Park & 50 <sup>th</sup> St Ct Improvements Project Phase I	
<input type="checkbox"/> ORDERED BY ENGINEER/CITY UNDER TERMS OF SECTION 1-04.4 OF THE STANDARD SPECIFICATIONS. <input type="checkbox"/> CHANGE PROPOSED BY CONTRACTOR. <input type="checkbox"/> OTHER: CHANGE MUTUALLY AGREED BETWEEN THE CITY AND THE VENDOR.	ENDORSED BY: <u>Stan Palmer Construction, INC</u> COMPANY NAME   SIGNATURE _____ 11-24-08 DATE TITLE: <u>Vice-President</u>	
Consent Given by Surety (When required): BY: _____ ATTORNEY IN-FACT _____ DATE _____		TO: City of Gig Harbor * _____ _____

DESCRIPTION OF WORK

THE CONTRACTOR / VENDOR SHALL PERFORM THE FOLLOWING UPON RECEIPT OF AN APPROVED COPY OF THIS CHANGE ORDER:

Receive compensation for Peninsula light connection fees and design fee. See Attached letter.

ALL WORK, MATERIALS, AND MEASUREMENTS SHALL OTHERWISE BE IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT AS APPLICABLE.

ORIGINAL CONTRACT AMOUNT \$ <u>989,154<sup>88</sup></u>	CURRENT CONTRACT AMOUNT \$ <u>984,233<sup>88</sup></u>	NET CHANGE THIS ORDER \$ <u>3283.67</u>	CONTRACT TOTAL AFTER CHANGE \$ <u>987,517<sup>55</sup></u>
<input type="checkbox"/> APPROVAL RECOMMENDED: _____ CITY ENGINEER _____ DATE _____	<input type="checkbox"/> APPROVED: _____ CITY ADMINISTRATOR _____ DATE _____	<input type="checkbox"/> APPROVAL RECOMMENDED: _____ CITY ADMINISTRATOR _____ DATE _____	
<input type="checkbox"/> APPROVED: _____ MAYOR _____		DATE: _____	

Note: Amounts include applicable Washington State Sales Tax. Final payment amount will vary from contract amount, and will be as set forth in the Final Progress Estimate and Reconciliation of Quantities.



5107 State Hwy 3 SW  
Port Orchard, WA 98367  
ST-AN-PC-4202NF  
(360) 674-2100 • Fax: (360) 674-7190  
www.stanpalmerconstruction.com

24 November 2008

City of Gig Harbor  
Attention: Jeff Olsen  
3510 Grandview Street  
Gig Harbor, WA 98335

RE: Kenneth Leo Marvin Veterans Memorial Park (COO-0814) & 50<sup>th</sup> St Ct  
Improvements phase 1 Project (CSP-0806)

Subject: Peninsula Light Charges

Dear Jeff Olsen;

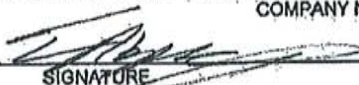
I am writing requesting a change order to recoup charges to Peninsula Light Company. In spec section 8-20.5 under Electrical system complete, it says that we are responsible for the connection fees. At bid time Peninsula light did not know what these fees would be. During the construction phase the design changed from where were going to get power and was then necessary to bore under the road. Stan Palmer Construction paid \$4283.67 to Peninsula Light. Since there was no way to quantify this amount at bid time, Stan Palmer Construction is asking to be compensated \$3283.67 for costs that were not foreseeable. Attached is a change order for that amount.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Abplanalp", written over a horizontal line.

Tom Abplanalp  
Project Manager

CITY OF GIG HARBOR  
PUBLIC WORKS DEPARTMENT

Sheet <u>1</u> of <u>1</u>	<b>CHANGE ORDER</b>	Change Order Number <u>4</u>
Date <u>11 / 24 / 08</u>	CONTRACT NO.: <u>CPP-0814/CSP-0806</u> KLM Veterans Memorial Park & 50 <sup>th</sup> St Ct Improvements Project Phase I	
<input type="checkbox"/> ORDERED BY ENGINEER/CITY UNDER TERMS OF SECTION 1-04.4 OF THE STANDARD SPECIFICATIONS. <input type="checkbox"/> CHANGE PROPOSED BY CONTRACTOR. <input type="checkbox"/> OTHER: CHANGE MUTUALLY AGREED BETWEEN THE CITY AND THE VENDOR.	TO: City of Gig Harbor,	
ENDORSED BY: <u>Stan Palmer Construction, INC</u> <small>COMPANY NAME</small>  <small>SIGNATURE</small> <u>11-24-08</u> <small>DATE</small> TITLE: <u>Vice- President</u>	_____ _____	
Consent Given by Surety (When required):		
BY: _____ DATE _____ <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:

Installation of debris barrier.

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ALL WORK, MATERIALS, AND MEASUREMENTS SHALL OTHERWISE BE IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT AS APPLICABLE.

ORIGINAL CONTRACT AMOUNT \$ <u>989,154.88</u>	CURRENT CONTRACT AMOUNT \$ <u>987,517.<sup>55</sup></u>	NET CHANGE THIS ORDER \$ <u>261.00</u>	CONTRACT TOTAL AFTER CHANGE \$ <u>987,778.<sup>55</sup></u>
<input type="checkbox"/> APPROVAL RECOMMENDED: <input type="checkbox"/> APPROVED: _____ DATE _____ <small>CITY ENGINEER</small>		<input type="checkbox"/> APPROVAL RECOMMENDED: <input type="checkbox"/> APPROVED: _____ DATE _____ <small>CITY ADMINISTRATOR</small>	
<input type="checkbox"/> APPROVED: _____ DATE: _____ <small>MAYOR</small>			

Note: Amounts include applicable Washington State Sales Tax. Final payment amount will vary from contract amount, and will be as set forth in the Final Progress Estimate and Reconciliation of Quantities.

CITY OF GIG HARBOR  
PUBLIC WORKS DEPARTMENT

Sheet <u>1</u> of <u>1</u> Date <u>1 / 27 /09</u>	<b>CHANGE ORDER</b>	Change Order Number <u>5</u>
<input type="checkbox"/> ORDERED BY ENGINEER/CITY UNDER TERMS OF SECTION 1-04.4 OF THE STANDARD SPECIFICATIONS. <input type="checkbox"/> CHANGE PROPOSED BY CONTRACTOR. <input type="checkbox"/> OTHER: CHANGE MUTUALLY AGREED BETWEEN THE CITY AND THE VENDOR.	CONTRACT NO.: CPP-0814/CSP-0806 KLM Veterans Memorial Park & 50 <sup>th</sup> St Ct Improvements Project Phase I	
ENDORSED BY: <u>Stan Palmer Construction, Inc.</u> <small>COMPANY NAME</small> _____ SIGNATURE _____ TITLE: <u>Vice President</u>	TO: City of Gig Harbor  _____ DATE	
Consent Given by Surety (When required): BY: _____ ATTORNEY IN-FACT _____ DATE _____		

DESCRIPTION OF WORK

In accordance with City of Gig Harbor Field Order No. GH004 dated November 3, 2008 (copy attached), provide and install:

1. Two Split Rail Split Fence: 246 l.f. @ \$15.95 per l.f. equals \$3,923.70
2. Wood fence (4 ft ht) with black chain link fabric: 226 l.f. @ \$31.40 per lineal ft. equals \$7,096.40

Total change order amount: \$11,020.10

ALL WORK, MATERIALS, AND MEASUREMENTS SHALL OTHERWISE BE IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT AS APPLICABLE.

ORIGINAL CONTRACT AMOUNT \$ <u>989,154<sup>88</sup></u>	CURRENT CONTRACT AMOUNT \$ <u>987,778<sup>55</sup></u>	NET CHANGE THIS ORDER \$ <u>11,020.10</u>	CONTRACT TOTAL AFTER CHANGE \$ <u>998,798<sup>65</sup></u>
<input type="checkbox"/> APPROVAL RECOMMENDED: _____ CITY ENGINEER _____ DATE _____	<input type="checkbox"/> APPROVED: _____ CITY ADMINISTRATOR _____ DATE _____	<input type="checkbox"/> APPROVED: _____ DATE: _____ MAYOR	

Note: Amounts include applicable Washington State Sales Tax. Final payment amount will vary from contract amount, and will be as set forth in the Final Progress Estimate and Reconciliation of Quantities.



'THE MARITIME CITY'

City of Gig Harbor

Field Order

No. GH004

Project Title KLM Veterans Memorial Park & 50<sup>th</sup> St Ct Improvements Project Phase I  
 Project No. CPP-0814/CSP-0806 Contract No. \_\_\_\_\_ NTP Date 10-30-2008  
 Contractor Stan Palmer Construction, Inc.

The City of Gig Harbor directs Stan Palmer Construction to perform the following work:

1. Provide and install approximately 260 LF of 4 foot tall black vinyl coated chain link fence per the attached City of Gig Harbor detail along the length of the play field as depicted in the attached sketch. The price per lineal foot is \$31.40 for an estimated installed cost of \$8,164.00.
2. Provide and install approximately 244 LF of 4 foot tall cedar 2 rail split rail fence along the storm detention pond/bio swale as depicted in the attached sketch. The price per lineal foot is \$15.95 for an estimated installed cost of \$3,955.60.

This Field order will add eight (8) working days to the contract and time will be suspended during fence procurement period.

This Field order will add a total estimated \$12,119.60 to the contract. The final amount paid to the contractor will be calculated based on field measurements.

Field measurements: 226 LF 4' black vinyl chain link  
 246 LF 4' cedar 2 rail split

- Distribution:
1. Contractor
  2. Proj. Mgr.
  3. Field Office
  4. File

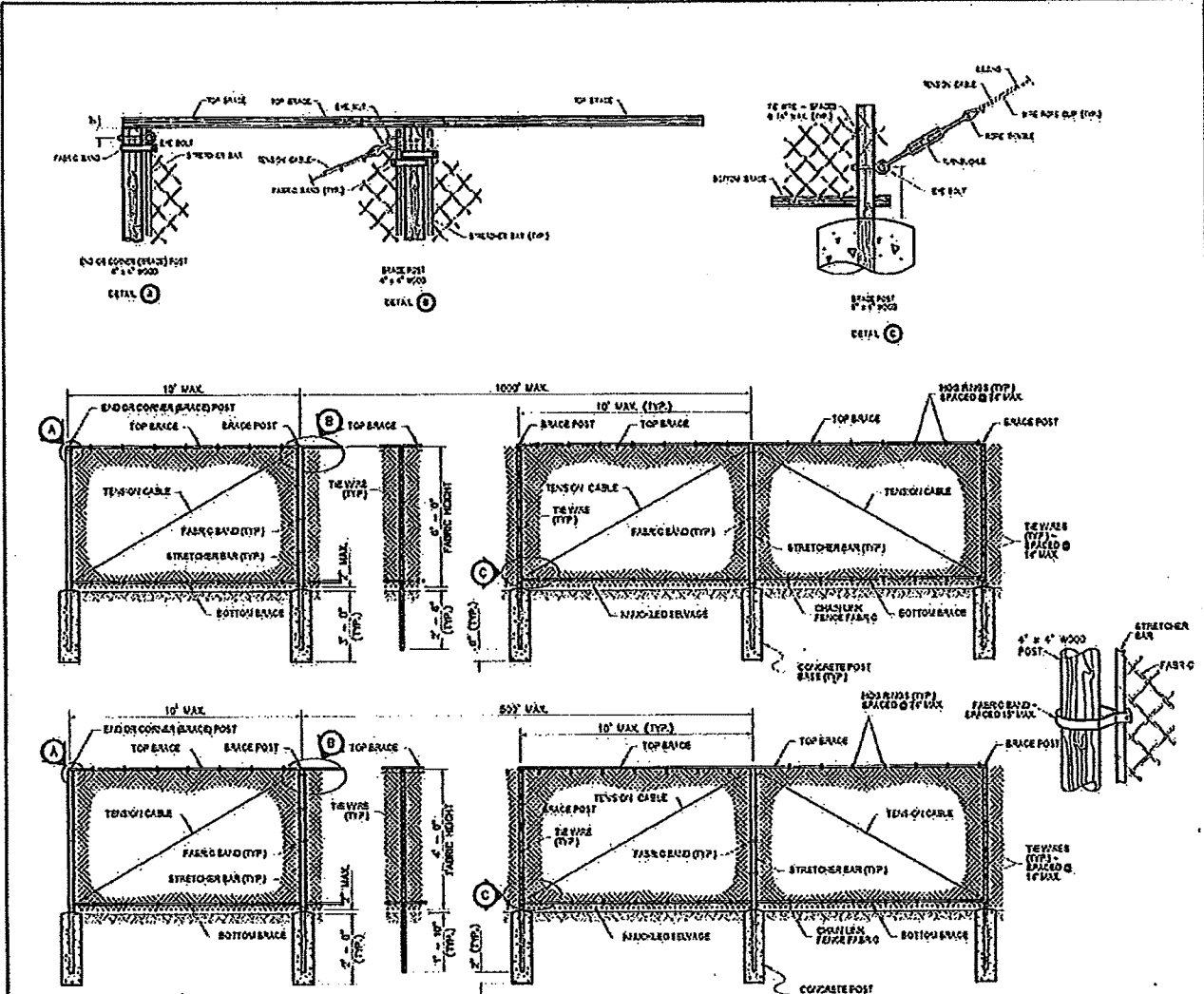
11-3-08  
Date

[Signature]  
Project Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor's Authorized Representative





**NOTE:**

1. FENCES SHALL BE CONSTRUCTED OF WOOD, WROUGHT IRON, BRICK, STONE OR CONCRETE BLOCK (CMU). SMOOTH-FACED CONCRETE BLOCK MUST HAVE A VENEER FINISH ON THE SIDE VISIBLE TO THE PUBLIC'S VIEW. IN COMMERCIAL AREAS OR RECREATION CENTERS IN RESIDENTIAL AREAS, BLACK, DARK BROWN OR OTHER DARK-TONED, VINYL-COATED CHAIN LINK ATTACHED TO WOOD POSTS AND RAILS IS PERMITTED. OTHER MATERIALS WHICH HAVE THE GENERAL APPEARANCE AND VISUAL QUALITY OF APPROVED FENCE MATERIALS MAY BE APPROVED BY THE PLANNING DIRECTOR. HOWEVER, THE USE OF PLYWOOD OR COMPOSITION SHEETING AS A MATERIAL IS NOT PERMITTED.
2. IN AREAS OUTSIDE OF DESIGNATED ACTIVITY CENTERS AND NOT VISIBLE FROM ANY CITY RIGHT-OF-WAY, WATERWAY, OR DESIGNATED PUBLIC SPACES, STANDARD CHAIN LINK FENCING INCLUDING STEEL POSTS AND RAILS IS PERMITTED. BLACK-COATED, DARK BROWN OR DARK-TONED, COATED CHAIN LINK FENCING WITH MATCHING POSTS AND RAILS ARE NONETHELESS ENCOURAGED.
3. FENCES ARE LIMITED TO A HEIGHT OF THREE FEET ALONG FRONT YARDS (FOUR FEET FOR OPEN RAIL FENCES) AND SIX FEET IN REAR YARDS; PROVIDED, THAT CLEAR VISION IS RETAINED FOR ADJACENT DRIVEWAYS AND INTERSECTIONS (SEE CLEAR VISION PROVISIONS IN THE CITY'S PUBLIC WORKS STANDARDS).
4. ALL CONCRETE POST BASES SHALL BE 10" MINIMUM DIAMETER.
5. ALONG THE TOP AND BOTTOM, USING HOO RINGS, FASTEN THE CHAIN LINK FENCE FABRIC TO THE TENSION WIRE AND TENSION CABLE WITHIN THE LIMITS OF THE FIRST FULL FABRIC WEAVE.
6. DETAILS ARE ILLUSTRATIVE AND SHALL NOT LIMIT HARDWARE DESIGN OR POST SELECTION OF ANY PARTICULAR FENCE TYPE.

POST AND RAIL SPECIFICATIONS		
POST	SECTION	
	END, CORNER, OR BRACE POST	4" X 4"
TOP OR BOTTOM BRACE RAIL	2" X 4"	②

CITY OF GIG HARBOR  
DEPARTMENT OF PUBLIC WORKS

**POND FENCING**

APPROVED BY \_\_\_\_\_ DATE 10/01/08  
CITY ENGINEER

DWN CKD DATE 10-14-08 FILE FIG X-XX

REF

REV. NO:

**Appleton, Emily**

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**From:** Olsen, Jeffrey  
**Sent:** Thursday, October 16, 2008 3:16 PM  
**To:** Appleton, Emily  
**Subject:** FW: Fence at KLM

Emily,

Below is the email from Dan Lilley about our fence at the park. He also feels it is needed. Should we just meet with Owl fencing onsite and explain what we want then get a price from them?

**Jeff Olsen**  
**Construction Inspector**  
**City of Gig Harbor**  
**253-851-6170**  
*Olsenj@cityofgigharbor.net*

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**From:** Lilley, Dan  
**Sent:** Thursday, October 16, 2008 2:48 PM  
**To:** Malch, Marco; Olsen, Jeffrey  
**Subject:** Fence at KLM

It appears necessary to fence that west side of the ball field. No visible barrier could result in serious injury. Dan

10/28/2008

**PLANTING NOTES**

1. PLANT MATERIAL LOCATIONS SHALL BE COORDINATED W/ SPRINKLER IRRIGATION HEAD LOCATIONS TO AVOID ANY CONFLICTS.
2. MULCH SHALL BE GROUND BARK MULCH. SEE SPECS.
3. ALL PARKING LOT PLANTING AREAS SHALL HAVE A 6"-12" HT. BERM WITHIN PLANTING AREA TO PROVIDE POSITIVE DRAINAGE. FIELD VERIFY W/ O.R. PRIOR TO BEGINNING CONST.

**PLANTING LEGEND**

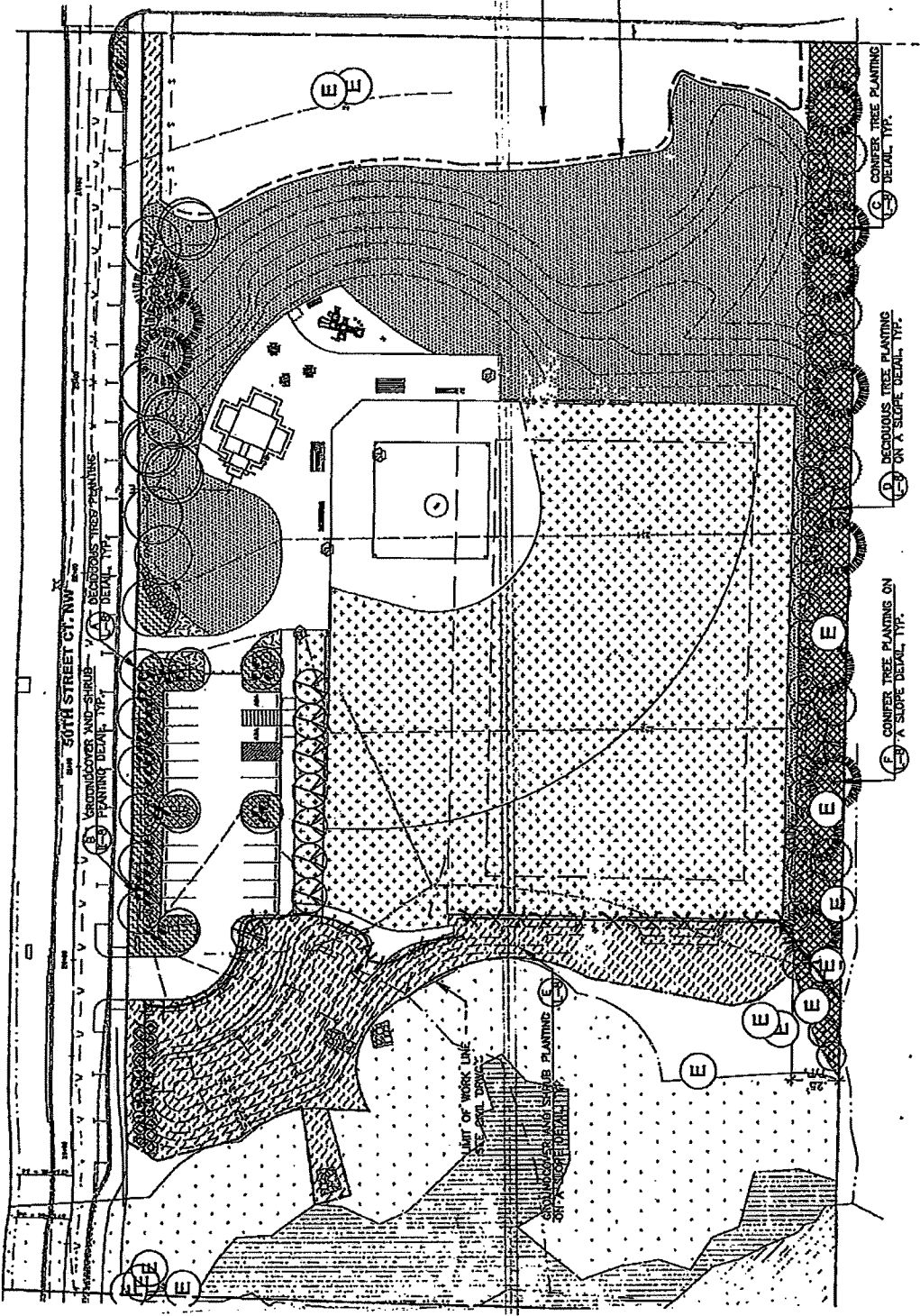
- (E) EXISTING SIGNIFICANT TREES TO REMAIN - SEE CIVIL DRWG'S FOR TREE PROTECTION REQUIREMENTS
- (E) DETAIL IDENTIFICATION SHEET IDENTIFICATION

EXISTING VEGETATION TO REMAIN

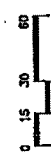
LIMIT OF PLANTING EQUALS LIMIT OF GRADING. SEE CIVIL DRWG'S.

||||||| = SPLIT RAIL FENCE 2000 LF  
 \* \* \* \* \* = 4" VINYL COATED CHAIN LINK FENCE 2000 LF

SEE SHEET L-7 FOR PLANTING SCHEDULE, SEE COVER SHEET FOR GENERAL NOTES, BASIS OF BEARING AND ABBREVIATIONS.



**PLANTING PLAN**



PROJECT MANAGER	J.H.
PROJECT DESIGNER	J.H.
DRAWN BY	JOF / CC
CHECKED BY	FLB
DATE	6/20/08
REVISIONS	
PROJECT NUMBER	

ISSUE	DATE	DESCRIPTION

**HDR**  
 1000 High Street, Suite 200  
 San Francisco, CA 94102  
 Tel: 415.774.4500  
 Fax: 415.774.4501  
 www.hdr.com

**SCAFF ARCHITECTURE**  
 1000 High Street, Suite 200  
 San Francisco, CA 94102  
 Tel: 415.774.4500  
 Fax: 415.774.4501  
 www.scaff.com

CITY OF GIG HARBOR  
 KENNETH LEO MARVIN VETERANS MEMORIAL  
 PLANTING PLAN, PLANTING  
 LEGEND & PLANTING NOTES

DATE	
SCALE	



CITY OF GIG HARBOR  
PUBLIC WORKS DEPARTMENT

Sheet <u>1</u> of <u>1</u> Date <u>1 / 27 /09</u>	<h2 style="margin: 0;">CHANGE ORDER</h2>	Change Order Number <u>6</u>
<input type="checkbox"/> ORDERED BY ENGINEER/CITY UNDER TERMS OF SECTION 1-04.4 OF THE STANDARD SPECIFICATIONS. <input type="checkbox"/> CHANGE PROPOSED BY CONTRACTOR. <input type="checkbox"/> OTHER: CHANGE MUTUALLY AGREED BETWEEN THE CITY AND THE VENDOR.	CONTRACT NO.: CPP-0814/CSP-0806 KLM Veterans Memorial Park & 50 <sup>th</sup> St Ct Improvements Project Phase I	
ENDORSED BY: <u>Stan Palmer Construction, Inc.</u> <small>COMPANY NAME</small>  _____ 1-27-09 <small>SIGNATURE DATE</small> TITLE: <u>Vice President</u>	TO: City of Gig Harbor	
Consent Given by Surety (When required): BY: _____ DATE _____ <small>ATTORNEY IN-FACT</small>		

DESCRIPTION OF WORK

Revise bid item quantities as shown on the attached entitled "Final Contract Summary" to reflect the final quantities for the contract.

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ALL WORK, MATERIALS, AND MEASUREMENTS SHALL OTHERWISE BE IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT AS APPLICABLE.

ORIGINAL CONTRACT AMOUNT \$ <u>989,154<sup>88</sup></u>	CURRENT CONTRACT AMOUNT \$ <u>998,798<sup>65</sup></u>	NET CHANGE THIS ORDER \$ <u>-87,445.82</u>	CONTRACT TOTAL AFTER CHANGE \$ <u>911,352<sup>83</sup></u>
<input type="checkbox"/> APPROVAL RECOMMENDED: _____ <small>CITY ENGINEER</small>	<input type="checkbox"/> APPROVED: _____ <small>DATE</small>	<input type="checkbox"/> APPROVAL RECOMMENDED: _____ <small>CITY ADMINISTRATOR</small>	<input type="checkbox"/> APPROVED: _____ <small>DATE</small>
<input type="checkbox"/> APPROVED: _____ DATE: _____ <small>MAYOR</small>			

Note: Amounts include applicable Washington State Sales Tax. Final payment amount will vary from contract amount, and will be as set forth in the Final Progress Estimate and Reconciliation of Quantities.

Final Contract Summary  
Stan Palmer Construction Contract

Item No.	Unit	Bid Quantity	Unit Price	Contract Amount	Final Quantity	Final Amount	Percent of Bid Amount	Difference	Overrun	Underrun
<b>SCHEDULE A - KLM VETERAN'S MEMORIAL PARK</b>										
A-1	Mobilization	LS 1	\$40,000.00	\$40,000.00	1.00	\$40,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-2	Crushed Rock Paving (Spec. Prov.)	TON 220	\$33.00	\$7,260.00	254.00	\$8,382.00	115.45%	\$1,122.00	\$1,122.00	\$0.00
A-3	Geotextile	SY 1,230	\$2.00	\$2,460.00	0.00	\$0.00	0.00%	(\$2,460.00)	\$0.00	(\$2,460.00)
A-4	6' Ht. Cedar Wood Fence	LF 530	\$25.00	\$13,250.00	433.00	\$10,825.00	81.70%	(\$2,425.00)	\$0.00	(\$2,425.00)
A-5	Bike Rack	EA 1	\$800.00	\$800.00	1.00	\$800.00	100.00%	\$0.00	\$0.00	\$0.00
A-6	Player Benches	EA 2	\$1,200.00	\$2,400.00	2.00	\$2,400.00	100.00%	\$0.00	\$0.00	\$0.00
A-7	Picnic Tables	EA 3	\$3,000.00	\$9,000.00	3.00	\$9,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-8	Bleachers	EA 2	\$3,500.00	\$7,000.00	2.00	\$7,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-9	Trash Receptacles	EA 2	\$1,500.00	\$3,000.00	2.00	\$3,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-10	Play Equipment	LS 1	\$20,000.00	\$20,000.00	1.00	\$20,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-11	Play Area Surfacing & Drainage Fabric	SF 1,264	\$4.00	\$5,056.00	1,264.00	\$5,056.00	100.00%	\$0.00	\$0.00	\$0.00
A-12	Concrete Play Area Curb & Ramp	LF 180	\$27.00	\$4,860.00	171.00	\$4,617.00	95.00%	(\$243.00)	\$0.00	(\$243.00)
A-13	25' Ht. Backstop Fencing	LF 82	\$300.00	\$24,600.00	82.00	\$24,600.00	100.00%	\$0.00	\$0.00	\$0.00
A-14	10' Ht. Chain link Fencing	LF 120	\$42.00	\$5,040.00	99.00	\$4,158.00	82.50%	(\$882.00)	\$0.00	(\$882.00)
A-15	Ball Field Infield Mix	CY 196	\$65.00	\$12,740.00	196.00	\$12,740.00	100.00%	\$0.00	\$0.00	\$0.00
A-16	2" x 6" Wood Header	LF 185	\$6.00	\$1,110.00	156.00	\$936.00	84.32%	(\$174.00)	\$0.00	(\$174.00)
A-17	Bases and Home Plate	LS 1	\$1,000.00	\$1,000.00	1.00	\$1,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-18	Removable Bollards	EA 3	\$650.00	\$1,950.00	3.00	\$1,950.00	100.00%	\$0.00	\$0.00	\$0.00
A-19	Benches	EA 2	\$700.00	\$1,400.00	2.00	\$1,400.00	100.00%	\$0.00	\$0.00	\$0.00
A-20	Flagpole & Flag	LS 1	\$2,700.00	\$2,700.00	1.00	\$2,700.00	100.00%	\$0.00	\$0.00	\$0.00
A-21	Pseudotsuga menziesii / Douglas Fir (6' - 8' Ht.)	EA 9	\$108.00	\$972.00	9.00	\$972.00	100.00%	\$0.00	\$0.00	\$0.00
A-22	Thuja plicata 'Hogan' / Hogan Western Red Cedar (6'-8' Ht.)	EA 12	\$108.00	\$1,296.00	12.00	\$1,296.00	100.00%	\$0.00	\$0.00	\$0.00
A-23	Liriodendron tulipifera / Tulip Tree (2' Cal.)	EA 3	\$410.00	\$1,230.00	3.00	\$1,230.00	100.00%	\$0.00	\$0.00	\$0.00
A-24	Parrotia persica / PERSIAN PARROTIA (2" Cal.)	EA 4	\$410.00	\$1,640.00	4.00	\$1,640.00	100.00%	\$0.00	\$0.00	\$0.00
A-25	Fagus sylvatica 'Asplenifolia' / FERNLEAF BEECH (2" Cal.)	EA 5	\$410.00	\$2,050.00	5.00	\$2,050.00	100.00%	\$0.00	\$0.00	\$0.00
A-26	Liquidambar styraciflua 'Clydesform' / EMERALD SENTINAL	EA 11	\$410.00	\$4,510.00	11.00	\$4,510.00	100.00%	\$0.00	\$0.00	\$0.00
A-27	Pyrus calleryana 'Chanticleer' / Chanticleer Flowering Pear (2" Cal.)	EA 8	\$410.00	\$3,280.00	8.00	\$3,280.00	100.00%	\$0.00	\$0.00	\$0.00
A-28	Arbutus unedo 'Compacta' / Compact Strawberry Tree (5 Gal.)	EA 15	\$48.00	\$720.00	15.00	\$720.00	100.00%	\$0.00	\$0.00	\$0.00
A-29	Amelanchier x grandiflora 'Autumn Brilliance' / Autumn Brilliance	EA 11	\$48.00	\$528.00	11.00	\$528.00	100.00%	\$0.00	\$0.00	\$0.00
A-30	Mahonia aquifolium / Oregon Grape (1 Gal.)	EA 310	\$13.00	\$4,030.00	310.00	\$4,030.00	100.00%	\$0.00	\$0.00	\$0.00
A-31	Rosa rugosa 'Pink Pavement' / Pink Pavement Rugosa Rose (1 Gal.)	EA 135	\$13.00	\$1,755.00	135.00	\$1,755.00	100.00%	\$0.00	\$0.00	\$0.00
A-32	Rubus pentalobus 'Emerald Carpet' / Emerald Carpet Rubus (1 Gal.)	EA 280	\$13.00	\$3,640.00	280.00	\$3,640.00	100.00%	\$0.00	\$0.00	\$0.00
A-33	Gaultheria shallon / Salal (1 Gal.)	EA 190	\$13.00	\$2,470.00	190.00	\$2,470.00	100.00%	\$0.00	\$0.00	\$0.00
A-34	Fothergilla 'Mt. Airy / MT AIRY FOTHERGILLA (5 Gal.)	EA 26	\$48.00	\$1,248.00	26.00	\$1,248.00	100.00%	\$0.00	\$0.00	\$0.00
A-35	Ilex crenata 'Green Island' / Green Island Holly (5 Gal.)	EA 13	\$48.00	\$624.00	13.00	\$624.00	100.00%	\$0.00	\$0.00	\$0.00
A-36	Rosa rugosa 'Pink Pavement' / Pink Pavement Rugosa Rose (5 Gal.)	EA 45	\$48.00	\$2,160.00	45.00	\$2,160.00	100.00%	\$0.00	\$0.00	\$0.00
A-37	Cornus stolonifera / RedTwig Dogwood (1 Gal.)	EA 9	\$13.00	\$117.00	9.00	\$117.00	100.00%	\$0.00	\$0.00	\$0.00
A-38	Holodiscus discolor / Oceanspray (1 Gal.)	EA 11	\$13.00	\$143.00	11.00	\$143.00	100.00%	\$0.00	\$0.00	\$0.00
A-39	Prunus laurocerasus 'Mt. Vernon' / Mt. Vernon Laurel (1 Gal.)	EA 790	\$13.00	\$10,270.00	790.00	\$10,270.00	100.00%	\$0.00	\$0.00	\$0.00
A-40	Arctostaphylos uva-ursi 'Massachusetts' / Massachusetts Kinnikinnick (1 Gal.)	EA 290	\$13.00	\$3,770.00	290.00	\$3,770.00	100.00%	\$0.00	\$0.00	\$0.00

Final Contract Summary  
Stan Palmer Construction Contract

Item No.	Unit	Bid Quantity	Unit Price	Contract Amount	Final Quantity	Final Amount	Percent of Bid Amount	Difference	Overrun	Underrun
A-41	Hemerocallis 'Stella de Oro' / STELLA DE ORO DAYLILY(1 Gal.)	EA 200	\$13.00	\$2,600.00	200.00	\$2,600.00	100.00%	\$0.00	\$0.00	\$0.00
A-42	Topsoil Type A	CY 757	\$50.00	\$37,850.00	810.00	\$40,500.00	107.00%	\$2,650.00	\$2,650.00	\$0.00
A-43	Topsoil Type B	CY 450	\$40.00	\$18,000.00	450.00	\$18,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-44	Bark or Wood Chip Mulch	CY 116	\$44.00	\$5,104.00	116.00	\$5,104.00	100.00%	\$0.00	\$0.00	\$0.00
A-45	Seeded Lawn Installation	SF 99,443	\$0.06	\$5,966.58	95,204.00	\$5,712.24	95.74%	(\$254.34)	\$0.00	(\$254.34)
A-46	Native Seeding and Mulching	SF 19,972	\$0.15	\$2,995.80	19,972.00	\$2,995.80	100.00%	\$0.00	\$0.00	\$0.00
A-47	Irrigation System	LS 1	\$55,000.00	\$55,000.00	1.00	\$55,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-48	Gravel Backfill for Drains	CY 12	\$480.00	\$480.00	12.00	\$480.00	100.00%	\$0.00	\$0.00	\$0.00
A-49	Concrete Band	LF 20	\$50.00	\$1,000.00	20.00	\$1,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-50	Clearing and Grubbing	ACR 4.5	\$15,000.00	\$67,500.00	4.50	\$67,500.00	100.00%	\$0.00	\$0.00	\$0.00
A-51	Removal of Structure and Obstructions (Spec Prov)	LS 1	\$5,000.00	\$5,000.00	1.00	\$5,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-52	Unsuitable Foundation Excavation Include. Haul	YD 10	\$22.00	\$220.00	10.00	\$220.00	100.00%	\$0.00	\$0.00	\$0.00
A-53	Embankment Compaction	CY 5,000	\$2.00	\$10,000.00	5,000.00	\$10,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-54	Site Excavation Incl Haul (Spec Prov)	CY 6,500	\$9.00	\$58,500.00	6,500.00	\$58,500.00	100.00%	\$0.00	\$0.00	\$0.00
A-55	Quarry Spalls (Rip Rap)	CY 75	\$55.00	\$4,125.00	75.00	\$4,125.00	100.00%	\$0.00	\$0.00	\$0.00
A-56	Under Drain Pipe 8 IN Diam (French Drain, Spec Prov)	LF 226	\$23.00	\$5,198.00	240.00	\$5,520.00	106.19%	\$322.00	\$322.00	\$0.00
A-57	Catch Basin Type 1	EA 4	\$950.00	\$3,800.00	3.00	\$2,850.00	75.00%	(\$950.00)	\$0.00	(\$950.00)
A-58	Catch Basin Type 2 48 IN Diam	EA 2	\$1,700.00	\$3,400.00	2.00	\$3,400.00	100.00%	\$0.00	\$0.00	\$0.00
A-59	Grate Inlet	EA 2	\$750.00	\$1,500.00	0.00	\$0.00	0.00%	(\$1,500.00)	\$0.00	(\$1,500.00)
A-60	Yard Drain (Spec Prov)	EA 1	\$250.00	\$250.00	1.00	\$250.00	100.00%	\$0.00	\$0.00	\$0.00
A-61	Construction Geotextile for Underground Drainage	SY 40	\$2.50	\$100.00	0.00	\$0.00	0.00%	(\$100.00)	\$0.00	(\$100.00)
A-62	Control Structure (Spec Prov)	EA 1	\$3,500.00	\$3,500.00	1.00	\$3,500.00	100.00%	\$0.00	\$0.00	\$0.00
A-63	Corr Poly St Sewer Pipe 12 IN Dia (Spec Prov)	LF 218	\$30.00	\$6,540.00	235.00	\$7,050.00	107.80%	\$510.00	\$510.00	\$0.00
A-64	Corr Poly St Sewer Pipe 18 IN Dia (Spec Prov)	LF 437	\$45.00	\$19,665.00	486.00	\$21,870.00	111.21%	\$2,205.00	\$2,205.00	\$0.00
A-65	PVC Sanitary Sewer Pipe 2 IN Dia (Spec Prov)	LF 240	\$16.00	\$3,840.00	267.00	\$4,272.00	111.25%	\$432.00	\$432.00	\$0.00
A-66	Sanitary Sewer Grinder Pump (Spec Prov)	EA 1	\$8,500.00	\$8,500.00	1.00	\$8,500.00	100.00%	\$0.00	\$0.00	\$0.00
A-67	Double Check Valve Assembly	EA 1	\$1,300.00	\$1,300.00	1.00	\$1,300.00	100.00%	\$0.00	\$0.00	\$0.00
A-68	Polyethylene Pipe for Water Main 2 IN Diam (Spec Prov)	LF 206	\$14.00	\$2,884.00	72.00	\$1,008.00	34.95%	(\$1,876.00)	\$0.00	(\$1,876.00)
A-69	Water Service Meter Setter (Spec Prov)	EA 2	\$1,400.00	\$2,800.00	1.00	\$1,400.00	50.00%	(\$1,400.00)	\$0.00	(\$1,400.00)
A-70	Crushed Surfacing Base Course (Spec Prov)	TON 281	\$27.00	\$7,587.00	341.25	\$9,213.75	121.44%	\$1,626.75	\$1,626.75	\$0.00
A-71	Crushed Surfacing Top Course	TON 189	\$34.00	\$6,426.00	209.11	\$7,109.74	110.64%	\$683.74	\$683.74	\$0.00
A-72	HMA CL B 1/2 IN PG 58-22	TON 165	\$115.00	\$18,975.00	130.00	\$14,950.00	78.79%	(\$4,025.00)	\$0.00	(\$4,025.00)
A-73	High Visibility Silt Fence (Spec Prov)	LF 900	\$4.00	\$3,600.00	800.00	\$3,200.00	88.89%	(\$400.00)	\$0.00	(\$400.00)
A-74	Straw Bale	EA 20	\$85.00	\$1,700.00	15.00	\$1,275.00	75.00%	(\$425.00)	\$0.00	(\$425.00)
A-75	Erosion/Water Pollution Control (Spec Prov)	LS 1	\$15,000.00	\$15,000.00	0.50	\$7,500.00	50.00%	(\$7,500.00)	\$0.00	(\$7,500.00)
A-76	Stabilized Construction Entrance	SY 222	\$15.00	\$3,330.00	298.00	\$4,470.00	134.23%	\$1,140.00	\$1,140.00	\$0.00
A-77	Paint Line	LF 324	\$3.00	\$972.00	427.00	\$1,281.00	131.79%	\$309.00	\$309.00	\$0.00
A-78	Painted Access Parking Space Symbol	EA 2	\$80.00	\$160.00	2.00	\$160.00	100.00%	\$0.00	\$0.00	\$0.00
A-79	Permanent Signing	LS 1	\$1,000.00	\$1,000.00	1.00	\$1,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-80	Water	MGA 4	\$120.00	\$480.00	104.60	\$12,552.00	2615.00%	\$12,072.00	\$12,072.00	\$0.00
A-81	Construction Surveying	L 1	\$16,500.00	\$16,500.00	1.00	\$16,500.00	100.00%	\$0.00	\$0.00	\$0.00
A-82	Pervious Concrete Sidewalk (Spec Prov)	SY 125	\$115.00	\$14,375.00	131.50	\$15,122.50	105.20%	\$747.50	\$747.50	\$0.00
A-83	Cement Conc Sidewalk Ramp Type 1B	EA 1	\$1,350.00	\$1,350.00	1.00	\$1,350.00	100.00%	\$0.00	\$0.00	\$0.00
A-84	Cement Conc Bumper Curb	EA 20	\$210.00	\$4,200.00	21.00	\$4,410.00	105.00%	\$210.00	\$210.00	\$0.00
A-85	Extruded Curb	LF 520	\$6.00	\$3,120.00	444.00	\$2,664.00	85.38%	(\$456.00)	\$0.00	(\$456.00)
A-86	Maintenance Bond	LS 1	\$300.00	\$300.00	1.00	\$300.00	100.00%	\$0.00	\$0.00	\$0.00

Consent Agenda 14

Final Contract Summary  
Stan Palmer Construction Contract

Item No.	Unit	Bid Quantity	Unit Price	Contract Amount	Final Quantity	Final Amount	Percent of Bid Amount	Difference	Overrun	Underrun
A-87	LS	1	\$2,500.00	\$2,500.00	1.00	\$2,500.00	100.00%	\$0.00	\$0.00	\$0.00
A-88	LS	1	\$13,000.00	\$13,000.00	1.00	\$13,000.00	100.00%	\$0.00	\$0.00	\$0.00
A-89	EA	1	\$700.00	\$700.00	1.00	\$700.00	100.00%	\$0.00	\$0.00	\$0.00
				\$664,972.38		\$663,932.03	99.84%	(\$1,040.35)	\$24,029.99	(\$25,070.34)
	<b>SUBTOTAL</b>									
	Tax at 8.4%			\$55,857.68		\$55,770.29	99.84%	(\$87.39)	\$2,018.52	(\$2,105.91)
	<b>SUBTOTAL WITH TAX</b>			\$720,830.06		\$719,702.32	99.84%	(\$1,127.74)	\$26,048.51	(\$27,176.25)
AA#4	CY	351	\$95.00	\$33,345.00	0.00	\$0.00	0.00%	(\$33,345.00)	\$0.00	(\$33,345.00)
	AA#4 Tax at 8.4%			\$2,800.98		\$0.00	0.00%	(\$2,800.98)	\$0.00	(\$2,800.98)
	<b>Subtotal AA#4</b>			\$36,145.98		\$0.00	0.00%	(\$36,145.98)	\$0.00	(\$36,145.98)
AA#5	CY	196	\$60.00	\$11,760.00	196.00	\$11,760.00	100.00%	\$0.00	\$0.00	\$0.00
	AA#5 Tax at 8.4%			\$987.84		\$987.84	100.00%	\$0.00	\$0.00	\$0.00
	<b>Subtotal AA#5</b>			\$12,747.84		\$12,747.84	100.00%	\$0.00	\$0.00	\$0.00
	<b>SCHEDULE A TOTAL</b>			\$769,723.88		\$732,450.16	95.16%	(\$37,273.72)	\$26,048.51	(\$63,322.23)
	A-CCO#1-5			\$2,776.68		\$2,776.68	0.36%			
	<b>A-CCO#6 (net of over/underruns)</b>			(\$37,273.72)		included	-4.84%			
	<b>Subtotal</b>			(\$34,497.04)		n/a	-4.48%			
	<b>Schedule A Total with Change Orders :</b>			\$735,226.84		\$735,226.84	95.52%			

Final Contract Summary  
Stan Palmer Construction Contract

Item No.	Unit	Bid Quantity	Unit Price	Contract Amount	Final Quantity	Final Amount	Percent of Bid Amount	Difference	Overrun	Underrun
<b>SCHEDULE B - 50th STREET IMPROVEMENTS PHASE I</b>										
B-1	Mobilization	LS	1	21,000.00	\$21,000.00	1.00	100.00%	\$0.00	\$0.00	\$0.00
B-2	Clearing and Grubbing	ACRE	0.18	15,000.00	\$2,700.00	0.18	100.00%	\$0.00	\$0.00	\$0.00
B-3	Removal of Structure and Obstruction (Spec Prov)	EA	1	5,000.00	\$5,000.00	1.00	100.00%	\$0.00	\$0.00	\$0.00
B-4	Roadway Excavation Incl Haul (Spec Prov)	CY	450	17.00	\$7,650.00	450.00	100.00%	\$0.00	\$0.00	\$0.00
B-5	Common Borrow Incl Haul	CY	90	28.00	\$2,520.00	0.00	0.00%	(\$2,520.00)	\$0.00	(\$2,520.00)
B-6	Embankment Compaction	CY	450	3.00	\$1,350.00	70.00	15.56%	(\$1,140.00)	\$0.00	(\$1,140.00)
B-7	Catch Basin Type 1	EA	1	950.00	\$950.00	1.00	100.00%	\$0.00	\$0.00	\$0.00
B-8	Testing Storm Sewer Pipe	LF	141	3.00	\$423.00	139.00	98.58%	(\$6.00)	\$0.00	(\$6.00)
B-9	Corr Poly St Sewer Pipe 12" Dia (CPEP) (Spec Prov)	LF	141	30.00	\$4,230.00	139.00	98.58%	(\$60.00)	\$0.00	(\$60.00)
B-10	Quarry Spalls (Rip Rap)	CY	1	75.00	\$75.00	0.00	0.00%	(\$75.00)	\$0.00	(\$75.00)
B-11	Crushed Surfacing Base Course (Spec Prov)	CY	50	65.00	\$3,250.00	50.00	100.00%	\$0.00	\$0.00	\$0.00
B-12	Crushed Surfacing Top Course (Spec Prov)	CY	35	70.00	\$2,450.00	35.00	100.00%	\$0.00	\$0.00	\$0.00
B-13	HMA CL 1/2 IN PG 58-22	TON	30	125.00	\$3,750.00	30.00	100.00%	\$0.00	\$0.00	\$0.00
B-14	ESC Lead	Day	50	225.00	\$11,250.00	5.00	10.00%	(\$10,125.00)	\$0.00	(\$10,125.00)
B-15	Check Dam	LF	10	20.00	\$200.00	0.00	0.00%	(\$200.00)	\$0.00	(\$200.00)
B-16	Street Cleaning	HR	30	175.00	\$5,250.00	13.00	43.33%	(\$2,975.00)	\$0.00	(\$2,975.00)
B-17	Inlet Protection	EA	5	60.00	\$300.00	7.00	140.00%	\$120.00	\$120.00	\$0.00
B-18	Silt Fence (Spec Prov)	LF	218	4.00	\$872.00	150.00	68.81%	(\$272.00)	\$0.00	(\$272.00)
B-19	Cement Conc Traffic Curb and Gutter	LF	609	20.00	\$12,180.00	571.00	93.76%	(\$760.00)	\$0.00	(\$760.00)
B-20	Paint Line	LF	1,290	1.00	\$1,290.00	865.00	67.05%	(\$425.00)	\$0.00	(\$425.00)
B-21	Permanent Signage	LS	1	1,500.00	\$1,500.00	1.00	100.00%	\$0.00	\$0.00	\$0.00
B-22	Illumination System	LS	1	22,000.00	\$22,000.00	1.00	100.00%	\$0.00	\$0.00	\$0.00
B-23	Project Temporary Traffic Control	LS	1	5,000.00	\$5,000.00	0.00	0.00%	(\$5,000.00)	\$0.00	(\$5,000.00)
B-24	Flaggers and Spotters	HR	320	48.00	\$15,360.00	0.00	0.00%	(\$15,360.00)	\$0.00	(\$15,360.00)
B-25	Traffic Control Supervisor	HR	160	58.00	\$9,280.00	0.00	0.00%	(\$9,280.00)	\$0.00	(\$9,280.00)
B-26	Structure Excavation Class B Incl Haul	CY	10	24.00	\$240.00	3.00	30.00%	(\$168.00)	\$0.00	(\$168.00)
B-27	Pervious Concrete Sidewalk (Spec Prov)	SY	431	125.00	\$53,875.00	443.50	102.90%	\$1,562.50	\$1,562.50	\$0.00
B-28	Pervious Asphalt (Spec Prov)	TONS	103	210.00	\$21,630.00	91.19	88.53%	(\$2,480.10)	\$0.00	(\$2,480.10)
B-29	Cement Conc Driveway Entrance Type 2	SY	20	85.00	\$1,700.00	33.50	167.50%	\$1,147.50	\$1,147.50	\$0.00
B-30	Construction Geotextile for Underground Drainage	SY	1,078	2.00	\$2,156.00	0.00	0.00%	(\$2,156.00)	\$0.00	(\$2,156.00)
	<b>SCHEDULE B TOTAL</b>			<b>\$219,431.00</b>			<b>77.14%</b>	<b>(\$50,172.10)</b>	<b>\$2,830.00</b>	<b>(\$53,002.10)</b>
	B-CCO#1,3,5			\$6,867.09			3.13%	\$0.00		
	B-CCO#6			(\$50,172.10)		included	-22.86%			
	Subtotal B-CCO's			(\$43,305.01)		n/a	-19.74%			
	<b>Schedule B Total with Change Orders:</b>			<b>\$176,125.99</b>			<b>80.26%</b>			
	<b>ORIGINAL Contract Amount (Sched A - includes AA#4 &amp; #5 - and Sched B)</b>			<b>\$989,154.88</b>						
	<b>FINAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS</b>			<b>\$911,352.83</b>			<b>92.13%</b>	<b>(\$87,445.82)</b>	<b>\$28,878.51</b>	<b>(\$116,323.33)</b>





Subject: Assigned Counsel Agreement

Proposed Council Action:

Approve Contract with the Pierce County Department of Assigned Counsel

Dept. Origin: Administration

Prepared by: Rob Karlinsey

For Agenda of: February 9, 2009
Exhibits: Agreement & Memo re: rules of professional conduct.

Concurred by Mayor:
Approved by City Administrator: [Signature] 2/3/09
Approved as to form by City Atty: VIA EMAIL
Approved by Finance Director:

Initial & Date

Table with 3 columns: Expenditure, Amount, Appropriation. Row 1: Required \$53,959.04, Budgeted \$55,000, Required \$0.

INFORMATION / BACKGROUND

The Department of Assigned Counsel (DAC) of Tacoma represents all indigent defendants charged with misdemeanor and gross misdemeanor cases in the City of Gig Harbor and fulfills the Court's Constitutional Obligation to provide all citizens including citizens without the means to hire private counsel the right to competent representation.

DAC has an office adequately staffed with administrative support staff, investigators, as well as criminal defense attorneys.

The proposed extension of this agreement with DAC will run through December 31, 2010.

FISCAL CONSIDERATION

For 2009, this amendment proposes a 0% increase in the base contract amount but will add an allowance of approximately \$2,000 per year for certain contracted services (conflict counsel, expert services, and investigations, for example). Under new ethics rules imposed by the Washington State Supreme Court, certain contracted services must be accounted and paid for separately from the public defender's budget (see attached memo from WA State Office of Public Defense). These costs will be paid by the City on a reimbursement basis.

For 2010, the base amount of the contract will increase by the same amount as the County's cost of living increase, as determined by the County's Budget & Finance Department.

RECOMMENDATION / MOTION

Move to: Approve Contract with the Pierce County Department of Assigned Counsel

**AMENDMENT NO. 2 TO ASSIGNED COUNSEL AGREEMENT**

THIS AMENDMENT NO. 2 to that certain Assigned Counsel Agreement dated January 1, 2007 (the "Agreement") is made by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), and PIERCE COUNTY, a political subdivision of the State of Washington (the "County"), on behalf of its Department of Assigned Counsel (the "Department").

**WITNESSETH:**

WHEREAS, the parties entered into an Agreement for the provision of legal counsel services to indigent defendants in the Gig Harbor Municipal Court for the 2007-2008 calendar years; and

WHEREAS, the parties desire to extend the term of the Agreement to cover the 2009-2010 calendar years; and

WHEREAS, in 2008 the Washington Supreme Court amended Section 1.8 of the Rules of Professional Conduct ("RPC") affecting contracting practices for public defense services; and

WHEREAS, an amendment is necessary to ensure compliance with the revisions to RPC Section 1.8;

NOW, THEREFORE, in consideration of the mutual promises contained in the Agreement and this Amendment, the parties hereto agree as follows:

**TERMS:**

**Section 1.** Section 1 of the Agreement is hereby amended to read as follows:

The Department will provide legal counsel services to indigent defendants in the Gig Harbor Municipal Court for the 2009-2010 calendar years. Such services will include, but are not limited to, legal services to all indigent defendants charged with misdemeanor crimes, including, where appropriate, interviewing defendants held in custody, representation at arraignments as requested by the Court, and at all subsequent proceedings in the Municipal Court. Indigency status will be determined by the City in coordination with the Court.

**Section 2.** Section 2 of the Agreement is hereby amended to read as follows:

A. In return for the services rendered to the City and to those indigent defendants represented by the Department in 2009-2010, the City agrees to pay the County the annual sum of Fifty-One Thousand, Nine Hundred Fifty-Nine Dollars and 04/100's (\$51,959.04). Payments shall be made in

equal quarterly installments of Twelve Thousand, Nine Hundred Eighty-Nine Dollars and 76/100's (\$12,989.76), due and payable at the end of each quarter for those services rendered. The sum for period January 1, 2010, through December 31, 2010, will be increased in accordance with and determined by the 2010 Pierce County Budget & Finance Department's Cost of Living Increase, and submitted as an amendment to this Agreement.

B. An allowance of \$2,000 shall be available to the County to cover costs associated with conflict counsel, expert services and investigations. These costs will be paid on a reimbursement basis, after presentation of an invoice for such costs. In the event that the retention of the services in this subparagraph exceeds \$2,000, the City shall provide additional funds for those services so that all payments for those services remain separate from the contract compensation to the County under this Agreement.

**Section 3.** Section 5 of the Agreement is hereby amended by adding a sentence to read as follows:

In the event of conflict, the Department may assign responsibilities to court-approved conflict counsel.

**Section 4. Ratification.** The parties intend that this Amendment relate back to December 31, 2008, and this Amendment shall ratify the prior oral understandings between the parties set forth in the Agreement and this Amendment.

EXCEPT AS EXPRESSLY MODIFIED BY THIS AMENDMENT NO. 2, ALL TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, this Amendment shall become effective upon signature by the last party hereto.

**CITY OF GIG HARBOR**

**PIERCE COUNTY**

\_\_\_\_\_  
Mayor Date

\_\_\_\_\_  
Michael R. Kawamura Date  
Director, Department of Assigned Counsel

Attest:

Approved as to legal form only:

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

By \_\_\_\_\_  
Deputy Prosecuting Attorney Date

Approved as to legal form only:

Recommended:

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

By \_\_\_\_\_  
Budget & Finance                      Date



Internet Email: [opd@opd.wa.gov](mailto:opd@opd.wa.gov)

WASHINGTON STATE  
OFFICE OF PUBLIC DEFENSE

(360) 586-3164  
FAX (360) 586-8165

October 20, 2008

**TO:** County and City Indigent Defense Contract Administrators  
**FROM:** Washington State Office of Public Defense (OPD)  
**RE:** Recent Amendment to Rules of Professional Conduct

OPD has the unique opportunity to observe local indigent defense programs throughout the state. As we review the RCW 10.101 funding applications, and meet with many of you, it has come to our attention that local governments may not receive notice of amendments to the Rules of Professional Conduct (RPCs).

The RPCs, commonly known as "ethics rules," are adopted by the Washington Supreme Court and govern the professional conduct of attorneys licensed in the state. The violation of an RPC can have serious negative consequences for the attorney involved. Find the complete RPCs at [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.state&group=ga](http://www.courts.wa.gov/court_rules/?fa=court_rules.state&group=ga)

**We want to be sure you are aware of a recent change to RPC 1.8 that could affect your contracting practices with attorneys who provide public defense services.** RPC 1.8 relates to attorney conflicts of interest. The pertinent section reads:

(m) A lawyer shall not:

(1) make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm:

(i) to bear the cost of providing conflict counsel; or

(ii) to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel; or

(2) knowingly accept compensation for the delivery of indigent defense services from a lawyer who has entered into a current agreement in violation of paragraph (m)(1).

The vast majority of contracts that OPD has reviewed comply with this Rule. However, we encourage contract administrators and attorneys to review their public defense contracts for compliance and to take any necessary remedial measures.

If you have questions, please contact an OPD Public Defense Services Manager. David DeLong is at 360-586-3164 ext.110 or [david.delong@opd.wa.gov](mailto:david.delong@opd.wa.gov). Eric Weston is at 360-586-3164 ext. 102 or [eric.weston@opd.wa.gov](mailto:eric.weston@opd.wa.gov). Kathy Kuriyama is at 360-586-3164 ext. 114 or [kathy.kuriyama@opd.wa.gov](mailto:kathy.kuriyama@opd.wa.gov).

## Washington State Office of Public Defense

### Sample Public Defense Contract Clauses

1. REPRESENTATIONAL SERVICES – The services for which the Contracting Authority is to pay the Contractor are representational services, including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings.
2. OPERATIONAL SUPPORT – Public defense contractors shall warrant that adequate staff services and facilities will be established to enable the effective provision of legal services.
3. QUALIFICATIONS -- Public defense contractors who handle the most serious cases (1<sup>st</sup> and 2<sup>d</sup> degree murder, persistent offender cases and all class A felonies) should meet WSBA endorsed qualification standards (WSBA member; 7 hours of public defense related CLE per year); plus 2 years experience as either a prosecutor or public defender or either experience as a trial counsel alone or experience with other trial counsel including handling a significant portion of the trial in five felony cases that have gone to the jury.
4. TRAINING – Public defense contractors shall take training approved by OPD, including at least seven hours per year of continuing legal education (CLE) credits related to criminal defense.
5. INVESTIGATORS – Funding for investigators will be identified in the county or city budget and/or is specified in compensation in this contract for a public defender agency. Public defenders may file ex parte motions for such investigator funds.
6. EXPERTS -- Funding for experts will be identified in the county or city budget and/or is specified in compensation in this contract for a public defender agency. Public defenders may file ex parte motions for such expert funds.
7. EXTRAORDINARY CASES – If Contractor is assigned a case which requires an extraordinary amount of time and preparation, the following additional payment may be applied for: (specify – e.g. hourly over a certain number of hours).

- 8. PRIVATE PRACTICE – Public defense contractors shall each year provide a listing of hours billed for nonpublic defense legal services, including number and types of private cases. Contractors holding more than one public defense contract shall list each contract.
- 9. CONFLICT OF INTEREST – The cost of conflict counsel shall be paid by the county or city and not by the contracting public defender.
- 10. REPORTING – Contracting public defender shall report total cases, types of cases, dispositions and total time spent on cases on a monthly basis.



**Subject: Main Street™ Agreement**

**Proposed Council Action:**

Approve the agreement between the City and the Gig Harbor Historic Waterfront Association (GHHWA).

**Dept. Origin:** Administration

**Prepared by:** Rob Karlinsey

**For Agenda of:** February 9, 2009

**Exhibits:** Agreement

Initial & Date

**Concurred by Mayor:** \_\_\_\_\_

**Approved by City Administrator:** ROK

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

**Approved by Finance Director:** \_\_\_\_\_

**Approved by Department Head:** ROK/

Expenditure	Amount	Appropriation
Required \$35,000 (in-kind + cash)	Budgeted \$35,000	Required \$0

**INFORMATION / BACKGROUND**

In 2007, the Gig Harbor Waterfront Restaurant & Retailers Association (GHWRRRA) disbanded. Former members of GHWRRRA formed a new organization called the Gig Harbor Historic Waterfront Association (GHHWA). This new organization, now in its second year of existence and registered as a non-profit entity with the State and with an established board of directors, has formed using the Mainstreet™ approach as approved and administered by the State of Washington. By adopting the Mainstreet™ approach, members can access state programs, grants, and tax credits that were otherwise unavailable.

The GHHWA, under the Mainstreet™ approach, has run and will continue to run and promote community events, business retention programs, and other strategies to preserve the historic character of the downtown while improving the economic vitality of the downtown.

In the first year of its existence (2008), the GHHWA requested and received a contribution from the City of \$70,000 (\$35,000 of which was a dollar-for-dollar match of contributions from other sources). For 2009, the proposed contribution will be reduced to \$35,000. This proposed amount was discussed and approved during the 2009 budget process and workshops. The components of the City's \$35,000 contribution are as follows:

Cash Contribution:	\$26,000
In-Kind Marketing Funded from Lodging Tax:	\$3,000
In-kind Office Space at the Visitor Center:	\$6,000
<b>Total:</b>	<b>\$35,000</b>



In return for its contribution, the GHHWA will produce specific deliverables as stated in section three of the attached agreement.

**FISCAL CONSIDERATION**

Sufficient funds are included in the 2009 adopted budget, as stated as part of objective #2 in the Administration Department's Narrative of Objectives (page 62).

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to: Approve the agreement.**

**ADMINISTRATION  
NARRATIVE OF OBJECTIVES 2009**

**Administration**

1. **Personnel Policies Update.** Complete and implement the personnel policies update. Implement the new Drug and Alcohol Testing policies and procedures.
2. **Economic Development.** Support business groups in developing an economic development strategy that involves a broad base of stake holders and addresses the needs of the various economic and employment centers in the city. Some recommended components of the economic development strategy are as follows:
  - Downtown Business Plan. Begin implementation of the downtown business plan that was produced in 2008.
  - Mainstreet Program. Provide limited funding for the Gig Harbor Historic Waterfront (Mainstreet) association and its continued activities to promote downtown businesses. A portion of the city funding can come from in-kind city contributions (office space, etc.) **\$35,000.**
  - Downtown Parking Strategy. Support downtown businesses in completing and implementing a downtown parking strategy, including a potential lease or acquisition of a public parking lot.
  - Pier Options. This is a 2008 project that may carry over into 2009. Work with the Skansie Pier Options Feasibility Committee to investigate the economic and physical feasibility of a commercial dock, temporary floats and/or an extension of the Jerisich Dock at Skansie Brothers Park. Review other locations that could be purchased, leased or upgraded for public use. A pier would bolster the local fishing industry, preserve local jobs, and enhance the Gig Harbor business climate and overall economy. Apply for state and/or federal grant funds to finance the project. **\$5,000 - Carry forward from 2008 if necessary.**
3. **Eddon Boatyard Building and Park.** Complete the Eddon Boatyard Building restoration project funded by the State's Heritage Capital Projects Grant (reimbursable grant) to provide public access for heritage programming sponsored by the Gig Harbor BoatShop. This work includes construction of public restrooms in the brick house. (Funded through parks capital fund) **\$964,522** (\$95,000 of which is a General Fund contribution to pay for the park share of the restroom construction) - **July.**

**AGREEMENT  
BETWEEN THE CITY OF GIG HARBOR AND  
THE GIG HARBOR HISTORIC WATERFRONT ASSOCIATION**

**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2009, by and between the City of Gig Harbor, Washington, an optional code municipal corporation organized under the laws of the state of Washington, hereinafter referred to as the "City" and the Gig Harbor Historic Waterfront Association, a nonprofit corporation organized under the laws of the State of Washington, hereinafter referred to as "GHHWA."

**WHEREAS**, the City is governed by Title 35A RCW, but the City also has "all of the powers which any city of any class may have and shall be governed in matters of state concern by statutes applicable to such cities in connection with such powers to the extent to which such laws are appropriate . . ." (RCW 35A.21.160); and

**WHEREAS**, RCW 35.21.703 provides that "it shall be a public purpose for all cities to engage in economic development programs," and "cities may contract with nonprofit corporations in furtherance of this and other acts relating to economic development"; and

**WHEREAS**, GHHWA, a 501c(3) corporation with UBI # 602 799 246, encourages and supports historic preservation and economic vitality of the historic Gig Harbor waterfront district; and

**WHEREAS**, the City Council is interested in contracting with the GHHWA for the activities and services described herein, in order to promote and encourage historic preservation and economic vitality in historic waterfront district of Gig Harbor; and

**WHEREAS**, the City Council values the concepts embodied in the Main Street™ Approach and recognizes the ability to increase local investment through access to Washington State B & O tax credit incentives, access to Washington State CTED staff resources and grant opportunities afforded by Main Street Program; and,

**WHEREAS**, the City Council recognizes that it is not the sole financial contributor to the work of GHHWA;

**NOW THEREFORE**, in consideration of the mutual off-setting benefits and conditions hereinafter contained, the parties hereto agree as follows:

**TERMS**

1. Purpose of the Agreement. In the execution of this Agreement, the City and GHHWA seek to:

A. Describe the conditions which must occur in order for the city to provide "in-kind" support for the use and maintenance of office and conference space at the Bogue Building at 3125 Judson Street, Gig Harbor, WA 98335, until December 31, 2009;

B. Clarify the term and nature of the City's support in order to assist the GHHWA in the development of their programs;

C. Describe the programs that will be implemented by the GHHWA for the benefit of City citizens, which shall serve as consideration for this Agreement;

D. Identify the procedures and methods to be utilized by the GHHWA in order to promote the activities and services of the GHHWA that are sponsored by the City;

E. Describe the procedures under which the GHHWA shall request monetary contributions from the City, and the manner in which the City shall respond;

F. Describe the procedures to be used by the GHHWA in order to report the outcomes of the programs to the City and the manner in which all records shall be maintained by GHHWA.

2. General Provisions of the Agreement. The City and the GHHWA acknowledge that:

A. The programs authorized and/or funded by this Agreement are municipal, educational and community purposes, designed to foster historic preservation and economic vitality development in the historic waterfront district.

B. This agreement is intended to provide to GHHWA "in-kind" lease of office and conference space in the Bogue Building until termination of this agreement.

C. Any funding provided by the City under this Agreement will be derived from the City's General Fund, and, except as noted in Section 4B of this agreement, not from lodging tax dollars.

3. Organization and Responsibilities of GHHWA. GHHWA shall organize a thriving association of stakeholders, as defined in GHHWA Bylaws with an interest in preservation and economic stability of the Gig Harbor historic waterfront district. In furtherance of the City of Gig Harbor's economic development, GHHWA shall implement the following:

A. Become a member of the Washington State Main Street Tier System;

- B. Facilitate the retention and reinvestment of tax monies within the local community by making available a mechanism for local businesses to obtain Washington State B&O Tax credits available through the Washington State Main Street program;
- C. Provide access to Washington State CTED staff resources and grant opportunities afforded by the Main Street program;
- D. Create a funding plan for the GHHWA to obtain funding from various sources other than the City to establish and maintain a viable organization and to implement all of the activities contained in this document;
- E. Demonstrate local support by obtaining significant funding from community sources including individuals, businesses, and organizations;
- F. Manage, promote and conduct at least three events in the historic waterfront district which will attract members of the public to the historic waterfront district, thereby stimulating economic vitality;
- G. Develop and coordinate marketing efforts with the City in keeping with the existing brand and theme of the City of Gig Harbor; Use the City of Gig Harbor logo on promotional materials for at least three and up to five events developed by the GHHWA in this year to show the City's sponsorship support.
- H. Maintain a communications strategy for informing GHHWA's membership about GHHWA's activities and priorities;
- I. Produce at least a quarterly newsletter for the membership;
- J. Maintain a webpage with a link to City's marketing website, gigharborguide.com, using a separate domain name for GHHWA;
- K. Hold at least quarterly meetings for waterfront district stakeholders to promote improved business vitality as a whole, which could include;
  - 1. Enhanced economic pull through from City sponsored events
  - 2. Historic preservation
  - 3. City code and design standards
  - 4. Window display design
  - 5. Business marketing
  - 6. Parking
  - 7. Business Management

L. Work with City leaders and staff, business and property owners to enhance the attractiveness and maintain the historic character of the historic waterfront business district, in keeping with city codes and design standards.

M. Develop data and trend information useful in development of long term solutions to economic and business issues in the historic waterfront area. Use this information to assist City leaders and staff in preservation and development topics for the historic waterfront area in Gig Harbor, such as:

- 1) Produce retail market position analysis of the historic waterfront district;
- 2) Maintain a business inventory of the historic waterfront district;
- 3) Provide data and a summary report from a parking turnover analysis of the historic waterfront district;

N. Work with the City Historic Preservation Coordinator to define grant opportunities and other opportunities for each party to pursue in furtherance of their mutual goals (the City maintains discretion over the types of grants it chooses to pursue);

O. Meet at least twice a year with the City's Historic Preservation Coordinator to discuss grant opportunities.

P. Submit quarterly progress reports due on or before the last day of March, June, September, and December 2009 to the City regarding activities conducted by GHHWA and proposed activities for the remainder of the term of the contract.

Q. Provide a royalty-free, fully paid license to the City for use of any logo or information provided by GHHWA. The use of the GHHWA logo requires approval of GHHWA, whose approval shall not be unreasonably withheld.

R. If an opening in the Washington State Main Street™ Tiered program becomes available during the term of this contract, GHHWA will submit an application for full Main Street member status.

S. Provide a fully paid annual GHHWA membership to the City of Gig Harbor.

T. Provide as requested qualified members for City sponsored ad hoc committees.

4. City's Responsibilities.

A. Funding to GHHWA for Services Described in this Agreement: The City will pay \$26,000, in four installments due February 15, 2009, April 1, 2009, July 1, 2009, and October 1, 2009 of \$6,500. Payment will be made within 30 days of receipt of an invoice and progress reports from GHHWA. The progress report for the February 15, 2009 payment is based on the December 31, 2008 report.

B. "In-kind services." In- Kind services include rent and utilities at the Bogue Center at 3125 Judson Street Gig Harbor, WA 98335 with 24 hours/day access including utilities, use of restroom facilities, access to the conference room on a sign up basis and building security and to assist GHHWA secure Internet access to the rented room. The in-kind contribution does not include telephone or Internet services. The annualized amount of the in-kind contribution is \$6,000. Additionally, there is a \$3,000 in-kind value for promotional services provided by the City's Marketing Department in support of GHHWA activities. No part of the in-kind funds can be carried past December 31, 2009, and if not utilized are forfeited.

C. Provide a royalty-free, fully paid license to GHHWA for use of any logo or information provided by the City. The use of the City logo requires approval of the City, whose approval shall not be unreasonably withheld.

D. Provide a link on the City's website [gigharborguide.com](http://gigharborguide.com).

5. Duration of Contract. This Contract will commence on the date it is signed by the duly authorized representatives of both parties, and shall terminate on December 31, 2009, unless sooner terminated as provided herein.

6. Independent Contractor. The parties intend that an independent contractor-client relationship will be created by this Agreement. No agent, employee, representative or sub-consultant of the GHHWA 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 GHHWA 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 GHHWA. The GHHWA 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 GHHWA performs hereunder.

7. Indemnification and Defense. The GHHWA shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection of the reports described herein, or the City's execution of this Agreement (requiring the GHHWA to provide certain services) 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 GHHWA and the City, its officers, officials, employees, agents and volunteers, the GHHWA's liability hereunder shall be only to the extent of the GHHWA's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE GHHWA'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 GHHWA'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE GHHWA'S EMPLOYEES DIRECTLY AGAINST THE GHHWA.

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

8. Insurance.

A. The GHHWA 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 GHHWA's own work including the work of the GHHWA's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before execution of this Agreement, and on the anniversary date of the execution of this Agreement, the GHHWA shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

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



completed operations, property damage, and employers liability,  
and

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

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

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

F. Under this agreement, the GHHWA'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 GHHWA's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

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

9. City's Right of Inspection, GHHWA's Responsibility to Comply with Law.

Even though the GHHWA is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the performance of services must meet the general approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The GHHWA 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 GHHWA's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

10. Record Keeping and Reporting.

A. The GHHWA shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended for the activities described

herein and claimed as reimbursement along with any other such records as may be deemed necessary to the City to ensure proper accounting for all funds contributed by the City for the performance of this Agreement and compliance with this Agreement. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the City.

B. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit during the performance of this Contract by the City. The City shall have the right to an annual audit of the GHHWA's financial statements and condition.

11. Termination.

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

B. Except in the situation where this Agreement has been terminated for public convenience, the GHHWA shall be liable to the City for any additional payments made by the City for which no services were rendered.

C. If the GHHWA's insurance coverage is canceled for any reason, the City shall have the right to terminate this Agreement.

12. Discrimination Prohibited. The GHHWA shall not discriminate against any employee, applicant for employment, or any person seeking the services of the GHHWA to be provided under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, sexual orientation, marital status or presence of any sensory, mental or physical handicap.

13. Assignment and Subcontract. Any assignment of this Agreement by the GHHWA 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.

14. Notices. Notices required by terms of this Agreement shall be sent to the other party at the following addresses, unless otherwise requested, in writing, by one of the parties hereto:

TO THE CITY:  
Attn: City Administrator  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor WA 98335

TO THE GHHWA:  
Attn: Steven Lynn, President  
Gig Harbor Historic Waterfront Association  
PO Box 771  
Gig Harbor, WA 98335

15. Applicable Law, Venue, Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in Pierce County, Washington or the U.S. District Court, Western District. The prevailing party in any such action shall be entitled to its reasonable attorney's fees and costs of suit.

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

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

18. Agreement Not Enforceable by Third Parties. This Agreement is neither expressly nor impliedly intended for the benefit of any third party and is neither expressly nor impliedly enforceable by any third party.

19. Severability. If any section, sentence, clause or phrase of this Agreement is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**CITY OF GIG HARBOR**

**GIG HARBOR HISTORIC  
WATERFRONT ASSOCIATION**

\_\_\_\_\_  
Derek Young, Mayor Pro Tem

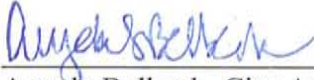
\_\_\_\_\_  


Attest:

\_\_\_\_\_  
Feb 5, 2009

\_\_\_\_\_  
Molly Towslee, City Clerk

Approved as to form:



Angela Belbeck, City Attorney



**Subject: Court Smart Contract**

**Proposed Council Action:**

Sign Purchase Contract

**Dept. Origin: Court**

**Prepared by: Paul Nelson**

**For Agenda of: February 9, 2008**

**Exhibits:**

Initial & Date

**Concurred by Mayor:** \_\_\_\_\_

**Approved by City Administrator:** PNK

**Approved as to form by City Atty:** CAM APPROV 11/10/08

**Approved by Finance Director:** \_\_\_\_\_

**Approved by Department Head:** PNW

Expenditure	Amount		Appropriation	
Required	Paid	Budgeted	Paid	Required
				\$0

**INFORMATION / BACKGROUND**

In an effort to reduce/eliminate the need to transport prisoners from the Pierce County Jail the Court budgeted for the purchase of an audio/video system that would allow an offender to be present via video transmission. In order to successfully install and operate the system the Court needed to purchase same unique equipment previously installed and operated by the Pierce County Jail.

**FISCAL CONSIDERATION:**

This was a capital budget item purchased in 2008. The amount budgeted was \$70,500. The total project cost came in \$61,354.40 or \$9,145.60 under budget.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Ratify Court Smart Contract

**AGREEMENT FOR EQUIPMENT AND INSTALLATION SERVICES  
BETWEEN CITY OF GIG HARBOR AND COURT SMART DIGITAL SYSTEMS, INC.**

THIS AGREEMENT, is made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_, by and between the City of Gig Harbor (hereinafter the "City"), and COURT SMART DIGITAL SYSTEMS, INC., a Massachusetts corporation, located and doing business at 51 Middlesex St, N. Chelms, MA 01863 (hereinafter "Contractor").  
Ford

WHEREAS, the City desires to hire the Contractor to perform the work described in Exhibit A and the Contractor agrees to perform such work under the terms set forth in this Agreement; and

WHEREAS, in the process of selection of the Contractor and award of this contract, the City has utilized the procedures in RCW 39.04.155(3);

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

**I. Description of Work.** The Contractor shall perform all work as described in Exhibit A, which is attached hereto and incorporated herein by this reference, in a workman-like manner according to standard construction practices. The work shall generally include the furnishing of all, materials and labor necessary to install the audio and visual hardware and software equipment defined in Exhibit A (price quotation) of this contract. The Contractor shall not perform any additional services without the express permission of the City.

**II. Payment.**

A. The City shall pay the Contractor the total sum of \$56,600.00 dollars and cents (\$56,600.00), plus sales tax, for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the tasks described in Exhibit A, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed change order.

B. After completion of the work, the City shall pay the full amount of an invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Contractor of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

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

**IV. Duration of Work.** The City and the Contractor agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement by both parties. The Contractor shall perform all work required by the Agreement on or before August 25, 2008. The indemnification provisions of Section IX shall survive expiration of this Agreement.

**V. Prevailing Wages.** Wages paid by the Contractor shall be not less than the prevailing rate of wage in the same trade or occupation in Pierce County as determined by the industrial statistician of the State Department of Labor and Industries and effective as of the date of this contract.

Before any payment can be made, the Contractor and each subcontractor shall submit a "Statement of Intent to Pay Prevailing Wages" to the City's Contract Compliance Division, which has been approved by the State Department of Labor and Industries. Each voucher claim (invoice) submitted by the Contractor for payment of work shall have a certification, which states that the prevailing wages have been paid in accordance with the pre-filed "Statement(s) of Intent to Pay

Prevailing Wages".

**VI. Waiver of Performance Bond and Retainage: Limited Public Works Process.** As allowed in RCW 39.04.155(3) for limited public works projects, the City has waived the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW for the work described in Exhibit A.

**VII. Termination.**

A. Termination Upon City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon five (5) days written notice to the Contractor.

B. Termination for Cause. If the Contractor refuses or fails to complete the tasks described in Exhibit A, to complete such work by the deadline established in Section IV, or to complete such work in a manner satisfactory to the City, then the City may, by written notice to the Contractor, give notice of its intention to terminate this Agreement. On such notice, the Contractor shall have five (5) days to cure to the satisfaction of the City or its representative. If the Contractor fails to cure to the satisfaction of the City, the City shall send the Contractor a written termination letter which shall be effective upon deposit in the United States mail to the Contractor's address as stated below.

C. Excusable Delays. This Agreement shall not be terminated for the Contractor's inability to perform the work due to adverse weather conditions, holidays or mechanical failures which affect routine scheduling of work. The Contractor shall otherwise perform the work at appropriately spaced intervals on an as-needed basis.

D. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for services satisfactorily performed by the Contractor to the effective date of termination, as described in a final invoice to the City.

**VIII. Discrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, the Contractor, its subcontractors or any person acting on behalf of the Contractor shall not, by reason of race, religion, color, sex, national origin or the presence of any sensory, mental, or physical handicap, discriminate against any person who is qualified and available to perform the work to which the employment relates.

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

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

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

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

**X. Insurance.**

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

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

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

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

- D. The City of Gig Harbor shall be named as an additional insured on the Contractor's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Contractor's insurance policies.
- E. It is the intent of this contract for the Contractor's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Contractor's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.
- F. The Contractor shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Contractor's coverage.

The Contractor shall procure and maintain for the duration of this Agreement, comprehensive general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its employees, agents or subcontractors. The cost of such insurance shall be borne by the Contractor. The Contractor shall maintain limits on such insurance in the above specified amounts: The coverage shall contain no special limitations on the scope of protection afforded the City, its officials, officers, employees, agents, volunteers or representatives.

The Contractor agrees to provide the City with certificates of insurance evidencing the required coverage before the Contractor begins work under this Agreement. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. The City reserves the right to require complete, certified copies of all required insurance policies at all times.

**XI. Entire Agreement.** The written provisions and terms of this Agreement, together with all exhibits attached hereto, all bids specifications and bid documents shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

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

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

**XIV. Warranties.** The Contractor hereby warrants that it is fully licensed, bonded and insured to do business in the State of Washington as a general contractor. Equipment Sales Company Inc. will warranty the labor and installation of materials for a one (1) year warranty period.

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

**XVI. Assignment.** Any assignment of this Agreement by the Contractor without the written consent of the City shall be void.



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

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

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

If any dispute arises between the City and the Contractor under any of the provisions of this Agreement which cannot be resolved by the City's determination in a reasonable time, or if the Contractor does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be with the Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party shall be reimbursed by the other party for its costs, expenses, and reasonable attorney's fees incurred in any litigation arising out of the enforcement of this Agreement.

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

**Court Smart Digital Systems, Inc., Contractor**

**THE CITY OF GIG HARBOR**

By: [Signature]  
Its President

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

**Notices should be sent to:**

**CourtSmart Digital Systems**  
51 Middlesex Street  
N. Chelmsford, MA 01863  
(800) 235-8690

**City of Gig Harbor**  
Attn: Paul Nelson  
Court Administrator  
3510 Grandview Street  
Gig Harbor, Washington 98335  
253-851-7808

**Approved as to form:**

By: \_\_\_\_\_  
City Attorney

**Attest:**

By: \_\_\_\_\_  
Molly M. Towslee, 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 Equipment Sales Company, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the  
State of Washington,  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

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

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

DATED: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the  
State of Washington,  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_



**Subject:** Declaration of Restrictive Covenants for Wetland Conservation

**Proposed Council Actions:**

Authorize the Mayor to execute a Declaration of Restrictive Covenants for Wetland Conservation for the Hospital Mitigation Improvements project wetland mitigation property.

**Dept. Origin:** Public Works  
**Prepared by:** David Stubchaer  
Public Works Director

**For Agenda of:** February 9, 2009

**Exhibits:** Declaration of Restrictive Covenants for Wetland Conservation

	Initial & Date
<b>Concurred by Mayor:</b>	_____
<b>Approved by City Administrator:</b>	<u>DSK</u>
<b>Approved as to form by City Atty:</b>	<u>approved via email</u>
<b>Approved by Finance Director:</b>	<u>DS 2/4/09</u>
<b>Approved by Department Head:</b>	<u>DS 2/3/09</u>

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

The Council approved a Possession, Use, and Purchase Agreement on July 28, 2008 for wetland mitigation property required as part of the Army Corps permit for the Hospital Mitigation Improvements project (including Canterwood Blvd. improvements). The Corps permit No. NWS-2007-1981-SO required that the wetlands be preserved in perpetuity through the use of restrictive covenants for such purpose and that those covenants be recorded with the Pierce County Auditor.

The attached Declaration of Restrictive Covenants for Wetland Conservation (Declaration) generally restricts the use of the wetland conservation areas of the property to only those activities consistent with the intended use of the property for wetland preservation in perpetuity. More details of the restrictions are contained in the Declaration.

Recordation of the Declaration should satisfy the requirements of the Army Corps permit for the project. The wetland mitigation property obtained by the City satisfies the requirement for both the Canterwood Blvd. improvements currently under construction and the balance of the interim improvements at the BB16 interchange planned for construction in the summer of 2009.

**FISCAL CONSIDERATION**

This is a no cost item.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

Authorize the Mayor to execute a Declaration of Restrictive Covenants for Wetland Conservation for the Hospital Mitigation Improvements project wetland mitigation property.

**DECLARATION OF RESTRICTIVE COVENANTS FOR WETLAND  
CONSERVATION**

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR WETLAND CONSERVATION (hereinafter "Declaration") made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the City of Gig Harbor, Washington (hereinafter "Grantor"):

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of certain tracts of land located in the City of Gig Harbor, Pierce County, Washington, and being the property conveyed to the Grantor by deed recorded on August 4, 2008, recorded at Pierce County, Auditor's File No. 200808040047, hereinafter referred to as the "Property;" and

WHEREAS, the United States Department of the Army, Corps of Engineers, through its Seattle District, Regulatory Branch (hereinafter "USACE"), and the Grantor have agreed that the Grantor would make the portion of the Property depicted on Exhibit A and legally described in Exhibit B and hereafter referred to as the "Wetland Conservation Areas" subject to the conservation-based covenants described in this Declaration as a condition of that certain Department of the Army Permit, No. NWS-2007-1981-SO issued August 4, 2008 for the Hospital Traffic Mitigation Improvements project; and

WHEREAS, the Grantor agrees to the creation of these conservation-based covenants and intends that the Wetland Conservation Areas shall be preserved and maintained in a natural condition in perpetuity;

NOW, THEREFORE, in consideration of the mutually-held interests in preservation of the environment, as well as the terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Washington, Grantor does hereby declare and agree to the following terms and conditions:

1. PURPOSE. The purpose of this Declaration of Restrictive Covenants for Wetland Conservation is:
  - A. To preserve and protect the native flora, fauna, soils, water table and drainage patterns, and other conservation values of the Wetland Conservation Areas;
  - B. To view the Wetland Conservation Areas in its scenic and open condition and in general;
  - C. To assure that the Wetland Conservation Areas, including its air space and subsurface, will be retained in perpetuity in its natural condition as provided herein and to prevent any use of the Wetland Conservation Areas that will impair or interfere with its natural resource functions and values. Grantor intends that this Declaration will confine the use of the Wetland Conservation Areas to such activities as are consistent with the purpose of this Declaration.

2. DURATION. This Declaration shall remain in effect in perpetuity, shall run with the land regardless of ownership or use, and is binding upon Grantor, its heirs, successors, and assigns.

3. PERMITTED USES. This Declaration will not prevent the Grantor from making use of the area(s) that are not expressly prohibited herein and are not inconsistent with the purpose of this Declaration. Grantor may take any appropriate environmental or conservation management measures consistent with the terms and purposes of this Declaration, including:

- 1) planting of native trees, shrubs, grasses and forbs; or
- 2) restoring, altering or maintaining the topography, hydrology, drainage, structural integrity, bed, water quantity, water quality or other relevant feature of any stream, wetland, water body or buffer on the Wetland Conservation Areas; or
- 3) conducting monitoring operations as may be required under the aforementioned permit.

4. MITIGATION. If the work required by a mitigation plan under the Department of Army permit for the authorized project occurs within the Wetland Conservation Areas, then the Grantor is allowed to construct the mitigation work in accordance with the authorized mitigation plan, a copy of which is incorporated by reference.

5. RESTRICTIONS. Any activity on or use of the Wetland Conservation Areas by the Grantor, its heirs, successors, and assigns, inconsistent with the purpose of the Declaration is prohibited. Without limiting the generality of the foregoing, and except as permitted under Section 3 above, or as necessary to accomplish mitigation approved under the aforementioned permit, the following activities and uses are expressly prohibited in, on, over, or under the Wetland Conservation Areas, subject to all of the express terms and conditions below:

- A. **Structures**. The construction of man-made structures on, in, over or above the ground or any water body, including but not limited to the construction, removal, placement, preservation, maintenance, alteration, or decoration of any buildings, roads, utility lines, billboards or other advertising. This restriction does not include deer stands, bat boxes, bird nesting boxes, bird feeders, duck blinds, and the placement of signs for safety purposes or boundary demarcation.
- B. **Demolition**. The demolition of fencing structures constructed for the purpose of demarcation of the Wetland Conservation Areas or for public safety.
- C. **Soils**. The removal, excavation, disturbance, or dredging of soil, sand, peat, gravel or aggregate material of any kind; or any change in the topography of the land, including any discharges of dredged or fill material, ditching, extraction, drilling, driving of piles, mining, or excavation of any kind.

- D. **Drainage.** The drainage or disturbance of the water level or the water table, except for pre-existing or approved project-related stormwater discharges and any maintenance associated with those stormwater discharges.
  - E. **Wastes or Debris.** The storage, dumping, depositing, abandoning, discharging, or releasing of any gaseous, liquid, solid or hazardous waste substance, materials or debris of whatever nature on, in, over or under ground or into surface or ground water, except for pre-existing or approved project-related stormwater discharges and any maintenance associated with those stormwater discharges.
  - F. **Non-Native Species.** The planting or introduction of non-native species.
  - G. **Herbicides, Insecticides and Pesticides.** The use of insecticides, pesticides, or herbicides or other chemicals, except for as may be necessary to control invasive species that threaten the natural character of the Wetland Conservation Areas. State-approved municipal application programs necessary to protect the public health and welfare are not included in this prohibition.
  - H. **Removal of Vegetation.** The mowing, cutting, pruning, removal, disturbance, destruction, or the collection of any trees, shrubs, or other vegetation, except for pruning, cutting or removal for:
    - 1) safety purposes; or
    - 2) control in accordance with accepted scientific forestry management practices for diseased or dead vegetation; or
    - 3) control of non-native species and noxious weeds; or
    - 4) scientific or nature study.
  - I. **Agricultural, Livestock & Other Activities.** Unless currently used for these purposes, conversion of, or expansion into, any portion of the Wetland Conservation Areas for use for agricultural, horticultural, aquacultural, silvicultural, livestock production or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agricultural to silvicultural).
  - J. **Other Material Impairment.** Other acts, uses or discharges which adversely affect fish or wildlife habitat or the preservation of lands, wetlands or water areas within the Wetland Conservation Areas.
6. INSPECTION, ENFORCEMENT AND ACCESS RIGHTS. The USACE and its authorized representatives shall have the right to enter and go upon the Property, to inspect the Wetland Conservation Areas and take actions necessary to verify compliance with this Declaration. When practicable, such entry shall be upon prior reasonable notice to the property owner. The Grantor grants to the USACE a discretionary right to enforce this Declaration in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title.

7. RECORDING AND EXECUTION BY PARTIES. The Grantor agrees to record this Declaration with the Pierce County Auditor and provide the USACE with proof of recordation.
8. NOTICE OF TRANSFER OF PROPERTY INTERESTS. No transfer of the rights of this Declaration, or of any other property interests pertaining to the Wetland Conservation Areas or the underlying property it occupies shall occur without thirty (30) calendar days prior written notice to the USACE.
9. MODIFICATIONS. This Declaration may only be modified with the prior written approval from the appropriate district commander of the USACE.
10. RESERVED RIGHTS.
  - A. The Grantor and any holders of easements or other property rights for the operation and maintenance of pre-existing or project-related structures or infrastructure such as utilities, drainage ditches, or stormwater facilities that are present on, over or under the Wetland Conservation Areas reserve the right, within the terms and conditions of their permits, their agreements, and the law, to continue with such operation and maintenance. All pre-existing or approved project-related structures or infrastructure shall be shown on the accompanying plat map or approved plan and attached to this instrument.
  - B. If the authorized project requires any related or unanticipated utility relocation, drainage ditches, or stormwater controls within the identified Wetland Conservation Areas, said activities must be applied for by the Grantor, project proponent, respective utility, or other appropriate party and may be permitted by the USACE.
  - C. The Grantor accepts the obligation to place any other responsible party on reasonable prior notice of their need to request such permission.
11. SEVERABILITY. If any portion of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.



IN WITNESS WHEREOF said GRANTOR has executed this Declaration the day and year first above written.

CITY OF GIG HARBOR

By: \_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST:

\_\_\_\_\_  
Molly Towslee, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Angela S. Belbeck

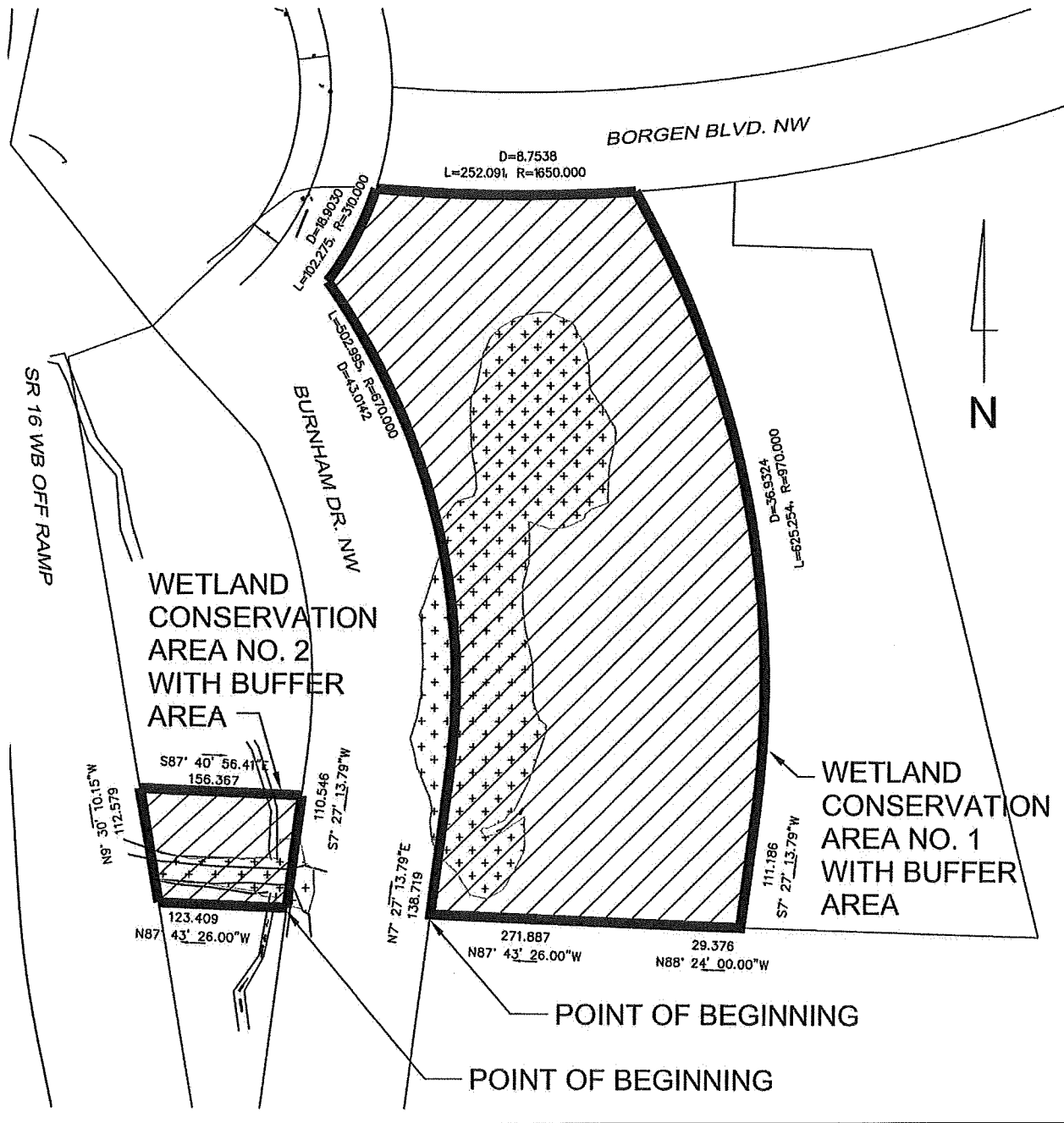
STATE OF WASHINGTON )  
  ) ss.  
COUNTY OF PIERCE        )

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 THE CITY OF GIG HARBOR, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Printed: \_\_\_\_\_  
Notary Public in and for Washington,  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**EXHIBIT A**  
**WETLAND CONSERVATION AREAS**



**EXHIBIT B**

**WETLAND CONSERVATION AREAS LEGAL DESCRIPTION**

The Wetland Conservation Areas are within Parcel B of the Boundary Line Adjustment BLA No. 08-0005 described below.

**BOUNDARY LINE ADJUSTMENT LEGAL DESCRIPTION**

Parcel B of Boundary Line Adjustment BLA No. 08-0005 Recorded July 1, 2008 in Pierce County, Washington under Recording No. 200807015008.

**WETLAND CONSERVATION AREA NO. 1 WITH BUFFER AREA LEGAL DESCRIPTION**

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN AND THAT PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN IN THE CITY OF GIG HARBOR IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST PROPERTY CORNER OF PARCEL B-1 BEING DESCRIBED AS THE 'POINT OF BEGINNING'; THENCE N07°27'14"E 138.72 FEET; THENCE ALONG A CURVE WHOSE ANGE IS 43.01° AND WHOSE RADIUS IS 670.00 FEET AND WHOSE LENGTH IS 503.00 FEET; THENCE ALONG A CURVE WHOSE ANGLE IS 18.90° AND WHOSE RADIUS IS 310.00 FEET AND WHOSE LENGTH IS 102.28 FEET; THENCE ALONG A CURVE WHOSE ANGLE IS 8.75° AND WHOSE RADIUS IS 1650.00 FEET AND WHOSE LENGTH IS 252.10 FEET; THENCE ALONG A CURVE WHOSE ANGLE IS 36.93° AND WHOSE RADIUS IS 970.00 FEET AND WHOSE LENGTH IS 625.25 FEET; THENCE S07°27'14"W 111.19 FEET; THENCE N88°24'00"W 29.38 FEET; THENCE N87°43'26"W 271.89 FEET AND RETURNING TO THE 'POINT OF BEGINNING'.

**WETLAND CONSERVATION AREA NO. 2 WITH BUFFER AREA LEGAL DESCRIPTION**

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN THE CITY OF GIG HARBOR IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST PROPERTY CORNER OF PARCEL B-2 BEING DESCRIBED AS THE 'POINT OF BEGINNING'; THENCE N87°43'26"W 123.41 FEET; THENCE N09°30'10"W 112.58 FEET; THENCE S87°40'56"E 156.37'; THENCE S07°27'14" 110.55 FEET AND RETURNING TO THE 'POINT OF BEGINNING'.



**Subject: Employee and Supervisor  
Guild Contracts**

**Proposed Council Action:**

Approve the Employee and Supervisor Guild  
Contracts for the Years 2009 - 2011.

**Dept. Origin:** Administration

**Prepared by:** Rob Karlinsey

**For Agenda of:** February 9, 2009

**Exhibits:** Guild Contracts (2)  
Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** ROK 2/4

**Approved as to form by City Atty:** SNYDEN VIA EMAIL

**Approved by Finance Director:** OP 2/4

**Approved by Department Head:** \_\_\_\_\_

Expenditure	Amount	Appropriation
Required \$7.3 million in 2009	Budgeted: \$7.3 million	Required \$0

**INFORMATION / BACKGROUND**

The Employee and Supervisors Guild contracts expired on December 31, 2008. For the past several months, the City has been in negotiations with the two guilds for new contracts for 2009 through 2011. As a result of the negotiations, the two attached agreements are before the City Council for consideration and approval. Some key points of the agreements are as follows:

- Annual Cost of Living Allowance Capped at 5.5% (0% minimum), calculated at 100% of the June Seattle-Tacoma-Bremerton CPI.
- By January 1, 2010, the employee medical plan will move from AWC Plan A to the AWC PPO (similar plan equal to or less expensive than the AWC PPO).
- Employee contribution to 2<sup>nd</sup> & 3<sup>rd</sup> dependent medical premiums will be required starting in 2009.
- Starting in 2009, \$125/mo. cash back will go to employees who do not enroll their dependents on the City's medical plan.
- Establishment of a Section 125 Plan to allow for the above cash back allowance and also tax-free flexible spending accounts (for health care and dependent care expenses).
- Overtime calculation based on the work week instead of the work day, in exchange for a flexible work schedule policy.
- Time-and-a-half for supervisors not triggered until the 46<sup>th</sup> hour worked in a work week.
- Layoff language that establishes order based on longevity; and limited bumping rights.

The effective date of both of these guild contracts (Employee and Supervisor) will be January 1, 2009. The contracts' terms will go through December 31, 2011.

**FISCAL CONSIDERATION**

The total compensation amounts as outlined in these two contracts, including salaries and benefits, were assumed in the 2009 Adopted Budget.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Approve the Employee and Supervisor Guild Contracts with terms of January 1, 2009 through December 31, 2011.

**AGREEMENT**

**By and Between**

**CITY OF GIG HARBOR**

**And**

**GIG HARBOR EMPLOYEES' GUILD**

**2009**

**PREAMBLE**

This Agreement is made and entered into by and between the City of Gig Harbor, hereinafter referred to as the "Employer", and the Gig Harbor Employees' Guild, hereinafter referred to as the "Guild". The purpose of this Agreement is to set forth the entire understanding reached between the parties with respect to wages, hours of work and conditions of employment for employees of the Employer who are represented by the Guild as set forth in Article I herein.

**ARTICLE I - RECOGNITION**

The Employer hereby recognizes the Guild as the exclusive bargaining representative for employees employed by the Employer as certified by the State of Washington, Department of Labor and Industries in Case No. 09524-E-91-01579, issued July 20, 1992. The bargaining unit covered by this Agreement shall include those regular employees working full time and regular part time employees working 20 hours or more per week as non-uniformed personnel for the Employer, but shall not include those employees who are non-represented and those represented by other guilds. The Police Services Specialist and Community Service Officer positions, through inclusion in this contract, waive the right to also participate in Civil Service.

**ARTICLE II - MEMBERSHIP**

**Section 1.** All employees who are members of the Guild on the effective date of this Agreement and all employees who may become members thereafter during the life of this Agreement shall as a condition of employment remain members of the Guild in good standing for the term of this Agreement.

**Section 2.** The Employer agrees to deduct monthly dues uniformly required in the bargaining unit from employees who voluntarily execute a wage assignment authorization form. The Employer shall transmit such deduction to the Guild by check payable to its order. Upon issuance and transmission of such deduction the Employer's responsibility shall cease with respect to such deductions.

The Guild and each employee authorizing the assignment of wages for payment of Guild dues hereby undertake to indemnify and hold the Employer harmless from all claims, demands, suits,

or other forms of liability that may arise against the Employer for or on account of any deduction made from wages of such employee.

### ARTICLE III - NONDISCRIMINATION

**Section 1.** The Employer and the Guild agree that the administration and application of this Agreement shall be consistent with applicable state and federal laws regarding nondiscrimination in employment.

**Section 2.** No employee covered by this Agreement shall be discriminated against because of his/her membership or non-membership in the Guild, or lawful activities on behalf of the Guild; provided, however, that such activity shall not be conducted during working hours nor be allowed to interfere with the Employer's operations except as defined herein.

### ARTICLE IV - HOURS OF WORK AND OVERTIME

**Section 1. Normal workweek.** The normal workweek, with a period beginning on Monday and ending on Sunday, shall consist of forty (40) hours. The normal workday shall consist of eight (8) hours per day in each of five (5) consecutive days or four (4) consecutive, ten (10) hour days. The normal workday may be adjusted by the City Administrator in order to allow flexible work schedules (e.g., 9-80) or to require additional hours of work. The normal workweek and workday are goals. The normal workweek and workday schedules shall be defined by the Mayor or the Mayor's designee. The work year shall consist of two thousand and eighty (2,080) hours.

**Section 2. Overtime.** Overtime as used in this Agreement shall mean hours worked in excess of 40 hours in an established consecutive 7 day work period. Used sick leave, vacation and holidays shall count toward hours worked for the purpose of calculating overtime. Compensation for overtime shall be as set forth in subsections A through H of this article.

- A. All overtime must be authorized in advance by the City Administrator or the respective department head, except in cases of emergency.
- B. Overtime shall be compensated at the rate of one-and-one half (1-1/2) times the regular straight-time pay (monthly salary x 12 /2080) for overtime worked as defined in this section (time worked in excess of 40 hours in a work week) except for holidays and for hours worked on the last day off before the start of the next work week. Overtime shall be compensated at the rate of two times the regular straight time pay for holidays and for hours worked on the last day off before a work week (Sunday for employees working a normal Monday through Friday work week).
- C. Employees will receive a minimum of 3 hours of overtime pay for work requiring a return to work from home, or other non-work location during the employees regularly scheduled time off or while on call, such as for emergencies or meetings called by the employer. The pay rate for overtime worked under this paragraph will be determined according to Section 2B above.

- D. Mandatory training on a regularly scheduled day off required by State, City or Departmental regulations as determined by the respective department head shall be compensated at one-and-one-half (1-1/2) times the employee's straight-time base hourly rate of pay with a minimum of two hours overtime compensation.
- E. The option to compensate by compensatory time shall be arranged by mutual agreement between the Employer (City Administrator, Department Head or manager) and the Employee. The compensatory time shall be used within a reasonable period of time and may be denied by the Employer only if it would cause an undue hardship to the city's operation. Accrued compensatory time off shall be used at a time mutually agreeable to Employer and the Employee. Employees may accrue a maximum of 80 compensatory time-off hours. If the employee works over time hours and has reached his/her maximum compensatory time hours, he/she shall be paid his/her regular pay according to Section 2b above.
- F. Any employee required to return to work while on vacation shall earn pay at the employee's overtime rate for his/her scheduled shift. In addition, monetary compensation shall be paid to said employee for reimbursement of any actual expenses regarding the rescheduling of hotel/motel, airfare, etc.
- G. When a member of the Guild completes an unscheduled shift in which 4 or more hours fall between the hours of 6:00 P.M. and 6:00 A.M. he/she shall be entitled to overtime pay according to Article IV, section 2 for those hours worked between 6:00 P.M. and 6:00 A.M. In order for a shift to be scheduled, at least 24 hours notice must be given to the employee prior to the start of the shift.
- H. If a scheduled meeting occurs outside an employee's regular shift and involves the use of overtime, a minimum of one hour of overtime shall be earned. In order to qualify, the meeting must begin after 6:00 P.M.

**Section 3. Workweek.** The Employer retains the right to schedule the workweek in any manner, which may be required in order to meet the needs of the community.

## ARTICLE V - WAGE RATES

### **Section 1. Wages and Salary Survey.**

- A. **Wages.** Effective January 1, 2009, members of the Guild shall receive a cost-of-living increase in their salaries of five and one half percent (5.5%). The salary schedule (see Attachment "A"), reflects adjustments required due to the salary range adjustment and to the cost of living increase for 2009.

Effective January 1, 2010, members of the Guild shall receive a cost of living wage increase in the salaries based on 100% of the annual increase of the June 2009 Seattle-Tacoma-Bremerton CPI-W, but not less than 0% nor greater than 5.5%.



Effective January 1, 2011, members of the Guild shall receive a cost of living wage increase in the salaries based on 100% of the annual increase of the June 2010 Seattle-Tacoma-Bremerton CPI-W, but not less than 0% nor greater than 5.5%.

**B. Salary Survey.** The City shall initiate a salary survey of employee wage rates prior to January 1, of each contract year, which shall analyze the appropriate wages for members relative to a selected group of cities agreed to by the parties. The results of this survey shall be compared with the current-year salary ranges of Guild members at that time, and if the survey results disclose that the salary range midpoint for any Guild position is two and one-half percent (2.5%) or more below the survey range mid-point for that position, then the City will:

1. Adjust the salary range midpoint for an identified position to conform to 100% of the salary survey midpoint.
2. Construct a salary range for this identified position around the adjusted salary midpoint, consistent with the City's past practice.

**Section 2. Salary range.** Movement within each salary range shall be governed by the City's Personnel Regulations as shown within Attachment "B".

**Section 3. Mileage.** Mileage shall be paid as prescribed by City Ordinance Chapter 2.28.010.

**Section 4. Education reimbursement.** Upon satisfactory completion of a job related educational course, when the employee who desires to take the course has prior written approval from the City Administrator, the city shall reimburse the employee for the educational course up to a maximum rate of two hundred dollars (\$200.00) per credit hour for undergraduate courses and four hundred dollars (\$400.00) per credit hour for graduate courses. The city agrees to reimburse reasonable expenses for textbooks required for such course and will retain such textbooks in the department of the respective Department Head. No employee shall receive a total credit reimbursement of over \$1,600 for undergraduate courses and \$3,000 for graduate courses in a given budget year. All reimbursements shall be taken from specifically budgeted line items. Based on the standards of the institution, a passing grade must be obtained in a given course in order for that course to be reimbursed. Upon the request of the City Administrator, an employee who is enrolled in a program leading to a two or four year degree shall submit evidence that the employee's accumulative GPA in the academic program is equivalent to 3.0 (on a 4.0 scale). An employee in such a program must maintain a 3.0 accumulative GPA or greater in order to qualify for tuition reimbursement. Any course that does not qualify for reimbursement at the end of the evaluation period for that course shall be ineligible for retroactive reimbursement.

**Section 5. Meal Pay.** If an employee is required to work through any meal period he/she shall receive a reasonably priced meal. The employer shall provide the meal or reimbursement.

**Section 6. Layoff Procedure.** The City may determine to layoff employees because of lack of work, lack of funds, or reorganization. At least one week prior to finalizing layoff plans the City will notify the Guild, in writing, to permit the Guild to consult with the City regarding the

necessity to layoff employees as well as the methods of implementing the layoff.

The primary order of layoff will be determined by length of service within a classification with consideration of knowledge and skill level when length of service is equal.

No regular full-time employee will be laid off while another employee in the same classification is employed on a probationary or temporary basis. Under no circumstances shall part time positions be used to fill full time positions in order to avoid the payment of benefits. It is the intent of the city not to create part time jobs for the purpose of avoiding the payment of benefits.

The City shall provide three (3) months notice to employees scheduled for layoff and shall provide \$1,500 to an employee designated vendor or reimbursement during the three (3) month notification period, for career counseling and retraining. Approved and designated funds shall be available and may be expended solely within twelve (12) months of the notice of termination.

**Bumping Rights.** An employee scheduled for layoff may exercise bumping rights to a previously held position in which the employee has greater length of service than another employee in that position for which that employee is then currently qualified; provided that employees in the Police Guild and non-represented employees cannot be bumped.

**Transfer in Lieu of Layoff.** An employee scheduled for layoff may request, and the City will consider a transfer to a vacant position for which that employee is then currently qualified.

**Recall Rights.** An employee who has been laid off will be placed on a recall list for a period of two (2) years. If the City determines that a position from which an employee has been laid off will be filled, it will recall employees from the recall list, recalling the employee with the longest length of service, in that classification, first. The employee has the duty to maintain his/her current address with the City.

**ARTICLE VI - VACATIONS**

Vacations with pay shall be granted annually to all full-time employees based upon the following schedule:

Months of Service	Earned Working Hours per Month	Working Days per Year Max.
0 - 12	6.67	10

During months 13 - 192 (2nd through 16th year), an additional .67 vacation hours per month (8 additional hours per year) shall be earned. The annual earned vacation rate shall not exceed 208 hours per year. Accumulated vacation balance shall not exceed 336 hours at any one time. Accumulated vacation balance shall not exceed 240 hours at year-end (December 31). With prior written approval by the City Administrator, employees who have reached the 240 hour maximum accrued vacation balance and are not able due to no fault of their own to take a sufficient amount of time off in order to avoid losing vacation hours may sell back a maximum

of 15 vacation days to the city at year-end. All other accumulated vacation hours in excess of 240 hours at year-end will be lost without compensation.

### ARTICLE VII - HOLIDAYS

The following holidays shall be recognized by the city as city holidays:

New Year's Day	January 1
Martin Luther King Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Fourth Friday in November
Christmas Day	December 25
*2 Floating Holidays	(taken at employee's discretion)

\* An employee must be on the payroll a minimum of 90 days to receive the floating holiday.

If a holiday falls on a Saturday (or the day following the employee's regular workweek) it shall be observed on the preceding day. A holiday falling on a Sunday (or the day preceding the employee's regular work week) shall be observed on the following day.

If a Department Manager directs an employee to work on a paid holiday, the employee shall receive pay at two times his/her regular straight-time hourly rate for the actual time worked.

Holidays observed during vacation or sick leave shall not be charged against such leave.

### ARTICLE VIII - MEDICAL BENEFITS

**Section 1.** The Employer shall pay 100% of the monthly premium for the following benefit plans for the Guild employee and one dependent. The employee will contribute 5% of the medical premium for second and third dependents each. This contribution will begin following the implementation of the Flexible Spending Account (FSA) for covered employees.

- 1) Medical - Association of Washington Cities Plan- A with chiropractic coverage.
- 2) Dental - AWC Trust (Plan A - Washington Dental Service) with orthodontia.
- 3) Vision - AWC Trust (Western Vision Service Plan).

A labor management committee will be established to recommend a medical plan to be implemented January 1, 2010 based on the AWC Preferred Provider Organization (PPO) or other agreed upon plan.

Upon implementation of the Flexible Spending Account, the City will pay employees who have no dependents covered on the City-sponsored medical plan \$125 per month. When the Flexible Spending Account becomes effective the City will pay all associated administrative and monthly fees.

## ARTICLE IX - LEAVES

**Section 1. Sick leave.** Full-time employees shall accrue sick leave at the rate of one day per calendar month for each month compensated. Sick leave is accumulated to a maximum of one hundred and eighty (180) days. Sick leave may be used for time off with pay for bona fide cases of incapacitating illness, injury, disability or for care of dependents as required by state law. Abuse of sick leave shall be grounds for suspension or dismissal.

**Section 2. Return to work.** A medical certificate may be required when there is cause to suspect sick leave abuse; to assist agencies in protecting the employees from returning to work too soon following an illness or injury; or to protect fellow employees or clients from contagious illness. A medical certificate must be required if the reason was personal illness as cited in WAC 356-18-060 (1)(a), (b), or (c), and continued for more than four continuous workdays.

**Section 3. Sick leave bonus.** An employee who has taken no sick leave during any six (6) month period shall receive, as a bonus, one annual day off or one day's pay (eight hours) for each period during the term of this Agreement. It shall be the responsibility of the employee to notify the City of the employee's eligibility of the bonus day(s). Upon retirement or voluntary termination twenty-five percent (25%) of unused sick leave shall be paid to an employee with five years or more of continuous city employment. Upon involuntary termination where the Mayor alone grants this benefit at the Mayor's sole discretion, twenty-five percent (25%) of unused sick leave shall be paid to an employee with five years or more of continuous city employment. Upon death, one hundred (100%) percent of sick leave will be paid.

**Section 4. Use of sick leave.** Sick leave may be used for the following:

- a. Personal illness or physical incapacity resulting from causes beyond the employee's control.
- b. Medical or dental treatment of the employee or his/her dependents.
- c. Illness within the immediate family (spouse or dependents) necessitating the employee's absence from work).
- d. Maternity or paternity purposes relating to childbirth or related circumstances.

Where practicable, notification of absence due to illness or injury shall be given to the relevant supervisor as soon as possible, but no later than one-half hour after the start of the work day. Failure to so notify shall cause the leave so taken to be construed as leave without pay and may result in disciplinary action.

**Section 5. Bereavement Leave.** A regular full-time employee may be granted up to five (5) days of leave without loss of pay because of death of a member in the immediate family. Leave over five days per death shall be charged to Sick Leave. For purposes of this section, immediate

family shall be defined as husband, wife, children, step-children, mother, father, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparents, grandparents-in-law, brother or sister of the employee and others as authorized by the City Administrator.

**Section 6. Military Leave.** In accordance with RCW 38.40.060, eligible employees shall receive employer pay up to fifteen (15) days during each calendar year.

**Section 7. Jury Duty.** While on jury duty, or while appearing as a legally required witness, any jury duty pay received by the employee during such leave shall be deducted from the employee's base pay. Travel time will be granted in the calculation of this deduction.

**Section 8. Funeral Participation.** An employee may be granted up to three (3) hours time off, without loss of pay, accrued vacation, or sick leave, to participate in a funeral ceremony when first approved by the respective department head.

**Section 9. Voting.** When an employee's work schedule is such that he/she cannot vote prior to or after the normally scheduled working hours, he/she shall be allowed time off to vote without loss of pay, accrued vacation, or sick leave.

**Section 10. Emergency call-outs.** Emergency call-outs before and after normal working hours. Employees shall be given the discretion to take up to six hours for rest after being called out for emergency work. Any normal work hours missed during this rest period shall be considered as sick leave time. The rest period time shall be deducted from the employee's accumulated sick leave. Any time taken in addition to the six-hour rest period shall be considered vacation time and shall be deducted from the employee's accumulated vacation time. Time taken for a rest period shall not be counted against the employee's time earned towards a bonus day off as described in Section 3 of this Article.

## ARTICLE X - BENEFIT PLAN

**Section 1. Statewide pension plan.** The Employer shall participate in the state-wide system for pension, relief, disability and retirement for qualified employees as provided in RCW 41.44.050.

**Section 2. Substitute Social Security Plan.** The City shall provide and maintain a benefit plan as a substitute for Social Security benefits. The City Administrator, with guild advisement, shall select the corporation(s) that will manage these benefits. The plan shall consist of three benefits:

- a. Long-term disability;
- b. Life insurance; and
- c. A deferred compensation plan for retirement income.

**Section 3. Workmen's Compensation.** The city shall insure city employees with the State Workmen's compensation plan. An employee receiving pay for sick leave who is eligible for time-loss payments under the workmen's compensation law, shall for the duration of such payments, receive only that portion of his regular salary which, together with said payments, will

equal his/her regular salary. To avoid hardship on the employee caused by a time lag in time-loss payments he/she shall endorse such payments to the city.

### ARTICLE XI - STAND-BY PAY

An employee scheduled for "standby status" shall be compensated as follows:

1. If the standby period is less than eighteen (18) hours, the employee shall receive one (1) hour of pay or compensation time at his/her overtime rate; or
2. If the standby period exceeds eighteen (18) hours but not twenty-four (24) hours, the employee shall receive two (2) hours pay or compensation time at his/her overtime hourly rate.
3. After twenty-four (24) hours, compensation is calculated by repeating the aforementioned method.
4. If the employee is called back to work while on stand-by, compensation shall be computed according to Article IV of this agreement.

Stand-by is defined as: The employee being available to respond to any call for City service during those hours and in such manner as designated by the respective department head. The method of scheduling personnel and the determination of periods for standby assignments shall be the responsibility of the respective department head or his/her designee.

### ARTICLE XII - TEMPORARY APPOINTMENT

Any employee who is placed in a supervisory position, with prior approval of the City Administrator, for a minimum of two weeks shall receive a pay increase of fifteen percent (15%) (not to exceed the supervisor's actual pay) for the time exceeding two weeks. Accordingly, from two to four weeks, the employee would receive a pay increase of fifteen percent (15%). If the temporary assignment extends more than four weeks, the fifteen percent (15%) pay increase (not to exceed the supervisor's actual pay) will be retroactive to the first day of the assignment.

### ARTICLE XIII - RIGHT OF ACCESS-GUILD REPRESENTATION

**Section 1.** Duly authorized representatives of the Guild shall be permitted to enter upon the Employer's premises at reasonable times for the purpose of observing working conditions and transacting Guild business that cannot be transacted elsewhere; provided, however, that the Guild representative first secures approval from the designated Employer representative as to time and place, and that no interference with the work of the employees or the proper operation of the Employer shall result.

**Section 2.** The Guild agrees that Guild business conducted by Guild members, including the investigation of grievances, shall occur during nonworking hours (e.g., coffee breaks, lunch periods, and before and after regular working hours). Public Works Department employees shall be allowed one-half (1/2) hour each quarter for their use to attend Guild meetings during the half

hour of 7:30 a.m. to 8:00 a.m.

#### ARTICLE XIV - EMPLOYEE RIGHTS

**Section 1.** Any employee, when being questioned by his/her employer about matters that may result in discipline has the right to:

- A. Receive the specific nature of the charge or allegation against him/her in writing.
- B. Have present his/her choice of the Guild Representative (who must be reasonably available). To a contract maximum of \$250 for all salary-related city expenses, the expense for guild representation shall be paid 50% by the employer and 50% by the Guild when the meeting is requested by the employer. Subsequent to exceeding the \$250 expense maximum, the Guild shall be solely responsible for representation expenses. The employer shall allow a reasonable length of time for the representative to arrive at the place of meeting.
- C. The questioning by the Employer shall be during normal Employer business hours unless agreed to be held at other times by the Employee.
- D. The employee may receive reasonable intermissions or breaks if the questioning exceeds approximately one hour.

**Section 2. City's Rules and Regulations.** It is mutually agreed that the Employer has full responsibility and authority to adopt rules and regulations for the operation of the city's departments and conduct of its employees. The Guild agrees that its members shall comply in full with such rules and regulations. Nothing in this Section shall be interpreted to restrict the respective department head and/or the City Administrator the right to make decisions or to establish procedures consistent with the "emergency" nature of operating each department. Emergency shall mean an event or set of circumstances which (1) demands immediate action to preserve public health, protect public property, or to provide relief to any stricken neighborhood overtaken by such circumstances, or (2) reaches such a dimension or degree of destructiveness as to warrant the City Council proclaiming the existence of a disaster or the Governor declaring a state of emergency in accordance with appropriate local and state statute.

**Section 3. Maintenance of city services.** In the event of any strike, walkout, slow down or work stoppage, the respective department head and/or City Administrator shall retain the right to require necessary level of staffing from the ranks of guild members in order to insure, in the city's immediate discretion, the safe maintenance of city services.

**Section 4. Failure to comply with Section 3.** Any employee refusing to comply with the conditions of Section 3 above will be subject to immediate dismissal.

#### ARTICLE XV - GRIEVANCE PROCEDURES

**Grievance defined:** A grievance is defined as an alleged violation of express terms and conditions of this Agreement. If any such grievance arises, it shall be submitted to the following

grievance procedure.

Time limits in the following steps may be extended only by mutual written consent of the parties hereto.

**Step One - The Respective Department Head.**

The grievance in the first instance will be presented to the respective department head in writing within ten (10) working days of the alleged breach of the express terms and conditions of this Agreement. Every effort shall be made to settle the grievance at this Step One.

**Step Two - City Administrator.**

If the respective department head does not adjust the grievance to the Complainant's satisfaction within ten (10) working days from the time the grievance was submitted in Step One, then the grievance may be presented to the City Administrator within five (5) working days (15 days after submittal of the grievance to the department head). The grievance shall be presented to the City Administrator in writing, setting forth detailed facts concerning the nature of the grievance, the contractual provisions allegedly violated, and the relief requested. Upon receipt of the written grievance, the City Administrator shall, within ten (10) working days, meet with the grievant and/or the representative of the Guild in an attempt to resolve the grievance. Within ten (10) working days after such meeting, the City Administrator shall send to the Guild a written answer stating the Employer's decision concerning the grievance.

**Step Three - Mediation.**

In the event the grievant, Guild and Employer are not able to resolve the grievance to the employee's satisfaction at Step Two, the parties may request the assistance of the State Mediation Service.

**Step Four - Arbitration.**

A grievance may be submitted to arbitration by a written demand for arbitration delivered within ten (10) working days following the decision rendered in Step Two. Within ten (10) working days after delivery of the demand for arbitration, the Employer shall select one (1) person and the Guild shall select one (1) person. Within five (5) working days, such selected persons shall then select a third impartial person who shall serve as chairman of the Arbitration Panel. A majority decision of the Arbitration Panel shall be made in writing within twenty (20) working days following the conclusion of the Arbitration hearing(s). Such decision shall be final and binding on both the Guild and the Employer. The authority of the Arbitration Panel is limited to ruling on the correct interpretation or application of the Articles of this Agreement and shall not add to or take away therefrom. Each party shall be responsible for their own costs and the fees and costs of the arbitrator appointed by them. The fees and costs of the third neutral arbitrator shall be borne equally between the Guild and the Employer.

**ARTICLE XVI - PERSONNEL POLICIES**

**Section 1.** All employees of this bargaining unit, in addition to being governed by this Agreement, shall also be subject to the Personnel Policies published by the Employer having



general applicability to all employees of the Employer and any subsequent personnel policies, rules and regulations that may be promulgated in the future, so long as they do not conflict with this Agreement. In case of any conflict, this Agreement shall be the controlling policy for the employees covered by this Agreement. Any changes made in the personnel policies, rules and regulations shall be approved by the Employer with Guild input.

**Section 2.** During the term of this Agreement, employees may submit a written request that his/her department head review that employee's job classification.

**Section 3.** An employee who is promoted or reclassified to a higher salary range (not transferred) shall receive an increase in salary of not less than 3%.

**Section 4. Return** – Promoted or transferred employees who do not satisfactorily complete a six (6) month probationary period shall have the right to return to their previous job classification without prejudice, provided that there is a vacant position in that classification. The City will not be required to create a new position for the employee to return to, nor will it be required to “bump” another employee, regardless of status, out of a position for the employee to return to. If the City needs to backfill the vacated position immediately a temporary employee will be utilized if practical, i.e.; summer help, temporary help, interns, etc. The City will notify the guild as to whether or not the position will be backfilled with temporary help during the 6 month probationary period.

**Section 5.** Any time a recruitment for a city position is posted externally, it shall be simultaneously posted internally as well. The City sees the value of growing its employees and recruiting/promoting from within. When and where practical and at the City Administrator’s discretion, the City shall internally post job announcements for at least one week before advertising the position externally.

## ARTICLE XVII - PERSONNEL RECORDS

The Employer and Guild recognize that effective management requires the maintenance of records regarding an employee's career development. These records may accompany an employee through succeeding management administrations. To ensure that the doctrine of fairness is applied with respect to these records, the following procedure will be adhered to:

1. Whenever any paper is entered into an employee's personnel file, a copy of same shall be provided to the employee.
2. In the case of any paper which reflects unfavorably upon an employee, the employee shall be allowed an opportunity to respond to the content of the paper, in writing, and the employee response shall be included in the personnel file.
3. Each employee shall be allowed access to his personnel file for review of its contents at reasonable times and upon reasonable notice.
4. The Employer, through the department head, shall take measures to assure that, within

the Guild, only legitimate supervisory and administrative personnel, and the employee, have access to the employee's personnel file. The confidentiality of personnel records is acknowledged to the extent permissible by law.

**ARTICLE XVIII - UNIFORMS AND EQUIPMENT**

At the time of employment and as needed thereafter as determined by the department head, full time Police Services Specialists and Community Services Officer will be assigned the following uniform items:

1. 1 skirt, or 1 jumper, or 1 skort
2. 2 blouses and/or shirts
3. 1 vest
4. 1 pair of slacks
5. 1 pair of shoes

At the time of employment, and as needed thereafter as determined by the department head, full time employees except clerical employees and sewer treatment plant operators will be assigned the following uniform items:

A. Uniform:

1. 5 trousers
2. 7 short sleeve shirts
3. 3 long sleeve shirts
4. 1 pair safety shoes or boots (Not to exceed \$250 per year)
5. 3 jackets
6. 3 coveralls

B. Rain Gear:

1. 1 waterproof coat
2. 1 waterproof trousers
3. 1 pair waterproof shoes or boots

C. Safety Equipment:

All safety equipment as required by Washington State and Federal regulations. These items are to include but are not limited to gloves, safety vests, safety goggles and hard hats.

At the time of employment, and as needed thereafter as determined by the department head, full time sewer treatment plant operators will be assigned the following uniform items:

A. Uniform:

1. 5 trousers

2. 5 short sleeve shirts
3. 3 long sleeve shirts
4. 1 pair safety shoes or boots (Not to exceed \$250 per year)
5. 3 jackets
6. 5 coveralls

B. Rain Gear:

1. 1 waterproof coat
2. 1 waterproof trousers
3. 1 pair waterproof shoes or boots

C. Safety Equipment:

All safety equipment as required by Washington State and Federal regulations. These items are to include but are not limited to gloves, safety vests, safety goggles or a \$350 prescription safety glasses allowance for frames every other year, lenses every year and hard hats.

At the time of employment, and as needed thereafter, to be determined by the department head, full time and regular part time employees, employees from the Planning, Building and Public Works Departments who make periodic inspections or otherwise required to represent the City for development and construction projects outside of the office will be assigned the following uniform items:

A. Uniform:

1. 1 summer jacket
2. 1 pair safety shoes or boots (Not to exceed \$250 per year)
3. 1 winter jacket
4. 2 coveralls
5. 4 Logo shirts

B. Rain Gear:

1. 1 waterproof coat
2. 1 waterproof trouser
3. 1 pair waterproof shoes or boots

C. Safety Equipment:

All safety equipment as required by Washington State and Federal regulations. These items are to include but are not limited to gloves, safety vests, safety goggles and hard hats.

The uniform shall meet the approval of the respective department head and all purchases shall be

through his/her office's established procedures. The employee agrees to maintain and keep in good condition and repair all parts of the uniform, and will have available for inspection on due notice his/her complete uniform.

The employer shall be responsible for laundering uniforms for non-office and non-clerical Public Works Operations and Waste Water Treatment Plant employees. Frequency of laundering uniforms shall be established by employer management policy.

For non-office and non-clerical Public Works Operations and Waste Water Treatment Plant employees, in lieu of City provided uniforms, the employee may elect to receive sixteen (16) cents per hour in clothing allowance added to their pay. An employee selecting this option will not have access to City provided uniform laundering. The employee selecting the hourly clothing allowance will still be provided all safety equipment as described in the appropriate section above, as well as the pair of safety shoes/boots.

If this option is selected the employee will not have access to the employer provided uniforms and laundry service for a period of one year from selecting the hourly clothing allowance.

This payment will be treated as ordinary income and taxed accordingly.

#### **ARTICLE XIX - VACCINATIONS**

The Employer shall provide those Employees who are subject to risk or potential disease exposure with the proper and required vaccinations for Hepatitis A, Hepatitis B and Tetanus along with any other vaccinations as required or recommended by the Tacoma/Pierce County Health Department.

#### **ARTICLE XX - LEAVE SHARING**

As per Resolution 393, employees may extend their accrued vacation time to any employee to a maximum benefit of 261 days in any one incidence. For employees eligible for unpaid FMLA leave, shared leave must be used at the same time as unpaid FMLA leave.

#### **ARTICLE XXI - SAVING CLAUSE**

If any article or section of this Agreement should be held invalid by operation of law or by any tribunal of competent jurisdiction, the balance of this Agreement shall continue in full force and effect. The article and section held invalid shall be modified as required by law or the tribunal of competent jurisdiction, or shall be re-negotiated to a mutually agreeable resolution for the purpose of adequate replacement.

#### **ARTICLE XXII - COMPLETE AGREEMENT**

The parties acknowledge that during the negotiations which resulted in this Agreement, each had an unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and

agreements arrived at by the parties after the exercises of that right and opportunity are set forth in this Agreement. Therefore, the parties for the life of this Agreement voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement.

**ARTICLE XXIII - TERM OF AGREEMENT**

This Agreement is effective January 1, 2009, and shall continue in full force and effect to and including December 31, 2011.

Notice to negotiate a new agreement shall be given within ninety (90) days prior to the expiration date.

IN WITNESS WHEREOF, we attached our signatures this \_\_\_\_ day, February, 2009.

CITY OF GIG HARBOR

GIG HARBOR EMPLOYEES' GUILD

\_\_\_\_\_  
Derek Young, Mayor Pro Tem

\_\_\_\_\_  
Willy Hendrickson, Co-President

\_\_\_\_\_  
Rob Karlinsey, City Administrator

\_\_\_\_\_  
Greg Foote, Co-President

ATTEST:

\_\_\_\_\_  
Diane Gagnon

## ATTACHMENT "A"

## 2009 GIG HARBOR EMPLOYEE'S SALARY SCHEDULE

POSITION	2009 RANGE	
	Minimum	Maximum
Senior Engineer	5,933	7,416
Senior Planner	5,562	6,953
Associate Engineer/Project Engineer	5,440	6,800
Accountant	5,255	6,569
Assistant Building Official/Fire Marshall	5,153	6,441
Field Supervisor	5,041	6,301
Associate Planner	4,563	5,704
Construction Inspector	4,450	5,563
Planning / Building Inspector	4,450	5,563
Payroll/Benefits Administrator	4,400	5,500
Wastewater Treatment Plant Operator	4,247	5,309
Mechanic	4,155	5,194
Information System Assistant	4,120	5,150
Assistant City Clerk	4,086	5,108
Engineering Technician	4,086	5,108
Executive Assistant	4,086	5,108
Special Projects Coordinator	4,086	5,108
Maintenance Technician II	3,972	4,965
Assistant Planner	3,959	4,949
Permit Coordinator	3,959	4,949
Community Development Assistant	3,754	4,693
Community Services Officer	3,734	4,668
Finance Technician	3,721	4,651
Lead Court Clerk	3,591	4,489
Administrative Assistant	3,300	4,125
Police Services Specialist	3,247	4,059
Court Clerk	3,203	4,004
Custodian	3,190	3,988
Maintenance Technician I (Laborer)	3,190	3,988
Administrative Receptionist	2,794	3,493
Community Development Clerk	2,794	3,493

Ranges include a cost-of-living adjustment calculated at 5.5%

**ATTACHMENT "B"**

**PERSONNEL SALARIES**

**SALARY RANGES ADJUSTED ANNUALLY**

1. City employees shall have the opportunity to suggest modifications in salaries and other wage supplements to the City Administrator.
2. Employees who have satisfactorily completed a six month employment probationary period shall be eligible for a performance pay increase from 0% to 5% and a one year employment probationary period shall be eligible for a performance pay increase from 0% to 8%.
3. Employees who have yet to reach the top of their salary range shall be eligible for performance pay increases of 0% to 8% each year. Such performance pay increases shall be added to their base rate of pay to compute the employee's new salary. Performance pay increase shall be approved by the City Administrator. Once an employee has reached the top of his/her salary range (control point) the employee shall be eligible for merit/bonus compensation up to 5% of the employee's annual base salary. Such merit/bonus pay increase shall not be added to the employee's base pay. This merit bonus pay is separate, non-cumulative compensation and must be earned through exemplary performance each evaluation period.

**MERIT/BONUS PAY**

Employees shall be eligible for merit/bonus pay salary increases in accordance with the provisions set forth below:

1. Merit/bonus pay increases shall be within the city's budget in an appropriate fund within each Department's budget.
2. The amount of the merit/bonus pay salary increase for each employee shall be based solely on performance.
3. Merit/bonus pay salary increase shall be granted by the City Administrator and confirmed by the Mayor.

LETTER OF INTENT

Parties: City of Gig Harbor (City)  
Gig Harbor Employees Guild (Guild)

Subject: Maintenance Tech I to Maintenance Tech II

The parties agree that there may be need for additional Maintenance Technician II positions, and that movement from Tech I to Tech II should not be automatic.

The City will evaluate the workload distribution and required skill levels of the Tech I and Tech II positions annually and if it deems it appropriate consider reclassifying positions from Tech I to Tech II as part to annual budget process.

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For the City  
Rob Karlinsey, City Administrator

For the Guild  
William Hendrickson, Co- President



LETTER OF INTENT

Parties: City of Gig Harbor (City)  
Gig Harbor Employees Guild (Guild)

Subject: Commute Trip Reduction

The City agrees to research obtaining a group/employer discount/reduction for Pierce County Transit fares and meet with the Guild to discuss its findings.

---

For the City  
Rob Karlinsey, City Administrator

For the Guild  
William Hendrickson, Co- President

**AGREEMENT**

**By and Between**

**CITY OF GIG HARBOR**

**And**

**GIG HARBOR EMPLOYEES' GUILD  
SUPERVISORY BARGAINING UNIT**

**2009**

**PREAMBLE**

This Agreement is made and entered into by and between the City of Gig Harbor, hereinafter referred to as the "Employer", and the Gig Harbor Employees' Guild Supervisory Bargaining Unit, hereinafter referred to as the "Guild". The purpose of this Agreement is to set forth the entire understanding reached between the parties with respect to wages, hours of work and conditions of employment for employees of the Employer who are represented by the Guild as set forth in Article I herein.

**ARTICLE I - RECOGNITION**

The Employer hereby recognizes the Guild as the exclusive bargaining representative for employees employed by the Employer as certified by the State of Washington, Department of Labor and Industries in Case No. 09524-E-91-01579, issued July 20, 1992. The bargaining unit covered by this Agreement shall include the City Engineer, Information Systems Manager, Planning Director, Building & Fire Safety Director, Tourism Marketing Director, Court Administrator, Wastewater Treatment Plant Supervisor and Public Works Superintendent.

**ARTICLE II - MEMBERSHIP**

**Section 1.** All employees who are members of the Guild on the effective date of this Agreement and all employees who may become members thereafter during the life of this Agreement shall as a condition of employment remain members of the Guild in good standing for the term of this Agreement.

**Section 2.** The Employer upon permission from the Supervisory Bargaining unit, may deduct monthly dues uniformly required in the bargaining unit from employees who voluntarily execute a wage assignment authorization form. If performed, the Employer shall transmit such deduction to the Guild by check payable to its order. Upon issuance and transmission of such deduction the Employer's responsibility shall cease with respect to such deductions.

The Guild members (as listed in Article I recognition) may authorize the assignment of wages

for payment of Guild dues hereby undertake to indemnify and hold the Employer harmless from all claims, demands, suits, or other forms of liability that may arise against the Employer for or on account of any deduction made from wages of such employee.

### ARTICLE III - NONDISCRIMINATION

**Section 1.** The Employer and the Guild agree that the administration and application of this Agreement shall be consistent with applicable state and federal laws regarding nondiscrimination in employment.

**Section 2.** No employee covered by this Agreement shall be discriminated against because of his/her membership or non-membership in the Guild, or lawful activities on behalf of the Guild; provided, however, that such activity shall not be conducted during working hours nor be allowed to interfere with the Employer's operations except as defined herein.

### ARTICLE IV - HOURS OF WORK AND OVERTIME

**Section 1. Normal workweek.** The normal workweek, with a period beginning on Monday and ending on Sunday, shall consist of forty (40) hours. The normal workday shall consist of eight (8) hours per day in each of five (5) consecutive days or four (4) consecutive, ten (10) hour days. The normal workday may be adjusted by the City Administrator in order to allow flexible work schedules (e.g. 9-80) or to require additional hours of work. The normal workweek and workday are goals. The normal workweek and workday schedules shall be defined by the Mayor or the Mayor's designee. The work year shall consist of two thousand and eighty (2,080) hours.

**Section 2. Overtime.** Overtime as used within this paragraph of the Agreement applies exclusively to the Wastewater Treatment Plant Supervisor and the Public Works Superintendent, positions. Overtime shall mean hours worked in excess of 40 hours in an established consecutive 7 day work period. Used sick leave, vacation and holidays shall count toward hours worked for the purpose of calculating overtime. Compensation for overtime shall be as set forth in subsections A through H of this article.

**Overtime for managers, directors and administrators.** Overtime as used within this paragraph of the Agreement applies exclusively to the City Engineer, Information Systems Manager, Planning Director, Building & Fire Safety Director, Tourism Marketing Director and Court Administrator positions. Overtime shall be hours worked in excess of 40 hours in an established and consecutive 7 day work period. Used sick leave, vacation, and holidays shall count toward hours worked for the purpose of calculating overtime. Overtime shall be compensated at the rate of regular straight-time pay (monthly salary x 12 /2080) for the first five (5) consecutive hours of overtime worked in the work period. Hours in excess of forty-five consecutive hours in the work period shall be paid at the rate of one and one-half times the regular straight time pay. Overtime shall be compensated at the rate of two times the regular straight time pay for holidays and for hours worked on the last day off before a regular workweek (Sunday for employees working a normal Monday through Friday workweek) without regard to the limitations set above. Overtime compensation for managers and directors is delimited by subsections A, C, D, E and F.

Sections A through H below shall apply to the Public Works Superintendent and Wastewater Treatment Supervisor.

- A.** All overtime must be authorized in advance by the City Administrator or the respective department head, except in cases of emergency.
- B.** Overtime shall be compensated at the rate of one-and-one half (1-1/2) times the regular straight-time pay (monthly salary x 12 /2080) for overtime worked as defined in this section (time worked in excess of 40 hours in a work week) except for holidays and for hours worked on the last day off before the start of the next work week. Overtime shall be compensated at the rate of two times the regular straight time pay for holidays and for hours worked on the last day off before a work week (Sunday for employees working a normal Monday through Friday work week).
- C.** Employees will receive a minimum of 3 hours of overtime pay for work requiring a return to work from home, or other non-work location during the employees regularly scheduled time off or while on call, such as for emergencies or meetings called by the employer. The pay rate for overtime worked under this paragraph will be determined according to Section 2b above.
- D.** Mandatory training on a regularly scheduled day off required by State, City or Departmental regulations as determined by the respective department head shall be compensated at one-and-one-half (1-1/2) times the employee's straight-time base hourly rate of pay with a minimum of two hours overtime compensation.
- E.** The option to compensate by compensatory time shall be arranged by mutual agreement between the Employer (City Administrator, Department Head or manager) and the Employee. The compensatory time shall be used within a reasonable period of time and may be denied by the Employer only if it would cause an undue hardship to the city's operation. Accrued compensatory time off shall be used at a time mutually agreeable to the Employer and the Employee. Employees may accrue a maximum of 80 compensatory time-off hours. If the employee works over time hours and has reached his/her maximum compensatory time hours, he/she shall be paid his/her regular pay according to Section 2b above.
- F.** Any employee required to return to work while on vacation shall earn pay at the employee's overtime rate for his/her scheduled shift. In addition, monetary compensation shall be paid to said employee for reimbursement of any actual expenses regarding the rescheduling of hotel/motel, airfare, etc.
- G.** When a member of the Guild completes an unscheduled shift in which 4 or more hours fall between the hours of 6:00 P.M. and 6:00 A.M. he/she shall be entitled to overtime pay according to Article IV, section 2 for those hours worked between 6:00 P.M. and 6:00 A.M. In order for a shift to be scheduled, at least 24 hours notice must be given to the employee prior to the start of the shift.

- H. If a scheduled meeting occurs outside an employee's regular shift and involves the use of overtime, a minimum of one hour of overtime shall be earned. In order to qualify, the meeting must begin after 6:00 P.M.

**Section 3. Workweek.** The Employer retains the right to schedule the workweek in any manner, which may be required in order to meet the needs of the community.

## ARTICLE V - WAGE RATES

### Section 1 Wages and Salary Survey.

- A. **Wages.** Effective January 1, 2009, members of the Guild shall receive a cost-of-living increase in their salaries of five and one half percent (5.5%). The salary schedule (see Attachment "A"), reflects adjustments required due to the salary range adjustment and to the cost of living increase for 2009.

Effective January 1, 2010, members of the Guild shall receive a cost of living wage increase in the salaries based on 100% of the annual increase of the June 2009 Seattle-Tacoma-Bremerton CPI-W, but not less than 0% nor greater than 5.5%.

Effective January 1, 2011, members of the Guild shall receive a cost of living wage increase in the salaries based on 100% of the annual increase of the June 2010 Seattle-Tacoma-Bremerton CPI-W, but not less than 0% nor greater than 5.5%.

- B. **Salary Survey.** The City shall initiate a salary survey of the Supervisor's Guild members (employee) wage rates prior to January 1<sup>st</sup> of each contract year, which shall analyze the appropriate wages for members relative to a selected group of cities agreed to by the parties. The results of this survey shall be compared with the current-year salary ranges at that time, and if the survey results disclose the salary range midpoint for any of the following positions: Tourism Marketing Director, Court Administrator, Wastewater Treatment Plant Supervisor and Public Works Superintendent positions are two and one-half percent (2.5%) or more below the survey range mid-point, then the City will make the adjustment as identified in Item 1, listed below. The City shall also initiate a salary survey of the Public Works Director position/wage rate prior to January 1<sup>st</sup>, of each contract year relative to the selected group of cities agreed to by the parties. The City will make the adjustment as identified in item 2, listed below:

1. Adjust the salary range midpoint for an identified position (Tourism Marketing Director, Court Administrator, Wastewater Treatment Plant Supervisor and Public Works Superintendent) to conform to 100% of the salary survey midpoint.
2. If the survey results disclose the salary range midpoint for the Public Works Director is two and one-half percent (2.5%) or more below the survey range midpoint: The City Engineer, Planning Director, Building & Fire Safety Director and the Information Systems Manager salary ranges shall be adjusted to conform to eighty-seven percent (87%) of the new Public Works Director salary range

midpoint. Or 100% of the annual increase of the June Seattle-Tacoma-Bremerton CPI-W (maximum 5.5%), whichever is greater.

**Section 2. Salary range.** Movement within each salary range shall be governed by the City's Personnel Regulations as shown within Attachment "B".

**Section 3. Mileage.** Mileage shall be paid as prescribed by City Ordinance Chapter 2.28.010.

**Section 4. Education reimbursement.** Upon satisfactory completion of a job related educational course, when the employee who desires to take the course has prior written approval from the City Administrator, the city shall reimburse the employee for the educational course up to a maximum rate of two hundred dollars (\$200.00) per credit hour for undergraduate courses and four hundred dollars (\$400.00) per credit hour for graduate courses. The city agrees to reimburse reasonable expenses for textbooks required for such course and will retain such textbooks in the department of the respective Department Head. No employee shall receive a total credit reimbursement of over \$1,600 for undergraduate courses and \$3,000 for graduate courses in a given budget year. All reimbursements shall be taken from specifically budgeted line items. Based on the standards of the institution, a passing grade must be obtained in a given course in order for that course to be reimbursed. Upon the request of the City Administrator, an employee who is enrolled in a program leading to a two or four year degree shall submit evidence that the employee's accumulative GPA in the academic program is equivalent to 3.0 (on a 4.0 scale). An employee in such a program must maintain a 3.0 accumulative GPA or greater in order to qualify for tuition reimbursement. Any course that does not qualify for reimbursement at the end of the evaluation period for that course shall be ineligible for retroactive reimbursement.

**Section 5. Meal Pay.** If a supervisor is required to work through any meal period he/she shall receive a reasonably priced meal. The employer shall provide the meal or reimbursement.

**Section 6. Layoff Procedure.** The City may determine to layoff employees because of lack of work, lack of funds, or reorganization. At least one week prior to finalizing layoff plans the City will notify the Guild, in writing, to permit the Guild to consult with the City regarding the necessity to layoff employees as well as the methods of implementing the layoff.

The primary order of layoff will be determined by length of service within a classification in a division with consideration of knowledge and skill level when length of service is equal.

No regular full-time employee will be laid off while another employee in the same classification is employed on a probationary, temporary basis. Under no circumstances shall part time positions be used to fill full time positions in order to avoid the payment of benefits. It is the intent of the city not to create part time jobs for the purpose of avoiding the payment of benefits.

The City shall provide three (3) months notice to employees scheduled for layoff and shall provide \$1,500 to an employee designated vendor or reimbursement during the three (3) month notification period, for career counseling and retraining. Approved and designated funds shall be available and maybe expended solely within twelve (12) months of the notice of termination.

**Bumping Rights.** An employee scheduled for layoff may exercise bumping rights to a previously held position in which the employee has greater length of service than another employee in the that position for which that employee is then currently qualified; provided that the employees in the Police Guild and non-represented employees cannot be bumped.

**Transfer in Lieu of Layoff.** An employee scheduled for layoff may request, and the City will consider a transfer to a vacant position for which that employee is then currently qualified.

**Recall Rights.** An employee who has been laid off will be placed on a recall list for a period of two (2) years. If the City determines that a position from which an employee has been laid off will be filled, it will recall employees from the recall list, recalling the employee with the longest length of service, in that classification, first. The employee has the duty to maintain his/her current address with the City.

**ARTICLE VI - VACATIONS**

Vacations with pay shall be granted annually to all full-time employees based upon the following schedule:

Months of Service	Earned Working Hours per Month	Working Days per Year Max.
0 - 12	6.67	10

During months 13 - 192 (2nd through 16th year), an additional .67 vacation hours per month (8 additional hours per year) shall be earned. The annual earned vacation rate shall not exceed 208 hours per year. An accumulated vacation balance shall not exceed 336 hours at any one time. An accumulated vacation balance shall not exceed 240 hours at year-end (December 31). With prior written approval by the City Administrator, employees who have reached the 240 hour maximum accrued vacation balance and are not able due to no fault of their own to take a sufficient amount of time off in order to avoid losing vacation hours may sell back a maximum of 15 vacation days to the city at year-end. All other accumulated vacation hours in excess of 240 hours at year-end will be lost without compensation.

**ARTICLE VII - HOLIDAYS**

The following holidays shall be recognized by the city as city holidays:

New Year's Day	January 1
Martin Luther King Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Fourth Friday in November

Christmas Day  
\* 2 Floating Holidays

December 25  
(taken at employee's discretion)

\* An employee must be on the payroll a minimum of 90 days to receive the floating holiday.

If a holiday falls on a Saturday (or the day following the employee's regular workweek) it shall be observed on the preceding day. A holiday falling on a Sunday (or the day preceding the employee's regular work week) shall be observed on the following day.

If a Department Manager directs an employee to work on a paid holiday, the employee shall receive pay at two times his/her regular straight-time hourly rate for the actual time worked.

Holidays observed during vacation or sick leave shall not be charged against such leave.

### ARTICLE VIII - MEDICAL BENEFITS

The Employer shall pay 100% of the monthly premium for the following benefit plans for the Guild employee and one dependent. The employee will contribute 5% of the MEDICAL premium for second and third dependents each. This contribution will begin following the implementation of the Federal Savings Account (FSA) for covered employees:

- 1) Medical - Association of Washington Cities Plan A with chiropractic coverage.
- 2) Dental - AWC Trust (Plan A - Washington Dental Service) with orthodontia .
- 3) Vision - AWC Trust (Western Vision Service Plan).

A labor management committee will be established to recommend a medical plan to be implemented January 1, 2010 based on a Preferred Provider Organization (PPO) or other agreed upon plan.

Upon implementation of the Flexible Spending Account, the City will pay employees who have no dependents covered on the City-sponsored medical plan \$125 per month. When the Flexible Spending Account becomes effective the City will pay all associated administrative and monthly fees.

### ARTICLE IX - LEAVES

**Section 1. Sick leave.** Full-time employees shall accrue sick leave at the rate of one day per calendar month for each month compensated. Sick leave is accumulated to a maximum of one hundred and eighty (180) days. Sick leave may be used for time off with pay for bona fide cases of incapacitating illness, injury, disability or for care of dependents as required by state law. Abuse of sick leave shall be grounds for suspension or dismissal.

**Section 2. Return to work.** A medical certificate may be required when there is cause to



suspect sick leave abuse; to assist agencies in protecting the employees from returning to work too soon following an illness or injury; or to protect fellow employees or clients from contagious illness. A medical certificate must be required if the reason was personal illness as cited in WAC 356-18-060 (1)(a), (b), or (c), and continued for more than four continuous workdays.

**Section 3. Sick leave bonus.** An employee who has taken no sick leave during any six (6) month period shall receive, as a bonus, one annual day off or one day's pay (eight hours) for each period during the term of this Agreement. It shall be the responsibility of the employee to notify the City of the employee's eligibility of the bonus day(s). Upon retirement or voluntary termination twenty-five percent (25%) of unused sick leave shall be paid to an employee with five years or more of continuous city employment. Upon involuntary termination where the Mayor alone grants this benefit at the Mayor's sole discretion, twenty-five percent (25%) of unused sick leave shall be paid to an employee with five years or more of continuous city employment. Upon death, one hundred (100%) percent of sick leave will be paid.

**Section 4. Use of sick leave.** Sick leave may be used for the following:

- a. Personal illness or physical incapacity resulting from causes beyond the employee's control.
- b. Medical or dental treatment of the employee or his/her dependents.
- c. Illness within the immediate family (spouse or dependents) necessitating the employee's absence from work).
- d. Maternity or paternity purposes relating to childbirth or related circumstances.

Where practicable, notification of absence due to illness or injury shall be given to the relevant supervisor as soon as possible, but no later than one-half hour after the start of the work day. Failure to so notify shall cause the leave so taken to be construed as leave without pay and may result in disciplinary action.

**Section 5. Bereavement Leave.** A regular full-time employee may be granted up to five (5) days of leave without loss of pay because of death of a member in the immediate family. Leave over five days per death shall be charged to Sick Leave. For purposes of this section, immediate family shall be defined as husband, wife, children, step-children, mother, father, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparents, grandparents-in-law, brother or sister of the employee and others as authorized by the City Administrator.

**Section 6. Military Leave.** In accordance with RCW 38.40.060, eligible employees shall receive employer pay up to fifteen (15) days during each calendar year.

**Section 7. Jury Duty.** While on jury duty, or while appearing as a legally required witness, any jury duty pay received by the employee during such leave shall be deducted from the employee's base pay. Travel time will be granted in the calculation of this deduction.

**Section 8. Funeral Participation.** An employee may be granted up to three (3) hours time off, without loss of pay, accrued vacation, or sick leave, to participate in a funeral ceremony when

first approved by the respective department head.

**Section 9. Voting.** When an employee's work schedule is such that he\she cannot vote prior to or after the normally scheduled working hours, he\she shall be allowed time off to vote without loss of pay, accrued vacation, or sick leave.

**Section 10. Emergency call-outs.** Emergency call-outs before and after normal working hours. Employees shall be given the discretion to take up to six hours for rest after being called out for emergency work. Any normal work hours missed during this rest period shall be considered as sick leave time. The rest period time shall be deducted from the employee's accumulated sick leave. Any time taken in addition to the six-hour rest period shall be considered vacation time and shall be deducted from the employee's accumulated vacation time. Time taken for a rest period shall not be counted against the employee's time earned towards a bonus day off as described in Section 3 of this Article.

## ARTICLE X - BENEFIT PLAN

**Section 1. Statewide pension plan.** The Employer shall participate in the statewide system for pension, relief, disability and retirement for qualified employees as provided in RCW 41.44.050.

**Section 2. Substitute Social Security Plan.** The City shall provide and maintain a benefit plan as a substitute for Social Security benefits. The City Administrator, with guild advisement, shall select the corporation(s) that will manage these benefits. The plan shall consist of three benefits:

- a. Long-term disability;
- b. Life insurance; and
- c. A deferred compensation plan for retirement income.

**Section 3. Workmen's Compensation.** The city shall insure city employees with the State Workmen's compensation plan. An employee receiving pay for sick leave who is eligible for time-loss payments under the workmen's compensation law, shall for the duration of such payments, receive only that portion of his regular salary which, together with said payments, will equal his/her regular salary. To avoid hardship on the employee caused by a time lag in time-loss payments he/she shall endorse such payments to the city.

## ARTICLE XI - STAND-BY PAY

An employee scheduled for "standby status" shall be compensated as follows:

1. If the standby period is less than eighteen (18) hours, the employee shall receive one (1) hour of pay or compensation time at his/her overtime rate; or
2. If the standby period exceeds eighteen (18) hours but not twenty-four (24) hours, the employee shall receive two (2) hours pay or compensation time at his/her overtime hourly rate.

3. After twenty-four (24) hours, compensation is calculated by repeating the aforementioned method.
4. If the employee is called back to work while on stand-by, compensation shall be computed according to Article IV of this agreement.

Stand-by is defined as: The employee being available to respond to any call for City service during those hours and in such manner as designated by the respective department head. The method of scheduling personnel and the determination of periods for standby assignments shall be the responsibility of the respective department head or his/her designee.

#### **ARTICLE XII – TEMPORARY APPOINTMENT**

Any employee who is placed in a supervisory position, with prior approval of the City Administrator, for a minimum of two weeks shall receive a pay increase of fifteen percent (15%) (not to exceed the supervisor's actual pay) for the time exceeding two weeks. Accordingly, from two to four weeks, the employee would receive a pay increase of fifteen percent (15%). If the temporary assignment extends more than four weeks, the fifteen percent (15%) pay increase (not exceed the supervisor's actual pay) will be retroactive to the first day of the assignment.

#### **ARTICLE XIII - RIGHT OF ACCESS-GUILD REPRESENTATION**

**Section 1.** Duly authorized representatives of the Guild shall be permitted to enter upon the Employer's premises at reasonable times for the purpose of observing working conditions and transacting Guild business that cannot be transacted elsewhere; provided, however, that the Guild representative first secures approval from the designated Employer representative as to time and place, and that no interference with the work of the employees or the proper operation of the Employer shall result.

**Section 2.** The Guild agrees that Guild business conducted by Guild members, including the investigation of grievances, shall occur during nonworking hours (e.g., coffee breaks, lunch periods, and before and after regular working hours). Public Works Department employees shall be allowed one-half (1/2) hour each quarter for their use to attend Guild meetings during the half hour of 7:30 a.m. to 8:00 a.m.

#### **ARTICLE XIV - EMPLOYEE RIGHTS**

**Section 1.** Any employee, when being questioned by his/her employer about matters that may result in discipline has the right to:

- A. Receive the specific nature of the charge or allegation against him/her in writing.
- B. Have present his/her choice of the Guild Representative (who must be reasonably available). To a contract maximum of \$250 for all salary-related city expenses, the expense for guild representation shall be paid 50% by the employer when the meeting is requested by the employer. Subsequent to exceeding the \$250 expense maximum, the Guild employee shall be solely responsible or voting Guild members may, unilaterally in

agreement, vote responsibility for representation expenses. The employer shall allow a reasonable length of time for the representative to arrive at the place of meeting.

- C. The questioning by the Employer shall be during normal Employer business hours unless agreed to be held at other times by the Employee.
- D. The employee may receive reasonable intermissions or breaks if the questioning exceeds approximately one hour.

**Section 2. City's Rules and Regulations.** It is mutually agreed that the Employer has full responsibility and authority to adopt rules and regulations for the operation of the city's departments and conduct of its employees. The Guild agrees that its members shall comply in full with such rules and regulations. Nothing in this Section shall be interpreted to restrict the respective department head and/or the City Administrator the right to make decisions or to establish procedures consistent with the "emergency" nature of operating each department. Emergency shall mean an event or set circumstances which (1) demands immediate action to preserve public health, protect public property, or to provide relief to any stricken neighborhood overtaken by such circumstances, or (2) reaches such a dimension or degree of destructiveness as to warrant the City Council proclaiming the existence of a disaster or the Governor declaring a state of emergency in accordance with appropriate local and state statute.

**Section 3. Maintenance of city services.** In the event of any strike, walkout, slow down or work stoppage, the respective department head and/or City Administrator shall retain the right to require necessary level of staffing from the ranks of guild members in order to insure, in the city's immediate discretion, the safe maintenance of city services.

**Section 4. Failure to comply with Section 3.** Any employee refusing to comply with the conditions of Section 3 above will be subject to immediate dismissal.

## ARTICLE XV - GRIEVANCE PROCEDURES

**Grievance defined:** A grievance is defined as an alleged violation of express terms and conditions of this Agreement. If any such grievance arises, it shall be submitted to the following grievance procedure.

Time limits in the following steps may be extended only by mutual written consent of the parties hereto.

### **Step One - The Respective Department Head.**

The grievance in the first instance will be presented to the respective department head in writing within ten (10) working days of the alleged breach of the express terms and conditions of this Agreement. Every effort shall be made to settle the grievance at this Step One.

### **Step Two - City Administrator.**

If the respective department head does not adjust the grievance to the Complainant's satisfaction within ten (10) working days from the time the grievance was submitted in Step One, then the

grievance may be presented to the City Administrator within five (5) working days (15 days after submittal of the grievance to the department head). The grievance shall be presented to the City Administrator in writing, setting forth detailed facts concerning the nature of the grievance, the contractual provisions allegedly violated, and the relief requested. Upon receipt of the written grievance, the City Administrator shall, within ten (10) working days, meet with the grievant and/or the representative of the Guild in an attempt to resolve the grievance. Within ten (10) working days after such meeting, the City Administrator shall send to the Guild a written answer stating the Employer's decision concerning the grievance.

**Step Three - Mediation.**

In the event the grievant, Guild and Employer are not able to resolve the grievance to the employee's satisfaction at Step Two, the parties may request the assistance of the State Mediation Service.

**Step Four - Arbitration.**

A grievance may be submitted to arbitration by a written demand for arbitration delivered within ten (10) working days following the decision rendered in Step Two. Within ten (10) working days after delivery of the demand for arbitration, the Employer shall select one (1) person and the Guild shall select one (1) person. Within five (5) working days, such selected persons shall then select a third impartial person who shall serve as chairman of the Arbitration Panel. A majority decision of the Arbitration Panel shall be made in writing within twenty (20) working days following the conclusion of the Arbitration hearing(s). Such decision shall be final and binding on both the Guild and the Employer. The authority of the Arbitration Panel is limited to ruling on the correct interpretation or application of the Articles of this Agreement and shall not add to or take away there from. Each party shall be responsible for their own costs and the fees and costs of the arbitrator appointed by them. The fees and costs of the third neutral arbitrator shall be borne equally between the Guild and the Employer.

**ARTICLE XVI - PERSONNEL POLICIES**

**Section 1.** All employees of this bargaining unit, in addition to being governed by this Agreement, shall also be subject to the Personnel Policies published by the Employer having general applicability to all employees of the Employer and any subsequent personnel policies, rules and regulations that may be promulgated in the future, so long as they do not conflict with this Agreement. In case of any conflict, this Agreement shall be the controlling policy for the employees covered by this Agreement. Any changes made in the personnel policies, rules and regulations shall be approved by the Employer with Guild input.

**Section 2.** During the term of this Agreement, employees may submit a written request that his/her department head review that employee's job classification.

**Section 3.** An employee who is promoted or reclassified to a higher salary range (not transferred) shall receive an increase in salary of not less than 3%.

**Section 4. Return** – Promoted or transferred employees who do not satisfactorily complete a six

(6) month probationary period shall have the right to return to their previous job classification without prejudice, provided that there is a vacant position in that classification. The City will not be required to create a new position for the employee to return to, nor will it be required to “bump” another employee, regardless of status, out of a position for the employee to return to. If the City needs to backfill the vacated position immediately a temporary employee will be utilized if practical, i.e.; summer help, temporary help, interns, etc. The City will notify the guild as to whether or not the position will be backfilled with temporary help during the 6 month probationary period.

**Section 5.** Any time a recruitment for a city position is posted externally, it shall be simultaneously posted internally as well. The City sees the value of growing its employees and recruiting/promoting from within. When and where practical and at the City Administrator’s discretion, the City shall internally post job announcements for at least one week before advertising the position externally.

### ARTICLE XVII - PERSONNEL RECORDS

The Employer and Guild recognize that effective management requires the maintenance of records regarding an employee's career development. These records may accompany an employee through succeeding management administrations. To ensure that the doctrine of fairness is applied with respect to these records, the following procedure will be adhered to:

1. Whenever any paper is entered into an employee's personnel file, a copy of same shall be provided to the employee.
2. In the case of any paper which reflects unfavorably upon an employee, the employee shall be allowed an opportunity to respond to the content of the paper, in writing, and the employee response shall be included in the personnel file.
3. Each employee shall be allowed access to his personnel file for review of its contents at reasonable times and upon reasonable notice.
4. The Employer, through the department head, shall take measures to assure that, within the Guild, only legitimate supervisory and administrative personnel, and the employee, have access to the employee's personnel file. The confidentiality of personnel records is acknowledged to the extent permissible by law.

### ARTICLE XVIII - UNIFORMS AND EQUIPMENT

**Safety Equipment:** At the time of employment, and as needed thereafter as determined by the City Administrator, safety equipment will be assigned as required by Washington State and Federal regulations. These items are to include but are not limited to gloves, safety vests, safety goggles or hard hats.

At the time of employment, and as needed thereafter as determined by the City Administrator, the Wastewater Treatment Plant Supervisor and the Public Works Superintendent will be

assigned the following uniform items:

A. Uniform:

1. 5 trousers
2. 5 short sleeve shirts
3. 3 long sleeve shirts
4. 1 pair safety shoes or boots (Not to exceed \$250 per year)
5. 3 jackets
6. 5 coveralls

B. Rain Gear:

1. 1 waterproof coat
2. 1 waterproof trousers
3. 1 pair waterproof shoes or boots

C. Safety Equipment:

All safety equipment as required by Washington State and Federal regulations. These items are to include but are not limited to gloves, safety vests, safety goggles or a \$350 prescription safety glasses allowance for frames every other year, lenses every year and hard hats.

At the time of employment, and as needed thereafter as determined by the City Administrator, full time and regular part time employees receiving benefits, employees from the Planning, Building and Public Works Departments who make periodic inspections or otherwise required to represent the City for development and construction projects outside of the office may be assigned the following uniform items:

A. Uniform:

1. 1 summer jacket
2. 1 pair safety shoes or boots (Not to exceed \$250 per year)
3. 1 winter jacket
4. 2 coveralls
5. 4 Logo shirts

B. Rain Gear:

1. 1 waterproof coat
2. 1 waterproof trouser
3. 1 pair waterproof shoes or boots

C. Safety Equipment:

All safety equipment as required by Washington State and Federal regulations. These items are to include but are not limited to gloves, safety vests, safety goggles and hard hats.

The uniform shall meet the approval of the City Administrator and all purchases shall be through his/her office's established procedures. The employee agrees to maintain and keep in good condition and repair all parts of the uniform, and will have available for inspection on due notice his/her complete uniform.

#### **ARTICLE XIX – VACCINATIONS**

The Employer shall provide those Employees who are subject to risk or potential disease exposure with the proper and required vaccinations for Hepatitis A, Hepatitis B and Tetanus along with any other vaccinations as required or recommended by the Tacoma/Pierce County Health Department.

#### **ARTICLE XX - LEAVE SHARING**

As per Resolution 393, employees may extend their accrued vacation time to any employee to a maximum benefit of 261 days in any one incidence. For employees eligible for unpaid FMLA leave, shared leave must be used at the same time as unpaid FMLA leave.

#### **ARTICLE XXI - SAVING CLAUSE**

If any article or section of this Agreement should be held invalid by operation of law or by any tribunal of competent jurisdiction, the balance of this Agreement shall continue in full force and effect. The article and section held invalid shall be modified as required by law or the tribunal of competent jurisdiction, or shall be re-negotiated to a mutually agreeable resolution for the purpose of adequate replacement.

#### **ARTICLE XXII - COMPLETE AGREEMENT**

The parties acknowledge that during the negotiations which resulted in this Agreement, each had an unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercises of that right and opportunity are set forth in this Agreement. Therefore, the parties for the life of this Agreement voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement.

#### **ARTICLE XXIII - TERM OF AGREEMENT**

This Agreement is effective January 1, 2009, and shall continue in full force and effect to and including December 31, 2011. Notice to negotiate a new agreement shall be given within ninety (90) days prior to the expiration date.



Notice to negotiate a new agreement shall be given within ninety (90) days prior to the expiration date.

IN WITNESS WHEREOF, we attached our signatures this \_\_\_ day of February, 2009.

CITY OF GIG HARBOR

GIG HARBOR EMPLOYEES' GUILD

\_\_\_\_\_  
Derek Young, Mayor Pro Tem

\_\_\_\_\_  
Steve Misiurak, Co-President

\_\_\_\_\_  
Rob Karlinsey, City Administrator

\_\_\_\_\_  
Kay J. Johnson, Co-President

**ATTACHMENT "A"**

**2009 GIG HARBOR EMPLOYEE'S SALARY SCHEDULE**

**2009**

**RANGE**

<b>POSITION</b>	<b>Minimu m</b>	<b>Maximu m</b>
Building & Fire Safety Director	6,336	7,920
City Engineer	6,336	7,920
Information Systems Manager	6,336	7,920
Planning Director	6,336	7,920
Tourism Marketing Director	5,933	7,416
Public Works Superintendent	5,651	7,064
Wastewater Treatment Plant Supervisor	5,651	7,064
Court Administrator	5,592	6,990

Includes cost of living adjustment calculated at 5.5% for 2009

**ATTACHMENT "B"**

**PERSONNEL SALARIES**

**SALARY RANGES ADJUSTED ANNUALLY**

1. City employees shall have the opportunity to suggest modifications in salaries and other wage supplements to the City Administrator.
2. Employees who have satisfactorily completed a six month employment probationary period shall be eligible for a performance pay increase from 0% to 5% and a one year employment probationary period shall be eligible for a performance pay increase from 0% to 8%.
3. Employees who have yet to reach the top of their salary range shall be eligible for performance pay increases of 0% to 8% each year. Such performance pay increases shall be added to their base rate of pay to compute the employee's new salary. Performance pay increase shall be approved by the City Administrator. Once an employee has reached the top of his/her salary range (control point) the employee shall be eligible for merit/bonus compensation up to 5% of the employee's annual base salary. Such merit/bonus pay increase shall not be added to the employee's base pay. This merit bonus pay is separate, non-cumulative compensation and must be earned through exemplary performance each evaluation period.

**MERIT/BONUS PAY**

Employees shall be eligible for merit/bonus pay salary increases in accordance with the provisions set forth below:

1. Merit/bonus pay increases shall be within the city's budget in an appropriate fund within each Department's budget.
2. The amount of the merit/bonus pay salary increase for each employee shall be based solely on performance.
3. Merit/bonus pay salary increase shall be granted by the City Administrator and confirmed by the Mayor.



Subject: Gig Harbor Arts Commission recommendation for 2008 Grant Awards

Proposed Council Action: Authorize the Award of the attached 2009 Grant agreements For the 2009 Gig Harbor Arts Commission Project Support Program for a combined Total amount of \$20,000.00.

Dept. Origin: Administration

Prepared by: Lita Dawn Stanton, Special Projects

For Agenda of: February 9, 2009

Exhibits: List of Recommended Recipients
Sample Contract

Initial & Date

Concurred by Mayor:

Approved by City Administrator: [Signature]

Approved as to form by City Atty: [Signature]

Approved by Finance Director: [Signature]

Approved by Department Head: [Signature]

Table with 3 columns: Expenditure Required, Amount Budgeted, Appropriation Required. Values: \$20,000, \$20,000, -0-

INFORMATION / BACKGROUND

A budgeted objective for 2009 authorized continuing the Arts Commission Project Support Program to provide funding through grants to arts and cultural organizations that provide events for the benefit of the Gig Harbor community.

12 grant applications, totaling \$29,215 in requests were submitted and reviewed by the City of Gig Harbor Arts Commission (GHAC) on February 2, 2009.

FISCAL CONSIDERATION

The recommended grant allocation is within the 2009 Art Grant Program in the General Fund - Parks Division, Objective No. 6.

BOARD OR COMMITTEE RECOMMENDATION

The GHAC recommends that Council authorize the award of the 2009 Grant agreements as presented.

RECOMMENDATION / MOTION

Move to: Authorize grant funding to the list of organizations attached in an amount not to exceed \$20,000.

**AGREEMENT BETWEEN CITY OF GIG HARBOR  
AND \_\_\_\_\_  
FOR DISTRIBUTION OF  
GIG HARBOR ARTS COMMISSION PROJECT GRANT FUNDS**

THIS AGREEMENT is made and entered into by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), and \_\_\_\_\_, a \_\_\_\_\_ (referred to as the "Recipient"), for the distribution of Gig Harbor Arts Commission Project Grant Funds for the express purposes described in this Agreement.

**WHEREAS**, pursuant to GHMC 2.49.030, the Gig Harbor Arts Commission is authorized to provide recommendations to the Mayor and City Council in connection with cultural and artistic endeavors and projects; and

**WHEREAS**, the Gig Harbor Arts Commission made a recommendation to the City Council that funding from the Gig Harbor Arts Commission Project Grant Funds be granted to the Recipient to provide for the project described in the grant application submitted by Recipient; and

**WHEREAS**, the City desires to grant such funds to Recipient for the purposes set forth in the grant application and as set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the terms, conditions and covenants contained herein, the parties hereto agree as follows:

**Section 1. Scope of Project.** The Recipient agrees to complete the project set forth in the grant application identified as

\_\_\_\_\_  
attached hereto as Exhibit A and incorporated herein by this reference (the "Project").

**Section 2. Term.** This Agreement shall commence upon execution by the duly authorized representatives of both parties and shall terminate on December 31, 20\_\_ unless sooner terminated as provided herein. Sections 3, 8 and 10 of this Agreement shall survive the termination of this Agreement.

**Section 3. Final Report and Payment.** After the Project is completed and not later than January 15, 20\_\_, the Recipient agrees to submit to the Gig Harbor Arts Commission Staff Representative, a Final Report on the form attached hereto as Exhibit B. The Final Report shall include: (i) a copy of the funding request to the City; (ii) an invoice and itemization of the expenditures of the funds to be granted under this Agreement, supported by copies of receipts, cancelled checks, and other applicable documentation substantiating expenses; and (iii) copies of media releases, programs,

brochures and any other event highlights. The total funding provided by the City to Recipient under this Agreement shall not exceed \_\_\_\_\_ (\$\_\_\_\_\_) and will be paid within twenty (20) days of receipt of an approved Final Report. Funds expended after December 31, 20\_\_, are not eligible for reimbursement under this Agreement.

**Section 4. Auditing of Records, Documents and Reports.** The Recipient shall maintain books, records, documents and other materials that sufficiently and properly reflect all expenditures made pursuant to this Agreement. The City Finance Director and any of his/her representatives shall have full access and the right to examine and copy, during normal business hours, all of the records of the Recipient with respect to matters covered in this Agreement. Such rights shall last for six (6) years from the date the disbursement is made hereunder.

**Section 5. Compliance with Federal, State and Local Laws.** The Recipient agrees to abide by all applicable federal and state statutes and regulations prohibiting employment discrimination, and any other statutes and regulations pertaining to the subject matter of this Agreement.

**Section 6. Recapture and Noncompliance.** In the event of a final determination by a court of competent jurisdiction that the Recipient has failed to expend the grant funds in accordance with state law and this Agreement, the City reserves the right to commence an action against the Recipient to recover said funds, in addition to all of the City's other available remedies at law.

**Section 7. Legal Relations.** Neither the Recipient, nor any employee, officer, official or volunteer of the Recipient shall be deemed to be an independent contractor, employee or volunteer of the City. No liability shall attach to the Recipient or the City by reason of entering into this Agreement except as expressly provided herein.

**Section 8. Indemnification.** The Recipient agrees to be responsible for and assumes liability for its own negligent acts or omissions, and those of its officers, agents, officials, employees or volunteers while performing work or expending funds pursuant to this Agreement to the fullest extent provided by law, and agrees to save, indemnify, defend and hold the City harmless from any such liability. This indemnification clause shall apply to any and all causes of action arising out of performance of work or expenditures of funds under this Agreement. Each contract for services or activities utilizing funds provided in whole or in part by this Agreement shall include a provision that the City is not liable for injuries, damages or claims for damages arising from the performance of any activity by an employee, contractor, subcontractor or independent contractor of the Recipient under this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to expiration or termination.

**Section 9. Severability.** If any phrase, sentence or provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect the validity of the remainder of this Agreement.

**Section 10. Attorneys' Fees.** In the event that the City is required to institute a lawsuit against the Recipient to enforce any of the terms of this Agreement and the City prevails in such lawsuit, the Recipient agrees to reimburse the City for its reasonable costs, expenses, attorneys' fees and expert witness fees, including such costs, expenses and fees incurred in any appeal.

**Section 11. Use of City Logo.** The Recipient shall add the City of Gig Harbor logo to any marketing and promotional materials generated as part of any activity or project funded through City of Gig Harbor Arts Commission grants. The City of Gig Harbor logo is a trademarked logo, available for use by permission of the City of Gig Harbor, and required as recognition for the City of Gig Harbor's support on any promotional material grant recipients produce. Failure to comply with this requirement may nullify eligibility for future grant awards.

**Section 12. Entire Agreement.** This document contains all covenants, agreements and stipulations of the parties on the subject matter expressed herein. No changes, amendments or modifications of the terms of this Agreement shall be valid unless reduced to writing and signed by the duly authorized representatives of both parties as an amendment to this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**THE CITY OF GIG HARBOR**

**ARTIST**

By: \_\_\_\_\_  
Mayor Charles L. Hunter

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

ATTEST:

\_\_\_\_\_  
Molly Towslee, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Angela S. Belbeck

**2009 GHAC GRANT REVIEW CRITERIA**

	Applicant / Organization	GRANT REQUEST	COMPLETE	REPORT	Artistic Merit 30%	Community Benefit 40%	Project Feasibility 30%	Bonus for Innovation 10%	Averaged Totals (GHAC Forms)	Comments (if needed, continue on back)	PROPOSED AWARD
1	<b>DRAWING YOU IN</b> Independent Group of Artists	\$600		✓					84.35%	(\$ amounts may be adjusted during deliberations)	\$ 600.00
2	<b>DISNEY'S HIGH SCHOOL MUSICAL 2</b> Encore! Theater	\$3,000		✓					93.57%	(\$ amounts may be adjusted during deliberations)	\$ 1,900.00
3	<b>DISNEY'S BEAUTY &amp; THE BEAST</b> Paradise Theatre	\$3,000		✓					77.86%	(\$ amounts may be adjusted during deliberations)	\$ 1,600.00
4	<b>GIG HARBOR FILM FESTIVAL</b> Gig Harbor Film Festival	\$3,000		✓					94.38%	(\$ amounts may be adjusted during deliberations)	\$ 2,000.00
5	<b>MUSIC AT THE MARKETS</b> Gig Harbor Farmers Market	\$2,925		✓					91.88%	(\$ amounts may be adjusted during deliberations)	\$ 1,850.00
6	<b>2009 SEASON FINALE - HAYDEN</b> GH Peninsula Symphony Orchestra	\$2,000		✓					89.38%	(\$ amounts may be adjusted during deliberations)	\$ 1,800.00
7	<b>MAKING CHORAL MUSIC AVAILABLE</b> Peninsula Community Chorus	\$3,090		✓					85.63%	(\$ amounts may be adjusted during deliberations)	\$ 1,725.00
8	<b>THREADS OF COURAGE</b> Gig Harbor Quilt Festival	\$3,000		✓					75.00%	(\$ amounts may be adjusted during deliberations)	\$ 1,500.00
9	<b>MARCH CONCERT</b> GH Peninsula Civic Orchestra	\$2,600		✓					72.14%	(\$ amounts may be adjusted during deliberations)	\$ 1,450.00
10	<b>2009 GIG HARBOR OPEN STUDIO TOUR</b> Gig Harbor Open Studio Tour	\$2,000							93.13%	(\$ amounts may be adjusted during deliberations)	\$ 1,875.00
11	<b>2009 PEN ART LEAGUE ART EXHIBITION</b> Peninsula Art League	\$2,000		✓					90.71%	(\$ amounts may be adjusted during deliberations)	\$ 1,800.00
12	<b>PENINSULA ORCH. YOUTH CAMP 2009</b> Peninsula Youth Orchestra Association	\$2,000		✓					93.57%	(\$ amounts may be adjusted during deliberations)	\$ 1,900.00
13											
	<b>TOTAL</b>	<b>\$29,215</b>								GHAC Recommendation 2-1-2009	<b>\$ 20,000.00</b>

Section 4., Grant Guidelines: Artistic quality and merit are the most important criteria in reviewing each application. The Commission may use site evaluations of previously funded projects, if applicable, when considering each application. The strength of the projects proposed must be clearly demonstrated in the application narrative and supported by the work sample submitted. The goal and expected outcome of the project must be clearly defined by the organization. Applications will be evaluated using the following criteria:

1. Artistic quality and merit of the effort, events, programs or services (30%)
2. Community benefit - adequate size and distribution of the audience or public served; efforts to diversify audiences and increase public access (including people with disabilities); and commitment to the community and public education (40%)
3. Project feasibility - the applicant's experience and ability to successfully complete the project (30%)
4. New or innovative projects could receive additional percentage points.





Public Hearing for

**Subject:** Harbor Hill Water Tank and Mainline Extension Latecomers Agreement

**Proposed Council Action:** Approve the Harbor Hill Water Tank and Mainline Extension Latecomers Agreement.

**Dept. Origin:** Public Works

**Prepared by:** Willy Hendrickson  
Engineering Technician *WHH*

**For Agenda of:** February 9, 2009

**Exhibits:** Latecomer's Agreement with letters of concern

Initial & Date

**Concurred by Mayor:** \_\_\_\_\_

**Approved by City Administrator:** *POK*

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

**Approved by Finance Director:** *DF 2/3/09*

**Approved by Department Head:** *DF 2/2/09*

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**INFORMATION / BACKGROUND**

Olympic Property Group (OPG) constructed approximately 4,800 feet of 16-inch diameter waterline, connecting to an existing City water main on Borgen Boulevard, and a 2.3-million gallon reservoir (improvements) that serves the Gig Harbor North area. The improvements to the City's water system constructed by OPG serve considerably more than the needs of OPG's proposed developments. Pursuant to RCW 35.91.020 and Chapter 13.35 GHMC, OPG has requested that the City bring the proposed Harbor Hill Water Tank and Mainline Extension Latecomers Agreement (Agreement) to Council for approval so that they may be reimbursed for costs of the improvements that they constructed which are over and above OPG's own needs by subsequent users.

Through consultation with the City Engineer, a method of calculating a property owner's fair pro-rata share of the improvements based on actual (if available) or calculated water usage based on land-use or structure use type. This same methodology was also summarized in the original design report enumerating the tank sizing components and was ultimately approved by the Department of Health. A copy of this design report is available for review. The total cost of the improvements was approximately \$3.043 million. Based on the calculations, OPG's share was approximately \$2.248 million, which leaves approximately \$795,333.00 which may be reimbursed.

If this Agreement is approved, each property owner who has been determined to benefit from the improvements would pay a fair pro-rata share of the \$795,333.00 if and when they have or were to connect to the improvements within 15 years of the date of the Agreement, or longer if the Agreement

was extended. If they do not connect within the 15-year period, their obligation under the Agreement would end. Each property and their pro-rata share amount are listed in the Agreement (attached).

A copy of the proposed Agreement and notification that the Agreement would be considered at the February 9, 2009, Gig Harbor City Council meeting was sent via certified mail to each of the affected property owners listed in the agreement on January 30, 2009, and advertised in the Gateway Newspaper on January 21, 2009.

**FISCAL CONSIDERATION**

The City would collect the pro-rata shares from each property owner on behalf of OPG. To cover the City's administrative costs of billing and collecting the pro-rata shares, the City would charge OPG a 5% charge on any collected amounts, and is thus considered cost-neutral to the City.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

Staff recommends approval of the proposed Harbor Hill Water Tank and Mainline Extension Latecomers Agreement.

AFTER RECORDING RETURN TO:

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

**WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM**

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

Harbor Hill Water Tank and Mainline Extension Latecomers Agreement

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

OPG Properties LLC

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

City of Gig Harbor

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

Portions of Sections 25, Township 22 North, Range 1 East, and Sections 30 and 31, Township 22 North, Range 2 East, W.M., Pierce County, Washington

Complete legal description is at Exhibit C (pages 13 to 19) hereto

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**Assessor's Property Tax Parcel or Account number:**

0122254090, 0122254083, 0222303002, 0122254073, 0122254051, 0122254072,  
0222312029, 0222312027, 0222312028, 0222316001, 0222316002, 0222316003,  
0222316004, 0222312023, 0222313023, 0222313044, 0222314016

See Attachment #1 for Additional Account Numbers

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**Reference number(s) of documents assigned or released:** None.

Attachment #1

Assessor's Property Tax Parcel or Account number (con't):

4002880010, 4002880020, 4002880030, 4002880040, 4002880050, 4002880060,  
4002880070, 4002880080, 4002880090, 4002880100, 4002880110, 4002880120,  
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4002881150, 4002881160, 4002881170, 4002881180, 4002881190, 4002881200,  
4002881210, 4002881220, 4002881230, 4002881240.  
0122254091, 3001140010, 3001140020, 3001140030, 3001140040.

**HARBOR HILL WATER TANK AND  
MAINLINE EXTENSION LATECOMERS AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_\_ day of January, 2009, by and between OPG Properties LLC, a Washington Limited Liability Company, and the City of Gig Harbor, situate in Pierce County, Washington, the parties respectively referred to herein as "Owner" and "City".

WITNESSETH:

**RECITALS**

1. The City owns and operates a water system within and adjacent to its limits; and
2. The Owner has constructed, under agreement with the City, pursuant to the Municipal Water and Sewer Facilities Act, RCW 35.91.010, et seq., certain improvements to said system more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Improvements"), which Improvements are capable of serving areas now owned by the Owner or its affiliate Harbor Hill LLC and other real property; and
3. The Improvements are located within the area served by the City's water system and have been accepted by the City for maintenance and operation; and
4. The Owner has transferred to the City title to the Improvements free and clear of all encumbrances, by a Bill of Sale executed and delivered by Owner to the City on or after July 25, 2006, after acceptance of the Improvements for maintenance by the City; and
5. The cost of construction of the Improvements under the provisions of said Municipal Water and Sewer Facilities Act is Three Million Forty-three Thousand Three Hundred Eight Dollars and Sixty-three Cents (\$3,043,308.63) (the "Project Cost"), as detailed on **Exhibit "B"** attached hereto and by this reference incorporated herein, which amount includes without limitation all design, engineering, construction, carrying costs, and construction management and processing fees incurred by or on behalf of the Owner; and
6. The area intended to be served and directly benefited by the Improvements is 540.13 gross acres located within fifty-one (51) tax parcels (the "Benefited Property"). Of the Benefited Property, the Owner is liable to bear the fair share allocation of the Project Cost as to 386.08 gross acres located within thirty-four (34) tax parcels and other property owners are liable for the fair share allocation of the Project Cost as to 154.05 gross acres located within seventeen (17) tax parcels (the "Assessed Property"). The Assessed Property is described in **Exhibit "C"** attached hereto and by this reference incorporated herein. The term "tax parcel" as used in this Agreement means "tax parcel as described on **Exhibit "C"** attached hereto" or as otherwise described and numbered by the Office of the Pierce County Assessor as of

March 31, 2008, regardless whether such parcel subsequently was consolidated or divided; and

7. The City has determined and the Owner has agreed that the fair share allocation of the Project Cost is described in this Agreement and is set forth as to each tax parcel on **Exhibit "D"** attached hereto and by this reference incorporated herein (the "Fair Pro Rata Share"), to be collected from the owner or owners of any portion of the Assessed Property upon the first to occur of either the date that such owner records a final plat, binding site plan, or condominium declaration relating to the lot, tract, or parcel in the real property records of Pierce County or the date the owner taps into or connects to the City's water system; and

8. The City and Owner desire and intend by this Agreement to provide for collection of the Fair Pro Rata Share from the owners of the Assessed Property, under the provisions of the Municipal Water and Sewer Facilities Act, PROVIDED, that nothing contained herein shall be construed to affect or impair in any manner the right of the City to regulate the use of its said system of which the Improvements shall become a part under the terms of this Agreement, pursuant to the provisions of any ordinance, resolution, or policy now or hereafter in effect. The imposition by the City of any such requirement shall not be deemed an impairment of this Agreement though it may be imposed in such a manner as to refuse service to an owner of the Assessed Property in order to secure compliance with such requirements of the City.

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

### AGREEMENT

A. All of the recitals set forth above are adopted by the parties as material elements of this Agreement.

B. Owner warrants that it has conveyed to the City ownership of the Improvements described in **Exhibit "A,"** that it has neither permitted nor suffered any person or other entity to tap into or connect to said Improvements prior to the date of this Agreement, that the Fair Pro Rata Share is to be assessed against the owner of each parcel within the Assessed Property who taps into or connects to the City's water system, and does further warrant that there are no persons, firms, or corporations who have filed or have the right to file a lien against the Improvements pursuant to the provisions of Title 60 of the Revised Code of Washington, other than those heretofore filed that have been satisfied. In the event that any lien or other claim against said Improvements is asserted, Owner shall defend and save harmless the City from loss on account thereof, and in the event the City shall be put to any expense in defense of such claim or otherwise, then the City shall have a lien against any Fair Pro Rata Share funds then or thereafter deposited with it pursuant to this Agreement.

C. The City has accepted and hereby agrees to maintain the Improvements as part of its water system and further agrees to collect the Fair Pro Rata Share from the owners of the Assessed Property who tap into or use the same, and the Fair Pro Rata Share of the Improvements shall be conclusively presumed to be a fair pro rata charge against the Assessed Property. Each owner of any lot, tract, or parcel within the Assessed Property shall pay the City its Fair Pro Rata Share upon the first to occur of either the date that such owner records a final plat, binding site plan, or condominium declaration relating to the lot, tract, or parcel in the real property records of Pierce County or the date the owner taps into or connects to the City's water system. The City shall charge, in addition to its usual and ordinary charges made against persons applying for service from the City's water system and in addition to the Fair Pro Rata Share agreed to be collected by the City in this paragraph, a sum equal to five percent (5%) of the Fair Pro Rata Share, to be collected from owners of the Assessed Property, which sum shall be used by the City to defray the cost of labor, bookkeeping, and accounting, pursuant to the terms of this Agreement.

D. The Project Cost for the Improvements, including costs eligible for reimbursement under this Agreement, is itemized on **Exhibit "B"** attached hereto. The Fair Pro Rata Share latecomer's assessment for tax parcels within the Assessed Property is set forth on **Exhibit "D"** attached hereto and shall be based upon the following formula:

The Fair Pro Rata Share assessment for each parcel is the current estimated gallons per day used by the parcel upon completion of development of the parcel, as set forth on Exhibit D, divided by the total estimated gallons per day used by all of the Assessed Property (381,163 gallons per day) upon completion of development, multiplied by the Project Cost (\$3,043,308.63).

For example, if the current estimated gallons per day to be used by a parcel upon completion of development of the parcel is 5,700, then 5,700 divided by 381,163 equals 0.014954232, multiplied by \$3,043,308.63 equals a Fair Pro Rata Share assessment of \$45,510.34.

The current estimated gallons per day used by the parcel upon completion of development of the parcel, as set forth on Exhibit D, is calculated as follows:

(1) Completed Developments. As to parcels on which development is complete as of the making of this Agreement, the current estimated gallons per day used by the parcel is based on the actual average daily use of water during the peak two-month period, except that where the development has been completed and in use for less than twelve months, the higher of the actual average daily use of water during the peak two-month period or the current estimated gallons per day using the formula for Future Nonresidential, Non-hospital Developments described below was used.

(2) Future Residential Developments. As to parcels on which development is not complete as of the making of this Agreement, if the highest and best use of the parcel is residential based on current zoning regulations and other

factors, then the current estimated gallons per day used by the parcel is based on the net usable area of the parcel, in acres, multiplied by the current estimated number of dwelling units per acre upon completion of development of the parcel, multiplied by the current estimated number of persons per dwelling unit, multiplied by the current estimated rate of water use per person per day, in gallons.

(3) Future Hospital Developments. As to parcels on which development is not complete as of the making of this Agreement, if the highest and best use of the parcel is hospital based on current zoning regulations and other factors, then the current estimated gallons per day used by the parcel is based on the current estimated number of hospital beds within the parcel, multiplied by the current estimated rate of water use per hospital bed per day, in gallons.

(4) Future Nonresidential, Non-hospital Developments. As to parcels on which development is not complete as of the making of this Agreement, if the highest and best use of the parcel is nonresidential and non-hospital based on current zoning regulations and other factors, then the current estimated gallons per day used by the parcel is based on the net usable area of the parcel, in acres, multiplied by the current estimated number of persons per acre upon completion of development of the parcel, multiplied by the current estimated rate of water use per person per day, in gallons.

The Owner's share of the Project Cost is \$2,225,186.79 based upon the formula described above. The Fair Pro Rata Share of the Project Cost allocated to the Assessed Property is \$818,121.84. The Fair Pro Rata Share for each lot, tract, or parcel within the Assessed Property shall be based upon the formula described above. The Fair Pro Rata Share for each tax parcel within the Assessed Property is set forth on "**Exhibit D**" attached hereto and by this reference incorporated herein.

E. The City shall pay to the Owner the sums agreed by the City to be collected under this Agreement within sixty (60) days after receipt thereof at the address of the Owner as set forth hereinafter or at such other addresses as the Owner shall provide by Certified Mail. Every two (2) years after the effective date of this Agreement, the Owner shall provide the City with information regarding the current name, address, and telephone number of the Owner. If the Owner shall fail to comply with the notification requirements of this section within sixty (60) days after the specified time, then the City may collect and retain any reimbursements owed to the Owner under this Agreement. Such funds shall be deposited in the capital fund of the City. The City shall not be responsible for locating the Owner or any successors or assigns.

F. The Owner agrees to indemnify and hold the City harmless from any liability for damages of any kind or nature whatsoever arising out of claims filed against the City as the result of any action taken by the City or the Owner pursuant to this Agreement and shall defend the City whenever the City is named in a lawsuit in which this Agreement is at issue and pay all costs of such defense, including but not limited to attorneys' fees and expert witness fees, except to the extent that the acts or omissions of the City, its officers, officials,



employees, representatives and agents, constitute negligence or intentional misconduct. At the City's option, the City may elect to be defended in any such litigation by the City Attorney's Office, and in such event the Owner agrees to reimburse the City for all costs of such defense, including attorneys' fees and expert witness fees. In addition, the Owner hereby agrees to release, indemnify, defend and hold the City, its officials, officers, employees, agents and representatives, harmless from any and all claims, costs, judgments, awards, attorneys' fees or liabilities to any third persons asserting that the formula used to determine either the Assessed Properties or the amount of such Assessment is in error or does not amount to a fair pro rata charge.

The Owner agrees that the City shall not be liable for money damages to the Owner for failing to collect any Fair Pro Rata Share called for by the terms of this Agreement and shall not be obligated to make any payment to Owners until the Fair Pro Rata Share actually has been received by the City. If the City shall fail to collect the Fair Pro Rata Share from any owner of any lot, tract, or parcel within the Assessed Property who subsequently taps into or uses the Improvements, then the Owner may at its option collect the Fair Pro Rata Share from the owner, in which case the City shall not collect either the Fair Pro Rata Share or the administrative fee described in Section C above.

G. In the event of the assignment or transfer of the rights of the Owner voluntarily, involuntarily, or by operation of law, then the City shall pay all benefits accruing hereunder, after timely notice, to such successor of the Owner as the City, in its sole judgment, deems entitled to such benefits; and in the event conflicting demands are made upon the City for benefits accruing under this Agreement, then the City may, at its option, commence an action in interpleader joining any party claiming rights under this Agreement, or other parties the City believes to be necessary or proper, and the City shall be discharged from further liability upon paying the person or persons whom any court having jurisdiction of such interpleader action shall determine, and in such action the City shall be entitled to recover its reasonable attorney's fees and cost, which fees and costs shall constitute a lien upon all funds accrued or accruing pursuant to this Agreement.

H. The City agrees not to allow an Owner or other user of any portion of the Assessed Property to tap into, connect to, or use the City's water system without such owner or user having first paid the Fair Pro Rata Share to the City.

I. The City shall be entitled to rely, without any resulting liability to the City, on the provisions of this Agreement with respect to the fairness of the Fair Pro Rata Share herein provided and upon the designation and description of the Assessed Properties set forth in **Exhibit "C"** attached hereto.

J. This Agreement shall become operative immediately after recording with the Auditor of Pierce County, at the expense of the Owner, and shall remain in full force and effect for a period of fifteen (15) years after the date of such recording, or until the Owner, or its successors or assigns, shall have been fully reimbursed as aforesaid, whichever event occurs

earlier; provided, that in the event the Improvements shall, during the term of this Agreement, be rendered useless by the redesign or reconstruction of a portion of the City's water system, such determination of uselessness to be in the absolute discretion of the City Engineer, then the City's obligation to collect for the Owner the Fair Pro Rata Share pursuant to this Agreement shall cease.

K. 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 Owner.

L. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary.

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

**Owner:**  
OPG Properties LLC  
Attn: President  
19245 Tenth Avenue N.E.  
Poulsbo, WA 98370

M. All of the provisions, conditions, regulations and requirements of this Agreement shall be binding upon the successors and assigns of the Owner, as if they were specifically mentioned herein.

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

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

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

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



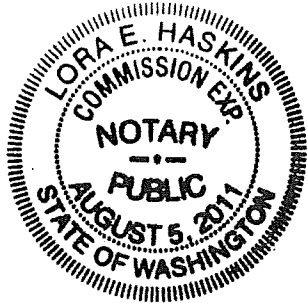
\_\_\_\_\_  
NOTARY PUBLIC, State of Washington,  
Print Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF                    )

I certify that I know or have satisfactory evidence that JON ROSE 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 President of OPG PROPERTIES LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 30, 2008

*Lora E. Haskins*  
NOTARY  
PUBLIC, State of Washington  
Print Name: Lora E. Haskins  
Residing at: Poulsbo, WA  
My Commission expires: August 5, 2011



**EXHIBIT A  
DESCRIPTION OF IMPROVEMENTS**

1. 2.3-million-gallon ground supported standpipe water reservoir located on Harbor Hill, Gig Harbor, Washington, and
2. 16-inch diameter water line extension of 4,800 feet in length, connecting to existing City water main on Borgen Boulevard, Gig Harbor, Washington.

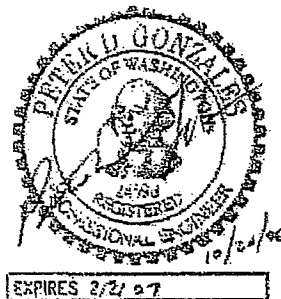
**EXHIBIT B  
PROJECT COST DETAIL**

**Water System Development Cost Summary**

<u>Paid To:</u>	<u>Description:</u>	<u>Amount:</u>
Apex Engineering	Stake Tank Foundabon	962.00
City of Gig Harbor	Tank Permit Fees	19,428.65
City of Gig Harbor	Tank Access Road Permit Fees	6,639.00
DEA	Tank Site Survey	11,035.00
DEA	Tank Access Survey	7,888.00
DEA	Access Road Water Main Design	28,091.50
DEA	Water Tank/Lines Bid Set	10,555.00
DEA	Water Tank Siting Assistance	8,442.50
HDR	Water Tank Design	84,232.51
HDR	Water Line Design	13,846.26
HDR	Water Tank Sizing	12,655.81
HDR	Tank Construction Management	54,999.26
Parker Smith Feek	Tank Maint. Bond	6,238.00
Parker Smith Feek	Tank Access Rd. Maint. Bond	1,067.00
PenLight	Power Service to tank	3,919.90
Pyramid	Water Tank Permitting Coord.	4,110.00
Pyramid	Water Tank Power Coordination	5,190.00
Pyramid	Water Tank Easement Prep	1,740.00
Pyramid	Latacomers Agreement Prep	510.00
Pyramid	Water Main As-built Preparation	1,050.00
T Bailey Inc.	Water Tank Construction	2,252,510.59
Tucci	Tank Access Road/Water Main Construction	508,209.55
<b>Total:</b>		<b>3,043,308.63</b>

Notes:

- 1. Copies of actual invoices available upon request.



Peter D. Gonzales, P.E.  
Pyramid Engineering, LLC

**EXHIBIT C  
LEGAL DESCRIPTION OF ASSESSED PROPERTY**

**No. 1 - Parcel No. 0122254090  
Swede Hill LLC**

That portion of the Southeast Quarter of Section 25, Township 22 North, Range 1 East of the W.M. described by the Record of Survey recorded under recording number 200507215004, Records of Pierce County, Washington.

**No. 2 - Parcel No. 0122254083  
Franciscan Health System West**

Lot 1 of Boundary Line Adjustment recorded under recording number 200407080296, Records of Pierce County, Washington.

**No. 4 - Parcel No. 0222303002  
United Western Development Inc**

The East half of Southeast Quarter of Southwest Quarter of Section 30, Township 22 North, Range 2 East of W.M., excluding Borgen Boulevard, in Pierce County, Washington

**No. 9 - Parcel No. 0122254073  
Gig Harbor North Annex LLC**

That portion of the following described property lying westerly of the westerly line of the Tacoma-Lake Cushman transmission line right of way:

Beginning at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M., in Pierce County, Washington;  
Thence North  $01^{\circ} 48' 52''$  East 660 feet;  
Thence North  $88^{\circ} 01' 08''$  West 533.63 feet;  
Thence South  $31^{\circ} 29'$  West 34.46 feet;  
Thence North  $88^{\circ} 01' 08''$  West 188.04 feet to east line of tract conveyed to A.T. Snow and Marguerite Snow by Warranty Deed dated November 23, 1960 under Recording Number 1907316;  
Thence South along said east line to southeast corner thereof;  
Thence North  $88^{\circ} 01' 08''$  West to Easterly line of widened State Highway No. 14;  
Thence southeasterly along said easterly line to south line of Section;  
Thence along said south line east to beginning;  
Except 100 foot right of way as appropriated by the City of Tacoma in Pierce County Superior Court Cause Number 51234.

Except the following described property:

Beginning at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M.;  
Thence North 87° 24' 49" West along the south line of said section 717.00 feet to the  
easterly line of State Road #16 as per map thereof, Narrows Bridge to Olympic Drive, on  
Sheet 14 of 52 as approved March 19, 1970, and being the northerly line of frontage road for  
relinquishment to Pierce County;  
Thence North 40° 04' 24" West along said frontage road line 192.83 feet to the True Point of  
Beginning;  
Thence North 50° 53' 03" East 194.52 feet;  
Thence North 04° 57' 18" East 103.76 feet;  
Thence North 84° 02' 16" West 143.68 feet;  
Thence South 63° 35' 31" West 112.21 feet;  
Thence South 88° 45' 55" West 72.32 feet to the northeasterly line of said frontage road  
being a curve having a radius of 340 feet with said radius bearing North 57° 16' 11" East;  
Thence southeasterly along said curve 43.57 feet;  
Thence South 40° 04' 24" East 201.90 feet to the True Point of Beginning.

Also except that portion deeded to the State of Washington.

Also except Canterwood Boulevard NW.

Also except the following described property:

Beginning at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M., in  
Pierce County, Washington;  
Thence North 87° 24' 49" West along the south line of said section 534.06 feet to the True  
Point of Beginning;  
Thence North 87° 24' 49" West 182.94 feet to the easterly line of State Road #16 as per  
map thereof, Narrows Bridge to Olympic Drive, on Sheet 14 of 52 as approved March 19,  
1970, and being the northerly line of frontage road, for relinquishment to Pierce County;  
Thence North 40° 04' 24" West along said frontage road line 192.83 feet;  
Thence North 50° 53' 03" East 194.52 feet;  
Thence South 29° 14' 49" East 319.23 feet to the True Point of Beginning.

Also except that portion deeded to the State of Washington.

Also except Canterwood Boulevard NW.

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



**No. 10 - Parcel No. 0122254051  
Gig Harbor North Annex LLC**

Commencing at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M., in Pierce County, Washington;  
Thence North 01° 48' 52" East 660 feet;  
Thence North 88° 01' 08" West 533.63 feet;  
Thence South 31° 29' West 34.46 feet;  
Thence North 88° 01' 08" West 188.04 feet;  
Thence North 01° 59' East for a distance of 30 feet, being the True Point of Beginning;  
Thence North 88° 01' 08" West 576.80 feet;  
Thence South 01° 48' 58" West 209 feet;  
Thence South 88° 01' 08" East 576.80 feet;  
Thence North to the True Point of Beginning.

Except that portion deeded to Buchanan Lumber Company for road under Recording Number 1923631.

Also except that portion deeded to the State of Washington.

**No. 11 - Parcel No. 0122254072  
Gig Harbor North Annex LLC**

Beginning at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M., in Pierce County, Washington;  
Thence North 87° 24' 49" West along the south line of said section 717.00 feet to the easterly line of State Road #16 as per map thereof, Narrows Bridge to Olympic Drive, on Sheet 14 of 52 as approved March 19, 1970, and being the northerly line of frontage road, for relinquishment to Pierce County;  
Thence North 40° 04' 24" West along said frontage road line 192.83 feet to the True Point of Beginning;  
Thence North 50° 53' 03" East 194.52 feet;  
Thence North 04° 57' 18" East 103.76 feet;  
Thence North 84° 02' 16" West 143.68 feet;  
Thence South 63° 35' 31" West 112.21 feet;  
Thence South 88° 45' 55" West 72.32 feet to the northeasterly line of said frontage road being a curve having a radius of 340 feet with said radius bearing North 57° 16' 11" East;  
Thence southeasterly along said curve 43.57 feet;  
Thence South 40° 04' 24" East 201.90 feet to the True Point of Beginning.

Except that portion thereof deeded to the State of Washington.

Also except Canterwood Boulevard NW.

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

Together with the following described parcel:

Beginning at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M., in Pierce County, Washington;

Thence North 87° 24' 49" West along the south line of said section 534.06 feet to the True Point of Beginning;

Thence North 87° 24' 49" West 182.94 feet to the easterly line of State Road #16 as per map thereof, Narrows Bridge to Olympic Drive, on Sheet 14 of 52 as approved March 19, 1970, and being the northerly line of frontage road, for relinquishment to Pierce County;

Thence North 40° 04' 24" West along said frontage road line 192.83 feet;

Thence North 50° 53' 03" East 194.52 feet;

Thence South 29° 14' 49" East 319.23 feet to the True Point of Beginning.

Except that portion thereof deeded to the State of Washington.

Also except Canterwood Boulevard NW.

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

**No. 38 - Parcel No. 0222312029  
McCormick Creek LLC**

The North 330 feet of the West half of the Southeast Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M., except the North 60 feet thereof.

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

**No. 39 - Parcel No. 0222312027  
McCormick Creek LLC**

The North 80 feet of that portion of the North half of the Southwest Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M. lying Easterly of the City of Tacoma's Lake Cushman Electric Power Line Right of Way. And The North 60 feet of the North 330 feet of the West half of the Southeast Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M.

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

**No. 40 - Parcel No. 0222312028  
McCormick Creek LLC**

That portion of the North half of the Southwest Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M. lying Easterly of the City of Tacoma's Lake Cushman Electric Power Line Right of Way, except the North 80 feet thereof. Situate in the City of Gig Harbor, County of Pierce, State of Washington.

**No. 41 - Parcel No. 0222316001  
Loretta Laramore**

Lot 1 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

**No. 42 - Parcel No. 0222316002  
Loretta Laramore**

Lot 2 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

**No. 43 - Parcel No. 0222316003  
Loretta Laramore**

Lot 3 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

**No. 44 - Parcel No. 0222316004  
Loretta Laramore**

Lot 4 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

**No. 45 - Parcel No. 0222312023  
McCormick Creek LLC**

That portion of the South half of the Southwest Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M. lying Easterly of the City of Tacoma's Lake Cushman Electric Power Line Right of Way. And All that portion of Government Lot 3 of Section 31, Township 22 North, Range 2 East of the W.M., described as follows:  
Commencing at the Northeast corner of said Government Lot 3 of Section 31, Township 22 North, Range 2 East of the W.M.; Thence South 01°10'40" West along the East line of Government Lot 3, 496.36 feet to a point 833.20 feet North of the Southeast corner of said Government Lot 3, thence North 88°20'24" West 378.94 feet to a point on the easterly Right of Way line of Tacoma-Lake Cushman Transmission Line; thence North 13°26'07" West

along said Easterly Right of Way Line 514.56 feet to a point on the East-West Centerline of said Section 31, thence along said East-West Centerline South 88°17'17" East 508.77 feet to the point of beginning.  
Situate in the City of Gig Harbor, County of Pierce, State of Washington.

**No. 49 - Parcel No. 0222313023  
McCormick Creek LLC**

The North 300 feet of the South 900 feet of the West half of the Northeast Quarter of the Southwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M., in Pierce County, Washington.

**No. 50 - Parcel No. 0222313044  
Gig Harbor Sportsman's Club**

Parcel "A" The East half of the Northeast quarter of the Southwest Quarter in Section 31, Township 22 North, Range 2 East of the Willamette Meridian. Except the North half of the Northeast Quarter of the Southwest Quarter of said Section.  
Situate in the County of Pierce, State of Washington.

Parcel "B" That portion of the East half of the Southeast Quarter of the Southwest Quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian, lying East of the Gig Harbor Longbranch Highway. Except the South 660 feet thereof.  
Situate in the County of Pierce, State of Washington.

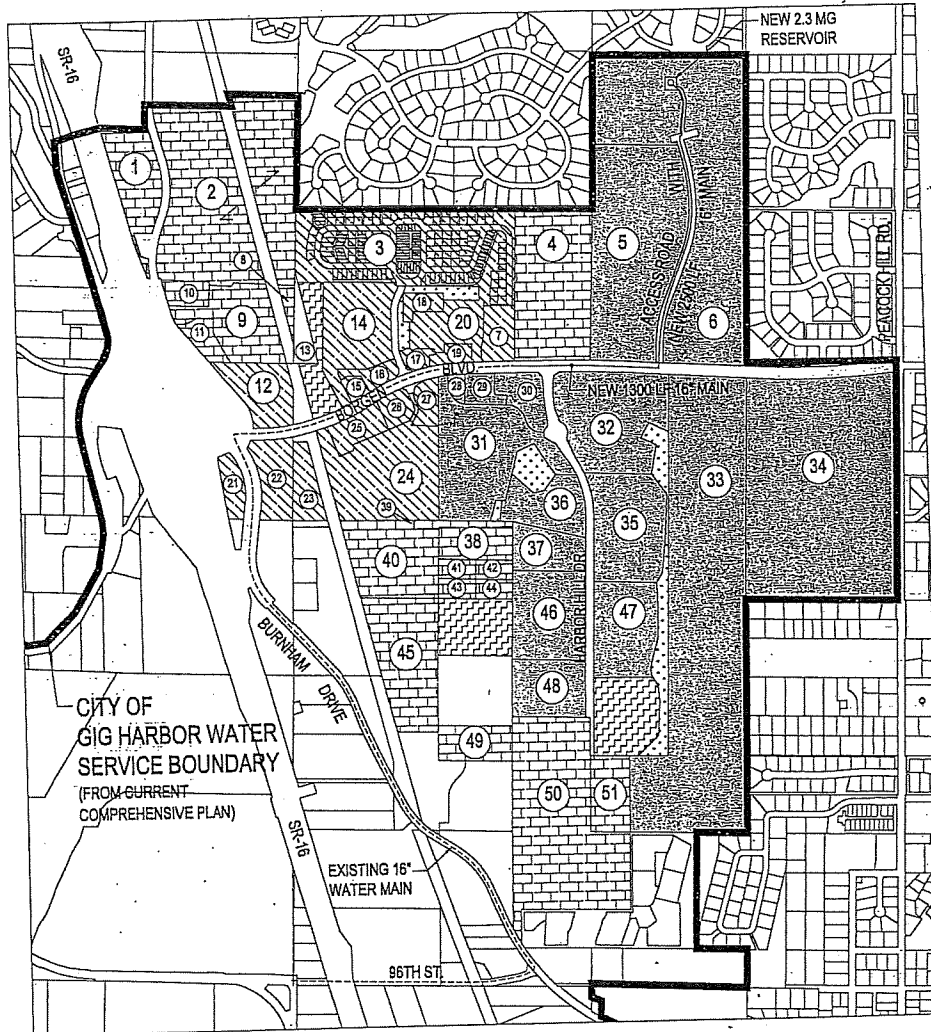
Parcel "C" That portion of the West 50 feet of the North 330 feet of the South 660 feet of the East half of the Southeast Quarter of the Southwest Quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian lying East of the Gig Harbor Longbranch Highway.  
Situate in the County of Pierce, State of Washington.

Parcel "D" The Southwest Quarter of the Southeast Quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian. Except the South 550 feet thereof. Also except the East 990 feet thereof.  
Situate in the County of Pierce, State of Washington.






**No. 51 - Parcel No. 0222314016  
Gig Harbor Sportsman's Club**

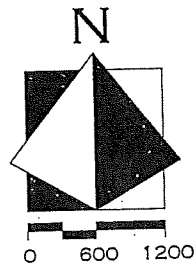
The South half of the West half of the West half of the Northwest quarter of the Southeast quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian. Subject to and together with easements, conditions and/or restrictions of record.  
Situate in the County of Pierce, State of Washington.

EACH PARCEL LEGALLY DESCRIBED ON EXHIBIT C IS GRAPHICALLY DEPICTED ON THE FOLLOWING DRAWING AND BEARS THE SAME NUMBER ON BOTH. FOR EXAMPLE, THE GRAPHICAL DEPICTION BELOW OF PARCEL "NO. 1" ON EXHIBIT C BEARS THE NUMBER "1" WITHIN A CIRCLE BELOW. NOTWITHSTANDING, NO WARRANTY IS MADE AS TO THE ACCURACY OF THIS DRAWING AND IT SHALL NOT ALTER OR MODIFY THE OTHER TERMS OF THE AGREEMENT.



**LEGEND**

-  OWNED BY HARBOR HILL
-  ASSESSMENT PAID BY HARBOR HILL UNDER PRIOR AGREEMENT
-  PARCELS
-  REGIONAL DRAINAGE CONTROL FACILITIES
-  WETLAND/OFFEN SPACE TRACTS



**LATECOMERS  
COVERAGE AREA**

04/25/08

**EXHIBIT D  
FAIR PRO RATA SHARES**

*[See attached pages.]*

**EXHIBIT D**  
**GIG HARBOR NORTH WATER RESERVOIR**  
**LATECOMER AGREEMENT ASSESSMENT COMPUTATION**

PARCEL NUMBER	TAX PARCEL NUMBER	OWNER	ZONE or Use	GROSS AREA (Acres)	NET USABLE AREA (Ac.)	DWELLING UNITS PER ACRE OR TOTAL BEDS	PERSONS PER Acre or Acre	WATER USE RATE (GPCD)	GALLONS USED PER DAY	FAIR SHARE CALCULATION	OPG Allocation	Assessed Property Allocation
1	0122254090	Swede Hill LLC	B-2	7.60	3.60	N/A	30.00	25.00	2,700	\$ 21,778.29	N/A	\$ 21,778.29
2	0122254083	Franciscan Health System West	Hospital	37.73	N/A	80.00	N/A	400.00	32,000	\$ 258,113.06	N/A	\$ 258,113.06
3	0222303010	Little Boat North Inc. (subdivided)	RMD	29.28	23.00	8.00	1.94	70.00	24,987	\$ 201,547.58	\$ 201,547.58	N/A
4	0222303002	United Western Development Inc and Quadrant Corp.	RMD	18.88	15	8.00	1.94	70.00	16,296	\$ 131,444.07	N/A	\$ 131,444.07
5	0222304000	OPG Properties LLC (North RMD)	RMD	29.42	29.42	8.00	1.94	70.00	31,962	\$ 257,805.65	\$ 257,805.65	N/A
6	0222304000	OPG Properties LLC (North RLD)	RLD	49.04	49.04	4.00	2.40	70.00	32,955	\$ 265,815.15	\$ 265,815.15	N/A
7	0222303011	SHDP Assoc LLC & Capital Management Group Inc.	BP	2.54	2.04	N/A	30.00	25.00	1,526	\$ 12,312.48	\$ 12,312.48	N/A
8	0122254074	Gig Harbor North Annex LLC	BP	0.74	0.00	N/A	30.00	25.00	0	\$ -	N/A	\$ -
9	0122254073	Gig Harbor North Annex LLC	RB-2	9.02	0.47	N/A	30.00	25.00	353	\$ 2,843.28	N/A	\$ 2,843.28
10	0122254051	Gig Harbor North Annex LLC	RB-2	1.68	0.65	N/A	30.00	25.00	488	\$ 3,932.19	N/A	\$ 3,932.19
11	0122254072	Gig Harbor North Annex LLC	RB-2	2.00	0.15	N/A	30.00	25.00	113	\$ 907.43	N/A	\$ 907.43
12	0122361075	SHDP Assoc LLC & Capital Management Group Inc.	BP	5.95	2.98	N/A	30.00	25.00	2,231	\$ 17,997.34	\$ 17,997.34	N/A
13	0222303003	Tacoma City Light	RB-2	1.09	0.00	N/A	0.00	0.00	0	\$ -	\$ -	N/A
14	4002060011	Target Corporation	C	10.76		Avg Daily Use over peak 2 month period			2,926	\$ 23,601.21	\$ 23,601.21	N/A
15	4002060060	Gig Harbor North LLC (Washington Mutual)	C	0.80		Avg Daily Use over peak 2 month period			772	\$ 6,226.98	\$ 6,226.98	N/A
16	4002060050	Gig Harbor North LLC (Retail Bldg "C")	C	1.51		Avg Daily Use over peak 2 month period			2,281	\$ 18,398.62	\$ 18,398.62	N/A
17	4002060070	Gig Harbor North LLC (Key Bank)	C	0.91		Avg Daily Use over peak 2 month period			49	\$ 395.24	\$ 395.24	N/A
18	4002060030	Gig Harbor North LLC (Retail Bldg "A")	C	1.42		Avg Daily Use over peak 2 month period			6,082	\$ 49,057.61	\$ 49,057.61	N/A
19	4002060040	Gig Harbor North LLC (Retail Bldg "B")	C	1.11		Avg Daily Use over peak 2 month period			1,937	\$ 15,623.91	\$ 15,623.91	N/A
20	4002060020	New Albertsons, Inc	C	5.43		Avg Daily Use over peak 2 month period			5,735	\$ 46,258.70	\$ 46,258.70	N/A
21	0122361073	SHDP Assoc LLC & Capital Management Group Inc.	BP	2.10	0.00	N/A	30.00	25.00	0	\$ -	\$ -	N/A
22	0122361074	SHDP Assoc LLC & Capital Management Group Inc.	BP	4.75	2.38	N/A	30.00	25.00	1,781	\$ 14,367.62	\$ 14,367.62	N/A
23	0222312038	SHDP Assoc LLC & Capital Management Group Inc.	BP	3.64	1.82	N/A	30.00	25.00	1,365	\$ 11,010.14	\$ 11,010.14	N/A
24	4002070041	HD Development of Maryland, Inc. (Home Depot)	C	16.00		Avg Daily Use over peak 2 month period			5,107	\$ 41,193.23	\$ 41,193.23	N/A
25	4002070010	Gig Harbor South LLC (Office Depot & Petco)	C	2.70		Avg Daily Use over peak 2 month period			1,312	\$ 10,582.64	\$ 10,582.64	N/A
26	4002070020	Gig Harbor South LLC (Pier 1 Imports)	C	1.66		Avg Daily Use over peak 2 month period			197	\$ 1,589.01	\$ 1,589.01	N/A
27	4002070030	Gig Harbor South LLC (McDonald Corporation)	C	1.81		Avg Daily Use over peak 2 month period			2,934	\$ 23,665.74	\$ 23,665.74	N/A
28	4002520010	Northwest Capital Investors LLC	C	0.72	0.58	N/A	30.00	25.00	432	\$ 3,484.53	\$ 3,484.53	N/A
29	4002520020	Northwest Capital Investors LLC	C	1.77	1.42	N/A	30.00	25.00	1,062	\$ 8,566.13	\$ 8,566.13	N/A
30	4002520030	Northwest Capital Investors LLC	C	3.46	2.77	N/A	30.00	25.00	2,076	\$ 16,745.08	\$ 16,745.08	N/A
31	4002520040	Costco Wholesale Corporation	C	17.49	13.99	N/A	30.00	25.00	10,484	\$ 84,644.95	\$ 84,644.95	N/A
32	4002470060	Harbor Hill LLC - Lot 6	BP	16.06	12.85	N/A	30.00	25.00	9,636	\$ 77,724.29	\$ 77,724.29	N/A
33	0222311009	OPG Properties	RLD	65.67	65.67	4.00	2.40	70.00	44,130	\$ 355,955.95	\$ 355,955.95	N/A

### EXHIBIT D GIG HARBOR NORTH WATER RESERVOIR LATECOMER AGREEMENT ASSESSMENT COMPUTATION

PARCEL NUMBER	TAX PARCEL NUMBER	OWNER	ZONE or Use	GROSS AREA (Acres)	NET USABLE AREA (Ac.)	DWELLING UNITS PER ACRE OR TOTAL BEDS	PERSONS PER UNIT or Acre	WATER USE RATE (GPCD)	GALLONS USED PER DAY	FAIR SHARE CALCULATION	OPG Allocation	Assessed Property Allocation
34	0222311000	OPG Properties	RLD	55.88	55.88	4.00	2.40	70.00	37,551	\$ 302,890.51	\$ 302,890.51	N/A
35	4002470050	Harbor Hill LLC - Lot 5	BP	12.76	10.21	N/A	30.00	25.00	7,656	\$ 61,753.55	\$ 61,753.55	N/A
36	4002470011	Harbor Hill LLC - Lot 1A	BP	6.41	5.13	N/A	30.00	25.00	3,846	\$ 31,021.96	\$ 31,021.96	N/A
37	4002470012	Harbor Hill LLC - Lot 1B	BP	5.07	4.06	N/A	30.00	25.00	3,042	\$ 24,536.87	\$ 24,536.87	N/A
38	0222312029	McCormick Creek LLC	R-1/MUD	4.00	3.60	4.00	2.40	70.00	2,419	\$ 19,513.35	N/A	\$ 19,513.35
39	0222312027	McCormick Creek LLC	R-1/MUD	2.48	2.23	4.00	2.40	70.00	1,500	\$ 12,098.30	N/A	\$ 12,098.30
40	0222312028	McCormick Creek LLC	R-1/MUD	10.45	9.41	4.00	2.40	70.00	6,320	\$ 50,978.62	N/A	\$ 50,978.62
41	0222316001	Loretta Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 6,097.92	N/A	\$ 6,097.92
42	0222316002	Loretta Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 6,097.92	N/A	\$ 6,097.92
43	0222316003	Loretta Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 6,097.92	N/A	\$ 6,097.92
44	0222316004	Loretta Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 6,097.92	N/A	\$ 6,097.92
45	0222312023	McCormick Creek LLC	R-1/MUD	15.30	13.77	4.00	2.40	70.00	9,253	\$ 74,638.55	N/A	\$ 74,638.55
46	4002470020	YMCA of Tacoma-Pierce County	BP	11.00		Avg Daily Use over peak 2 month period			22,353	\$ 180,300.04	\$ 180,300.04	N/A
47	4002470040	Harbor Hill LLC - Lot 4	BP	10.06	8.05	N/A	30.00	25.00	6,036	\$ 48,686.58	\$ 48,686.58	N/A
48	4002470030	Harbor Hill LLC - Lot 3	BP	7.07	5.66	N/A	30.00	25.00	4,242	\$ 34,216.11	\$ 34,216.11	N/A
49	0222313023	McCormick Creek LLC	R-1/MUD	4.55	4.10	4.00	2.40	70.00	2,752	\$ 22,196.43	N/A	\$ 22,196.43
50	0222313044	Gig Harbor Sportsman's Club	R-1/MUD	30.36	27.32	4.00	2.40	70.00	18,362	\$ 148,106.31	N/A	\$ 148,106.31
51	0222314016	Gig Harbor Sportsman's Club	R-1/MUD	5.00	4.50	4.00	2.40	70.00	3,024	\$ 24,391.68	N/A	\$ 24,391.68
<b>TOTAL</b>										<b>\$ 3,043,308.63</b>	<b>2,247,975.39</b>	<b>795,333.24</b>

**Notes**  
 1. Gross Areas from Assessor-Treasurer information unless otherwise provided.  
 2. Net areas are Gross Area minus areas prohibited from development.  
 3. Units, People per Acre, and gpcd are from Tank Sizing Calculations by HDR, and based on DOH Guidelines  
 4. The Fair Share Factor is the Project Cost (\$3,043,308.63) divided by the estimated total Gallons Per Day (377,299) used by all of the Assessed Property upon completion of development.  
 5. OPG Properties LLC and Harbor Hill LLC are affiliated companies. OPG is the "Owner" under the Latecomer Agreement.  
 6. Assumes connection of all affected parcels.  
 7. GPCD = Gallons Per Capita Per Day



McCormick Creek, LLC  
PO Box 1800  
Orting, Washington 98360  
253 381-0101  
[sturgeon.t@comcast.net](mailto:sturgeon.t@comcast.net)

January 8, 2009

Mr. Hendrickson  
Engineering Technician  
Community Development Department  
City of Gig Harbor

Re: Latecomers Agreement

Dear Mr. Hendrickson,

Thank you for the package of information relating to Gig Harbor North Water Reservoir and Transmission Main Latecomers Agreement.

I understand that the Olympic Property Group (OPG) has requested this approval to the City Council and the Council will consider this on January 12, 2009.

I can not attend to provide testimony on that date but would like you to submit this letter on my behalf to the council for their consideration.

McCormick Creek, LLC (McC) and OPG have been negotiating several issues relating to both their properties that adjoin each other for sometime now. Our conversations have been with Mr. John Chadwell, it was my last understanding with Mr. Chadwell on this Latecomers request, we would pay on a per lot basis at the time of House Building Permit and the Four Tax Parcels were never discussed

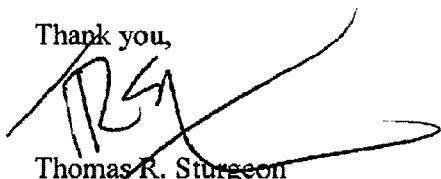
McC has always agreed with Mr. Chadwell that if the City Council agrees McC is receiving a benefit and Council agrees to the cost, we would pay our fair share.

Page 2  
McCormick Creek, LLC  
Latecomers Agreement

McC has not changed that position but would ask if the City Council approves the Latecomers Agreement they make it a condition payments to be on a per lot basis and not as shown in the Exhibit "C" on the chart.

Thank you for your consideration. If you have any questions you can contact me at 253 381-0101.

Thank you,

A handwritten signature in black ink, appearing to read 'T. Sturgeon', with a long horizontal flourish extending to the right.

Thomas R. Sturgeon  
McCormick Creek, LLC

Enclosure      Latecomers Agreement



Old Business - 1

GIG HARBOR SPORTSMAN'S CLUB  
9721 BURNHAM DRIVE N.W.  
GIG HARBOR, WA 98332

RECEIVED

JAN 21 2009

CITY OF GIG HARBOR

January 19, 2009

Mr. Charles Hunter, Mayor  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

Subject: Latecomers Agreement, Gig Harbor North Water Reservoir

Mr. Charles Hunter, Mayor

We received your Public Works Department December 26, 2008 letter regarding the Latecomers Agreement for the Gig Harbor North Water Reservoir and Transmission Main. As we told you in our April 5, 2007 response to your March 15, 2007 letter and our September 28, 2007 response to your September 25, 2007 letter on the same subject, we have already secured our water by paying a part of the cost of the original 16 inch water main running up Burnham Drive. At that time we were assured that the main was sufficient to meet our needs and that we would not have to pay for any expansion. We do not need, nor do we want to be a part of this water project. Please delete us from the project.

Sincerely

Ben J Pearson II  
Treasurer

Attachments:

Sportsman's Club ltr dtd April 5, 2007  
Sportsman's Club ltr dtd Sept 28, 2007

GIG HARBOR SPORTSMAN'S CLUB  
9721 BURNHAM DRIVE N.W.  
GIG HARBOR, WA 98332



April 5, 2007

Community Development Department  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

Dear Mr. Vodopich, Director

We received your Departments March 15 letter regarding the Latecomers Agreement for the Gig Harbor North Water Reservoir and Transmission Main. We have already secured our water by paying a part of the cost of the original 16 inch water main running up Burnham Drive. At that time we were assured that the main was sufficient to meet our needs and that we would not have to pay for any expansion. We do not need, nor do we want to be a part of this water project. Please delete us from the project.

Sincerely,

A handwritten signature in cursive script that reads "Ben J Pearson II".

Ben J Pearson II  
Treasurer



*Old Business - 1*

**GIG HARBOR SPORTSMAN'S CLUB  
9721 BURNHAM DRIVE N.W.  
GIG HARBOR, WA 98332**

September 28, 2007

Community Development Department  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

Dear Mr. Brereton, Director

We received your Departments September 25 letter regarding the Latecomers Agreement for the Gig Harbor North Water Reservoir and Transmission Main. As we told you in our April 5 response to your March 15 letter on the same subject, we have already secured our water by paying a part of the cost of the original 16 inch water main running up Burnham Drive. At that time we were assured that the main was sufficient to meet our needs and that we would not have to pay for any expansion. We do not need, nor do we want to be a part of this water project. Please delete us from the project.

Sincerely,

Ben J Pearson II  
Treasurer

CC Charles Hunter, Mayor  
Rob Karlinsey, City Administrator



UNITED  
WESTERN  
DEVELOPMENT  
INC.

February 6, 2009

City of Gig Harbor  
Community Development Department  
Willy Hendrickson  
3510 Grandview St  
Gig Harbor, WA 98335

RECEIVED  
FEB 09 2009  
CITY OF GIG HARBOR  
ENGINEERING

Dear Mr. Hendrickson:

I have received the latest Latecomer's Agreement for reimbursement of Municipal Water Costs. My property is "The Ridge" parcel number 022230-3002. We have been assessed in the amount of \$131,444.07.

As I am sure the city is aware, this project has been completed and approximately 12 homes are already constructed and some of those occupied. The reason for my letter is to ask the City Council to condition the Latecomer's Agreement so that the assessment is prorated to each lot and paid as they apply for water hook-up.

I see no other way to assess the property in an equitable manner since the plat is already connected to the city water system and many homes are also hooked up. The current building permit fees that the city charges this plat per lot already are in the neighborhood of \$42,000.00 per lot and would be an extreme hardship at this time to require the developer to pay this money up front.

As you may know, I have been under contract with Quadrant Homes and have now determined that they can not sell homes in this environment in Gig Harbor. It may help you to know the city imposed fees were around 12-15% of the selling price of the homes. Quadrant actually returned the money to homebuyers that were under contract to purchase homes in "The Ridge" just because they were losing money on each home. I am attempting to resell the lot inventory at my cost (no profit) and the lots may be sold one at a time, so to require one lump sum payment just would not be something that I could do.

If you have any questions, please call me at 253-564-6069.

Sincerely,

Donald Huber

Owner - United Western Development

P.O. Box 64160  
Tacoma, WA 98464  
1614 South Mildred, Suite #12  
Tacoma, WA 98465  
(253) 564-6069  
(253) 564-6272 Fax



Subject: Second Reading of Ordinance:
Gross Floor Area amendment (ZONE 07-0008)

Dept. Origin: Planning Department

Prepared by: Jennifer Kester
Senior Planner

Proposed Council Action: Adopt ordinance
at this second reading.

For Agenda of: February 9, 2009

Exhibits: Planning Commission Recommendation
with draft amendments; Council Work-Study
Session Staff Memo; Underground Floor Area
illustration

Initial & Date

Concurred by Mayor:

Approved by City Administrator: [Signature]

Approved as to form by City Atty: approved by
e-mail 1/15/2009

Approved by Finance Director: N/A

Approved by Department Head: TD 1/28/09

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

INFORMATION / BACKGROUND

On December 8, 2008, the City Council held a first reading and public hearing and reviewed the Planning Commission's proposed changes to the definition of gross floor area and the new definitions for attic and underground floor area. After the hearing the Council requested a work-study session on the draft ordinance. At the January 5, 2009 Council work-study session, the Council decided to exclude developments in the RB-1 zone, in addition to those in the waterfront zones, from the amended definition of gross floor area.

The Council felt that applying the new definition of gross floor area in the RB-1 zoning district could allow increased utilization and activity on RB-1 zoned property which would be incompatible with surrounding single-family zoning. The RB-1 zoning district is intended to serve as a buffer between high intensity commercial and lower density residential uses.

Due to this substantive change to the proposed development regulation, a second first reading and new public hearing was held on January 26, 2009.

History of Ordinance prior to December 8, 2008 Council meeting:

January 23, 2006, the City Council directed the Planning Commission to review several issues related to underground parking and underground structures (motion enclosed). In response, the Planning Commission held work-study sessions on these issues on January 18, 2007; February 1, 2007; June 21, 2007; November 15, 2007; December 6, 2007; December 20,

2007; and, January 3, 2008. The work-study sessions included conversations with two local architects on the feasibility of underground buildings and Dick Bower, Building and Fire Safety Director, on the building and fire code requirements related to underground floor area.

On January 28, 2008, the Council reviewed the work and draft recommendations of the Planning Commission and directed the Planning Commission to hold a public hearing in the 2<sup>nd</sup> quarter of 2008 and make a final recommendation to the Council. The Commission public hearing was held on April 17, 2008; no members of the public provided testimony at the hearing.

After considerable discussion, the Planning Commission recommended new definitions for "attic" and "underground floor area." The Commission recommended amendments to the definition of "gross floor area" which would apply to the PI, R-1, RLD, R-2, RMD, R-3, RB-1, RB-2, DB, B-1, B-2, C-1, PCD-C, ED, PCD-BP, PCD-NB and MUD districts zones to eliminate attics and underground floor area from the gross floor area calculation. The Planning Commission did not recommend a similar amendment to the definition of "gross floor area" for the waterfront (WC, WM, and WR) zoning districts for the reasons stated in the enclosed August 21, 2008 memo to City Council from the Planning Commission and summarized below.

The Planning Commission felt the topics of gross floor area, building size, underground structures and parking in the waterfront zones is most appropriately reviewed as part of the Shoreline Master Program update and View Basin Sub Area plan. The update to the Shoreline Master Program will inform allowed uses and setbacks along the waterfront related to environmental impacts, which could affect building size considerations. The View Basin plan will define the citizens' vision for the character of the view basin and will include policies and regulations on building size, architectural character, uses and amenities for the view basin. The Planning Commission felt the issue of underground garages and underground structures in the waterfront zones should be part of these large public discussions. Therefore, the Planning Commission recommended that the current definition of gross floor area remain for the waterfront zones. While due to budget reasons, the View basin plan will not begin in 2009, it is hoped that the plan will still be developed in the coming years.

### **POLICY CONSIDERATIONS**

A detailed reasoning of the Commission's recommendations can be found in the enclosed memo. Discussed here are the Planning Commission's considerations on the draft definitions:

#### **Gross Floor Area:**

The Planning Commission desired to have two definitions for gross floor area: A revised definition for the majority of the City and the current definition for the waterfront zones. The revised definition for the majority of zones would exempt underground floor area and attics from the calculation of gross floor area.

The Planning Commission is also recommending that the gross floor area definitions include a provision for determining off-street parking spaces for all zones. The current parking regulations often base parking on the gross floor area; however, the current definition includes garage space in gross floor area. Therefore, one might argue that our code requires a developer to provide additional parking spaces for the floor area of the garage space. While we have not applied the code in that way, it would be prudent to adjust the definition to deal with this issue.



The Commission is also recommending removal of “basement space” from the calculation for the majority of zones, as the provisions for underground floor area address basement spaces and the definition of “basement” is not consistent with the proposed definition of “underground floor area”. Finally, the revised definition removes references to attic headroom and excludes attics from the gross floor area in order to be consistent with the IBC’s definition and interpretation of attic space.

**Underground floor area:**

The definition is written to provide a building size allowance that exempts those portions of a building’s floor area which were truly underground from gross floor area limitations outside of the waterfront zones. The definition seeks to exclude required access points, especially those for rescue and escape, from the requirement to be entirely below grade. The Planning Commission wanted to acknowledge that any underground floor would need some kind of access to the outside, especially if the floor area is for habitable space (sleeping, etc.) or a parking garage. As the same time, the Commission did not want to exclude all linear feet of access in order to prevent a 100 foot opening into a parking garage from being considered underground.

**Attic:**

The intent of this new definition is to make the application of attics in the zoning code consistent with the definition in the building code. The current gross floor definition exempts attic spaces with a head room of less than 7 and one half feet from the calculation of gross floor area. The current International Residential Code requires a head room of 7 feet or more for habitable space. The current inconsistency between codes means a developer could propose a finished attic-type space with a headroom of seven and one-fourth feet, be considered habitable by the building code, but not count as floor area in the zoning code.

**ENVIRONMENTAL ANALYSIS**

The SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the proposed amendments on April 16, 2008 as per WAC 197-11-340(2).

**FISCAL CONSIDERATION**

None

**BOARD OR COMMITTEE RECOMMENDATION**

The Planning Commission is recommending approval of the proposed text amendments. The Planning Commission has not made a recommendation on the exclusion of the RB-1 zone from the new definitions.

**RECOMMENDATION / MOTION**

**Move to:** Adopt ordinance at this second reading.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE DEFINITION OF GROSS FLOOR AREA FOR THE WR, WM, WC AND RB-1 ZONING DISTRICTS TO ELIMINATE GARAGE SPACE, ACCESSORY WATER TANKS AND COOLING TOWERS, MECHANICAL EQUIPMENT AND UNFINISHED ATTIC SPACE FROM THE CALCULATION OF GROSS FLOOR AREA FOR THE PURPOSES OF CALCULATING OFF-STREET PARKING REQUIREMENTS; AMENDING THE DEFINITION OF GROSS FLOOR AREA FOR THE PI, R-1, RLD, R-2, RMD, R-3, RB-2, DB, B-1, B-2, C-1, PCD-C, ED, PCD-BP, PCD-NB AND MUD ZONING DISTRICTS TO ELIMINATE ATTICS AND UNDERGROUND FLOOR AREA FROM THE CALCULATION OF GROSS FLOOR AREA; AMENDING THE DEFINITION OF GROSS FLOOR AREA FOR THE PI, R-1, RLD, R-2, RMD, R-3, RB-2, DB, B-1, B-2, C-1, PCD-C, ED, PCD-BP, PCD-NB AND MUD ZONING DISTRICTS TO ELIMINATE GARAGE SPACE, ACCESSORY WATER TANKS AND COOLING TOWERS, MECHANICAL EQUIPMENT AND ATTICS FROM THE CALCULATION OF GROSS FLOOR AREA FOR THE PURPOSES OF CALCULATING OFF-STREET PARKING REQUIREMENTS; ADDING A NEW DEFINITION FOR ATTIC; AND ADDING A NEW DEFINITION FOR UNDERGROUND FLOOR AREA; ADDING GHMC SECTION 17.04.086 AND 17.04.362; AMENDING SECTION 17.04.360 OF THE GIG HARBOR MUNICIPAL CODE.**

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WHEREAS, the City desires to have two definitions for gross floor area: one definition (the existing definition in GHMC Section 17.04.360) which would apply to the waterfront and RB-1 zones and a new definition that would apply to the rest of the city's zoning districts; and

WHEREAS, the City desires to retain the current definition for gross floor area for the Waterfront Commercial (WC), Waterfront Millville (WM), Waterfront Residential (WR) and Residential and Business (RB-1) zoning districts; and

WHEREAS, the differences between the two definitions of gross floor area are that the waterfront and RB-1 zone definition includes garage space, basement space and finished attics with a headroom of seven and a half feet or more in the calculation, and the remaining zones definition does not include underground floor area and all attics in the calculation; and

WHEREAS, there are several reasons behind the City's desire to retain the current definition for gross floor area for the waterfront zones, such as:

(1) lots along the waterfront have performance standards that often allow more utilization of the upland portion of the site than parcels in non-waterfront zones; and

(2) developments on waterfront lots are typically allowed to build right up to the ordinary high water mark (bulkhead) as the rear yard setback is usually in the water, allowing full development of all upland; and

(3) developments on waterfront lots can use the water portion of the lot as the required pervious surface, and thereby cover the majority of the upland portion with hard surfaces or buildings; and

(4) both water uses (marinas, piers, floats) and upland uses (offices, residential, marine sales, parking) are allowed on lots in the waterfront zones, thereby increasing the number of uses and activity associated with a parcel; and

(5) all but six of the parcels in the waterfront zones are included in City's Waterfront View Corridor designation, which was established to protect views of the harbor along the Harborview Drive and North Harborview Drive public rights-of-way for public enjoyment, and exempting underground portions of a building from gross floor area without reducing the allowed gross floor area in waterfront zones could have the adverse effect of reducing view corridors for the traveling public along the waterfront; and

WHEREAS, there are several reasons behind the City's desire to retain the current definition for gross floor area for the RB-1 zoning district, such as:

(1) the RB-1 zoning district is intended to serve as a buffer between high intensity commercial and lower density residential uses, and

(2) the RB-1 zoning district is further intended to protect and preserve residential uses while permitting business uses compatible with single-family residential development, and

(3) exempting underground floor area from gross floor area in the RB-1 zoning district could allow increased utilization and activity on RB-1 zoned property which would be incompatible with surrounding single-family zoning, and

WHEREAS, the City desires to revise the definition for gross floor area for all zones except the waterfront and RB-1 zones to exempt underground floor area and attics from the calculation of gross floor area; and

WHEREAS, outside the waterfront and RB-1 zones, underground floor area and attics are not included in the gross floor area calculation because those portions of a building which are underground do not contribute to the perceived bulk and scale of a building and those portions with headroom less than seven feet between the ceiling beams of the top story and the roof rafters are not habitable and do not contribute to the perceived bulk and scale of the building; and

WHEREAS, the City believes the topics of gross floor area, building size, underground structures and parking in the waterfront zones is most appropriately reviewed as part of the Shoreline Master Program update, which the city has begun and the View Basin Sub Area plan, which the City intends to begin soon; and

WHEREAS, the View Basin Sub Area plan will define the citizens' vision for the character of the view basin, which includes the waterfront along Gig Harbor Bay, and will include policies and regulations on building size, underground structures, architectural character, uses and amenities for the view basin and waterfront zones; and

WHEREAS, the update of the Shoreline Master Program will document the environmental and aesthetic impacts of shoreline development and will recommend new regulations for uses and setbacks along the waterfront; and

WHEREAS, the development of new performance standards for the waterfront zones at this time, such as building size and parking regulations, would be premature given the extensive comprehensive planning the City will conduct along the waterfront with the View Basin Sub Area plan and Shoreline Master Program update; and

WHEREAS, incorporating the review of gross floor area for the waterfront zones into the View Basin Sub Area plan and Shoreline Master Program update will allow considerable public discussion of the regulations; and

WHEREAS, the City desires to add a new definition of underground floor area to implement the changes to the gross floor area definition for all zones except the waterfront and RB-1 zones; and

WHEREAS, the new definition of underground floor area excludes certain access points from the requirement to be entirely below grade for rescue and escape purposes and general access purposes; and

WHEREAS, the City desires to add a new definition of attic to implement the changes to the gross floor area definition for all zones except the waterfront and RB-1 zones; and

WHEREAS, the new definition of attic is consistent with International Building Code definitions; and

WHEREAS, the City desires to exempt attics from the gross floor area of all zones except the waterfront and RB-1 zones to be consistent with International Building Code's definitions and regulation of attic space; and

WHEREAS, The City desires to exempt water tanks, cooling towers, mechanical equipment and attics from all definitions of gross floor area for purposes of calculating off-street parking requirements as those spaces are not habitable nor can be occupied and, therefore, do not generate users needing parking spaces; and

WHEREAS, The City desires to exempt garage space from all definitions of gross floor area for purposes of calculating off-street parking requirements as it is unnecessary to require additional parking stalls for garage space; and

WHEREAS, the Gig Harbor City Council directed the Planning Commission to review performance standards related to underground parking and underground structures on January 23, 2006; and

WHEREAS, the City Planning Commission held work study sessions on performance standards related to underground parking and underground structures on January 18, 2007; February 1, 2007; June 21, 2007; November 15, 2007; December 6, 2007; December 20, 2007; and, January 3, 2008; and

WHEREAS, the Gig Harbor City Council reviewed the work study session and draft recommendations of the Planning Commission on January 28, 2008 and directed the Planning Commission to hold a public hearing in the 2<sup>nd</sup> quarter of 2008 and make a final recommendation to the Council; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on April 16, 2008; and

WHEREAS, on April 16, 2008, a copy of this Ordinance was sent to the Washington Department of Community, Trade and Economic Development, pursuant to RCW 36.70A.106; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on April 17, 2008 and made a recommendation of approval to the City Council; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on December 8, 2008; and

WHEREAS, the Gig Harbor City Council held a work-study session on the Ordinance on January 5, 2009; and

WHEREAS, the Gig Harbor City Council directed staff to exclude the RB-1 zone from the definition changes at the January 5, 2009 work-study session; and

WHEREAS, due to the substantive change made at the Council work-study session, the Gig Harbor City Council considered the Ordinance at a second first reading and public hearing on January 26, 2009; and

WHEREAS, on \_\_\_\_\_, 2009, the City Council adopted this Ordinance at second reading during a regular City Council meeting; Now, therefore;

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. A new Section 17.04.086 of the Gig Harbor Municipal Code is hereby added to the Gig Harbor Municipal Code, to read as follows:

**17.04.086 Attic.**

“Attic” means finished or unfinished space with a headroom of less than seven feet between the ceiling beams of the top story and the roof rafters.

Section 2. Section 17.04.360 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.04.360 Floor area, gross.**

A. “Gross floor area” in the WR, WM, WC and RB-1 zoning districts means:

1. The sum of the horizontal area of the several floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls. The gross floor area includes basement space, garage space, the elevator shafts and stairwells at each floor, mechanical equipment rooms, finished attics with a headroom of seven and one-half feet or more, penthouse floors, interior balconies and mezzanines, and enclosed porches. The gross floor area shall not include accessory water tanks and cooling towers, mechanical equipment, and unfinished attics regardless of headroom.

2. For purposes of determining off-street parking requirements, gross floor area shall mean the sum of the horizontal area of the floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls including basement space, the elevator shafts and stairwells at each floor, mechanical equipment rooms, finished attics with a headroom of seven and one-half feet or more,

penthouse floors, interior balconies and mezzanines, enclosed porches; but, shall not include garage space, accessory water tanks and cooling towers, mechanical equipment and unfinished attics regardless of headroom.

B. "Gross floor area" in the PI, R-1, RLD, R-2, RMD, R-3, RB-2, DB, B-1, B-2, C-1, PCD-C, ED, PCD-BP, PCD-NB and MUD zoning districts means:

1. The sum of the horizontal area of the floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls. The gross floor area includes garage space, the elevator shafts and stairwells at each floor, mechanical equipment rooms, penthouse floors, interior balconies and mezzanines, and enclosed porches. The gross floor area shall not include accessory water tanks and cooling towers, mechanical equipment, attics as defined by GHMC 17.04.086, and underground floor area as defined by GHMC 17.04.362.

2. For purposes of determining off-street parking requirements, gross floor area shall mean the sum of the horizontal area of the floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls including the elevator shafts and stairwells at each floor, mechanical equipment rooms, penthouse floors, interior balconies and mezzanines, enclosed porches and underground floor area; but, shall not include garage space, accessory water tanks and cooling towers, mechanical equipment and attics.

Section 3. A new Section 17.04.362 of the Gig Harbor Municipal Code is hereby added to the Gig Harbor Municipal Code, to read as follows:

**17.04.362 Floor area, underground.**

"Underground floor area" means the floor area of a building, structure, story, or portion of a story constructed entirely below natural or finished grade, whichever is lower, excluding below grade window wells required for rescue and escape and up to an additional 24 linear feet of access.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be 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 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 \_\_\_\_, 2009.

CITY OF GIG HARBOR

\_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Molly Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

\_\_\_\_\_  
Angela Belbeck, City Attorney

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO:





## COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR HUNTER AND MEMBERS OF THE CITY COUNCIL**  
**FROM: HARRIS ATKINS, VICE CHAIR, PLANNING COMMISSION**  
**SUBJECT: PROPOSED AMENDMENTS RELATED TO UNDERGROUND STRUCTURES**  
**DATE: AUGUST 21, 2008**

*Harris Atkins*

In response to a motion by the City Council for the Planning Commission to review several issues related to underground parking and underground structures (motion attached), the Planning Commission held work study sessions on these issues on January 18, 2007; February 1, 2007; June 21, 2007; November 15, 2007; December 6, 2007; December 20, 2007; and, January 3, 2008.

On January 28, 2008, the Council reviewed the work and recommendations of the Planning Commission and directed the Planning Commission to hold a public hearing in the 2<sup>nd</sup> quarter of 2008 and make a final recommendation to the Council. The Commission public hearing was held on April 17, 2008; no members of the public provided testimony at the hearing.

After considerable discussion and having reviewed information provided by the Building Official / Fire Marshal and Planning staff at those meetings and hearings, the Planning Commission recommends the following:

1. The Planning Commission recommends the enclosed amendments to the definition of "gross floor area" and the addition of definitions for "attic" and "underground floor area".
2. The Planning Commission recommends that the current definition for gross floor area remain for the Waterfront Commercial (WC), Waterfront Millville (WM), and Waterfront Residential (WR) zones for the following reasons:
  - a. The City has begun the development of the View Basin Sub Area plan. The plan will define the citizens' vision for the character of the view basin, which includes the waterfront along Gig Harbor Bay, and will include policies and regulations on building size, architectural character, uses and amenities for the view basin. The issue of underground garages and underground structures in the waterfront zones is part of View Basin scope of work. The View Basin Sub Area plan is expected to be finished in November 2009.
  - b. In addition, the City has begun an update of the Shoreline Master Program. The update will look at environmental and aesthetic impacts of shoreline development and will inform allowed uses and setbacks along the waterfront. Recommendations for development standards related to the shoreline are expected to be finished in November 2009.

- c. Development of new performance standards for the waterfront zones at this time, such as building size and parking regulations, would be premature given the extensive comprehensive planning the City has begun along the waterfront.
- d. Parcels along the waterfront have performance standards that often allow more utilization of the upland portion of the site than parcels in other zones. Developments on waterfront parcels are often allowed to build right up to the ordinary high water mark (bulkhead) as the rear yard setback is usually in the water. In addition, developments on waterfront parcels can use the water portion of the lot as the required pervious surface, thereby covering the majority of the upland portion with hard surfaces or buildings. Finally, waterfront parcels can have both water uses (marinas, piers, floats) and upland uses (offices, residential, marine sales, parking) thereby increasing the number of uses and activity associated with a parcel.
- e. All but six of the parcels in the waterfront zones are included in City's Waterfront View Corridor designation which was established to protect views of the harbor along the Harborview Drive and North Harborview Drive public rights-of-way for public enjoyment. Views to the water should be considered when discussing allowable building size. Exempting underground portions of a building from gross floor area without reducing the allowed gross floor area in waterfront zones could have the adverse effect of reducing view corridors. Waterfront view corridors and building size allowances should be reviewed comprehensively as part of the View Basin Sub Area Plan and Shoreline Master Program Update.

The Commission feels that outside of the waterfront areas, an allowance should be provided which would exempt those portions of a building that were truly underground from gross floor area limitations. We found no compelling zoning-based reason to include underground floor area in the gross floor area outside the waterfront area. However, in the waterfront zones, the Commission felt the factors discussed above warrant further review of the underground building issues as part of the View Basin Sub Area Plan and Shoreline Master Program Update.



## COMMUNITY DEVELOPMENT DEPARTMENT

**SUBJECT: ZONE 07-0008 – GROSS FLOOR AREA DEFINITION AMENDMENT**  
**DATE: August 21, 2008**

The Planning Commission is proposing an amendment to the definition of "gross floor area" which would apply to the PI, R-1, RLD, R-2, RMD, R-3, RB-1, RB-2, DB, B-1, B-2, C-1, PCD-C, ED, PCD-BP, PCD-NB and MUD zones. No substantive changes are proposed to the definition of "gross floor area" for the waterfront (WC, WM, and WR) zoning districts. In addition, new definitions for "attic" and "underground floor area" are proposed.

The proposed definitions are below:

**Gross Floor Area:**

## 17.04.360 Floor area, gross

A. "Gross floor area" in the WR, WM and WC districts means:

1. The sum of the horizontal area of the several floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls. The gross floor area includes basement space, garage space, the elevator shafts and stairwells at each floor, mechanical equipment rooms, finished attics with a headroom of seven and one-half feet or more, penthouse floors, interior balconies and mezzanines, and enclosed porches. The gross floor area shall not include accessory water tanks and cooling towers, mechanical equipment, and unfinished attics regardless of headroom.

2. For purposes of determining off-street parking requirements, gross floor area shall mean the sum of the horizontal area of the floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls including basement space, the elevator shafts and stairwells at each floor, mechanical equipment rooms, finished attics with a headroom of seven and one-half feet or more, penthouse floors, interior balconies and mezzanines, enclosed porches; but, shall not include garage space, accessory water tanks and cooling towers, mechanical equipment and unfinished attics regardless of headroom.

B. "Gross floor area" in the PI, R-1, RLD, R-2, RMD, R-3, RB-1, RB-2, DB, B-1, B-2, C-1, PCD-C, ED, PCD-BP, PCD-NB and MUD districts means:

1. The sum of the horizontal area of the floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls. The gross floor area includes garage space, the elevator shafts and stairwells at each floor, mechanical equipment rooms, penthouse floors, interior balconies and mezzanines, and enclosed porches. The gross floor area shall not include accessory water tanks and cooling towers, mechanical equipment, attics as defined by GHMC 17.04.086, and underground floor area as defined by GHMC 17.04.362.

2. For purposes of determining off-street parking requirements, gross floor area shall mean the sum of the horizontal area of the floor(s) of a building or

buildings measured from the exterior faces of exterior walls and from centerlines of division walls including the elevator shafts and stairwells at each floor, mechanical equipment rooms, penthouse floors, interior balconies and mezzanines, enclosed porches and underground floor area; but, shall not include garage space, accessory water tanks and cooling towers, mechanical equipment and attics.

**Attic:**

17.04.086 Attic.

"Attic" means finished or unfinished space with a headroom of less than seven feet between the ceiling beams of the top story and the roof rafters.

**Underground Floor Area:**

17.04.362 Floor area, underground.

"Underground floor area" means the floor area of a building, structure, story, or portion of a story constructed entirely below natural or finished grade, whichever is lower, excluding below grade window wells required for rescue and escape and up to an additional 24 linear feet of access.



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: GIG HARBOR CITY COUNCIL**  
**FROM: JENNIFER KESTER, SENIOR PLANNER**  
**SUBJECT: GROSS FLOOR AREA WORK-STUDY SESSION**  
**DATE: DECEMBER 18, 2008**

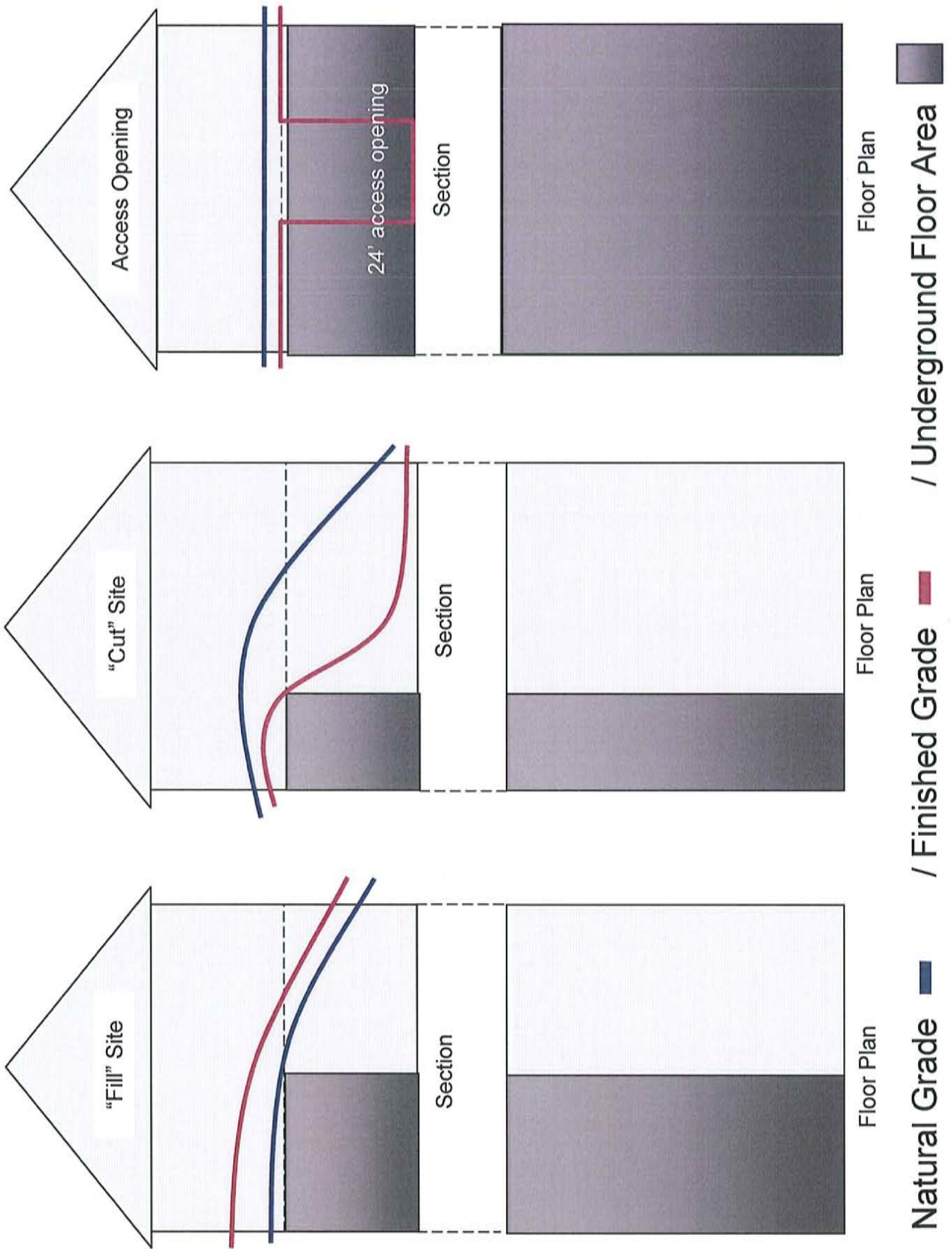
At this upcoming work-study session, I hope to have the opportunity to better explain the proposed definitions and answer any of your questions. Please feel free to bring development scenarios to the meeting and staff can explain how these proposed definitions will relate to that development.

The proposed ordinance makes four (4) basic changes:

1. States how gross floor area is calculated for parking
2. Exempts underground floor area and attics from gross floor area for all zones except the waterfront zones
3. Adds a definition of attic which is consistent with the definition found in the building code.
4. Adds a definition of underground floor area that is conservative in how grade is measured, but still allows limited vehicular and pedestrian outside access to underground floors.

I have enclosed the diagram handed out at the December 8<sup>th</sup> Council meeting as well as the proposed ordinance. The diagram illustrates how the underground floor area definition would apply to three different development scenarios:

1. Fill-site: This image illustrates what would be considered underground floor area if a developer wanted to mound earth around a lower basement or parking garage rather than sink the floor completely below existing grade.
2. Cut-site: This image illustrates what would be considered underground floor area if a developer chose to lower the existing grade of a site to expose more of the building.
3. Access-opening: This image illustrates that an underground floor is still considered underground floor area even if 24 feet of access to the outside (vehicular or pedestrian) is provided.





Subject: "96th Street Annexation"
(ANX 07-0002)

Proposed Council Action:

Adoption of a final ordinance approving the
96th Street Annexation.

Dept. Origin: Planning Department

Prepared by: Tom Dolan [Signature]
Planning Director

For Agenda of: February 9, 2009

Exhibits: Draft Ordinance

Initial & Date

Concurred by Mayor:

Approved by City Administrator: [Signature] 1/29

Approved as to form by City Atty: approved by e-mail

Approved by Finance Director: N/A

Approved by Department Head: TD 1/28/09

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and dollar amounts (\$0).

INFORMATION / BACKGROUND

On April 28, 2008 the City Council approved a resolution declaring its intent to approve the 96th Street Annexation. Subsequent to the Council's action, Staff prepared a Notice of Intention which was transmitted to the Pierce County Boundary Review Board. During the Board's appeal period, the Haven of Rest cemetery appealed the annexation. In responding to the Cemetery's concerns, the City Council approved to ordinances that eliminated provisions in the Gig Harbor Municipal Code that prohibited cemeteries within the City limits and made them a non-conforming use. At the Boundary Review Board hearings to consider the appeal by Haven of Rest, the cemetery indicated that because the City had revised the GHMC to allow cemeteries, they wished to withdraw the appeal. As a result of the withdrawal of the appeal, the Boundary Review Board issued a decision approving the annexation. State law provides that after the Boundary Review Board approves an annexation, the City must finalize the annexation by adopting an ordinance that formally accepts the annexed area into the City.

STAFF ANALYSIS

Staff recommends adoption of the ordinance.

**BOARD OR COMMITTEE RECOMMENDATION**

None

**RECOMMENDATION / MOTION**

**Move to: Adopt Ordinance \_\_\_\_\_ formally approving the 96<sup>th</sup> Street Annexation.**

**EXHIBITS – Draft Ordinance**



CITY OF GIG HARBOR  
ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO ANNEXATION AND ZONING, ANNEXING APPROXIMATELY 249 ACRES OF PROPERTY LOCATED GENERALLY BETWEEN ROSEDALE STREET ON THE SOUTH, 96<sup>TH</sup> STREET ON THE NORTH AND EAST OF STATE ROUTE 16 (ANX 07-0002), ADOPTING MEDIUM DENSITY RESIDENTIAL (R-2) ZONING, EMPLOYMENT DISTRICT (ED) ZONING, AND REQUIRING THE PROPERTY OWNERS TO ASSUME THEIR PROPORTIONATE SHARE OF INDEBTEDNESS.**

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WHEREAS, the City of Gig Harbor received a Notice of Intent to Annex approximately 249 acres of property located generally between Rosedale Street on the south, 96<sup>th</sup> Street on the north and east of State Route 16, adjacent to the existing City limits and within the City's Urban Growth Area (UGA), located in Pierce County; and

WHEREAS, the Notice of Intent was signed by the owners of not less than ten percent (10%) of the acreage of the property; and

WHEREAS, on November 26, 2007, the City Council met with the initiators of the petition and voted (Young/Dick, 7-0-0) to authorize circulation of the annexation petition subject to certain conditions including adoption of pre-annexation Single-Family Residential (R-2 and ED) zoning, preparation of a wetland analysis for the property, City approval of the withdrawal of the area by PenMet Parks from the annexed area and requiring that the property owners assume all of the existing indebtedness of the area being annexed; and

WHEREAS, on February 26, 2008, the petition for annexation of the property described in Exhibit A and graphically depicted on Exhibit B was received by the City; and

WHEREAS, on March 19, 2008, the Pierce County office of the Assessor-Treasurer certified the signatures on the petition for annexation of the property described in Exhibit A and graphically depicted on Exhibit B; and

WHEREAS, the property described in Exhibit A and graphically depicted on Exhibit B proposed to be annexed is within the Urban Growth Area as established by Pierce County and included in the Comprehensive Plans of both the County and the City of Gig Harbor; and

WHEREAS, the City of Gig Harbor Comprehensive Plan, adopted in December, 2004, established the land use map designation for this area as Employment District and Residential Medium, along with pertinent goals and objectives, to guide the development of the annexation area over the next twenty years; and

WHEREAS, the proposed pre-annexation zoning of Medium Density Residential (R-2) and Employment District (ED) being applied to the property described in Exhibit A and graphically depicted on Exhibit B is consistent with the City of Gig Harbor Comprehensive Land Use Plan designation of Residential Medium and Employment District; and

WHEREAS, on April 28, 2008, the City Council, following a public hearing on the annexation petition, voted (Young/Conan, 7-0-0) to declare its intent to authorize and approve the annexation and the proposed pre-annexation

Medium Residential (R-2) and Employment District (ED) zoning for the area described in Exhibit A and graphically depicted on Exhibit B, subject to Boundary Review Board approval; and

WHEREAS, on July 1, 2008, the Notice of Intention, together with supporting documentation, was submitted to the Chief Clerk of the Pierce County Boundary Review Board; and

WHEREAS, on July 14, 2008, the Chief Clerk of the Pierce County Boundary Review Board deemed the annexation proposal as complete, set the official filing date as July 1, 2008, initiated the forty-five (45) day review period, and noted that the period during which jurisdiction could be invoked would expire on August 15, 2008; and

WHEREAS, on December 2, 2008, the Pierce County Boundary Review Board issued a written decision approving the annexation of the property as described in Exhibit A and graphically depicted in Exhibit B; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meetings of January 26 and February 9, 2009; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR,  
WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. The Gig Harbor City Council hereby approves the annexation of approximately 249 acres of property located generally between Rosedale Street on the south, 96<sup>th</sup> Street on the north and east of State Route 16, adjacent to the existing City limits, located in Pierce County, as described in

Exhibit A and graphically depicted on Exhibit B, attached hereto, as part of the City of Gig Harbor, contingent upon compliance with the following conditions:

- A. Pursuant to the terms of the annexation petition, the approximately 249 acres of property located generally between Rosedale Street on the south, 96<sup>th</sup> Street on the north and east of State Route 16, adjacent to the existing City limits, located in Pierce County, as described in Exhibit A and graphically depicted on Exhibit B, shall be assessed and taxed at the same rate and on the same basis as property within the City, including assessments for taxes and payment of any bonds issued or debts contracted prior to or existing as of the date of annexation;
- B. All property within the area described in Exhibit A and graphically depicted on Exhibit B shall be zoned as Medium-Density Residential (R-2) and Employment District (ED), in accordance with the Gig Harbor Municipal Code, Title 17; and
- C. The City will, pursuant to RCW 35.61.360, approve the withdrawal of this area by PenMet Parks from its boundaries by resolution.

Section 2. The Planning Director is hereby instructed to effectuate the necessary changes to the Official Zoning Map of the City in accordance with the zoning established in Section 1.

Section 3. The Gig Harbor City Clerk hereby declares the property described in Exhibit A and graphically depicted in Exhibit B to be contiguous with the boundaries of the City of Gig Harbor.

Section 4. The City Clerk is hereby directed to record a certified copy of this ordinance with the Office of the Pierce County Auditor.

Section 5. This ordinance shall take effect five days after passage and publication as required by law.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 9<sup>th</sup> day of February, 2009.

APPROVED:

\_\_\_\_\_  
MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;  
OFFICE OF THE CITY ATTORNEY:

BY: \_\_\_\_\_  
ANGELA BELBECK

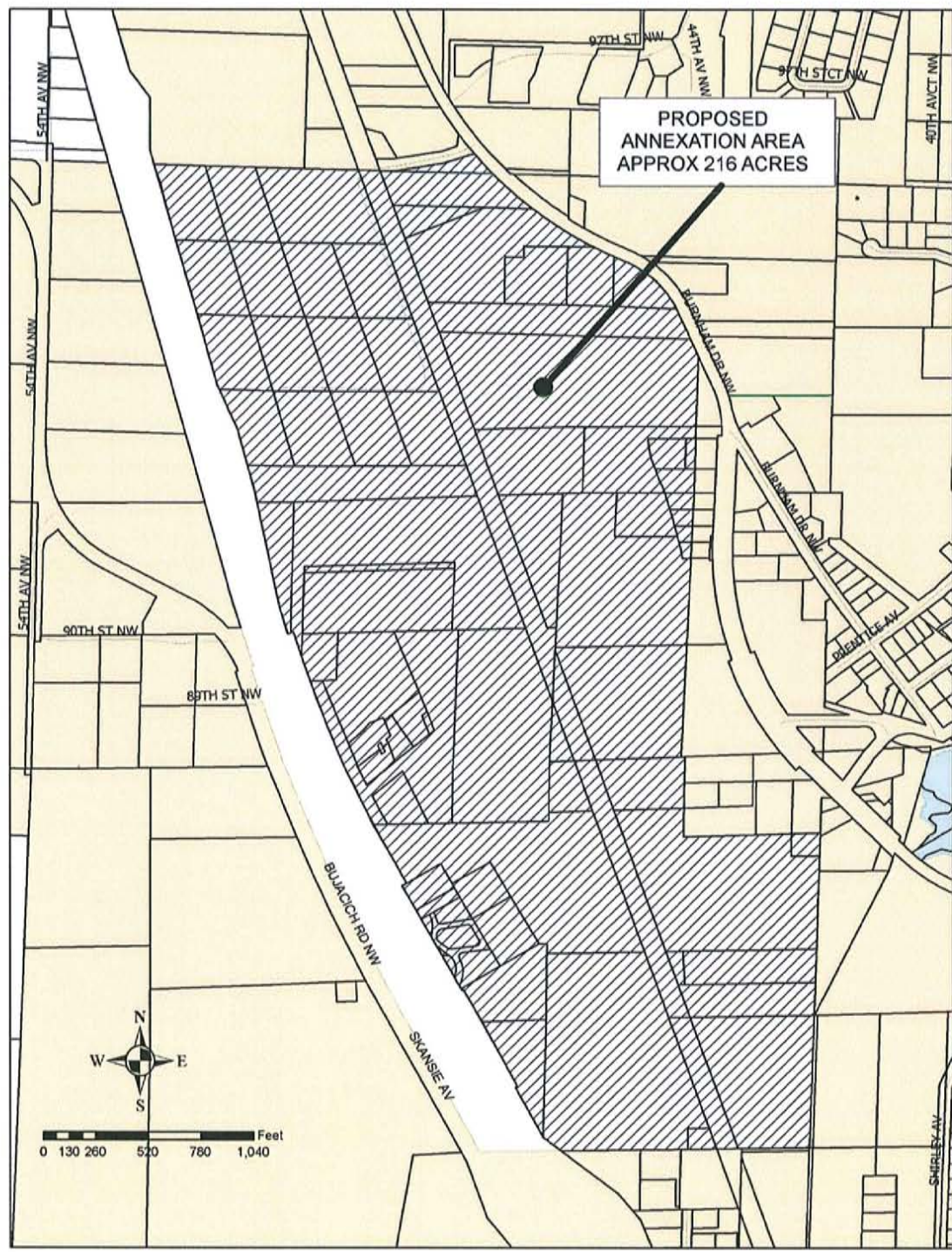
FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO.

**Exhibit A**  
**96<sup>th</sup> STREET ANNEXATION (ANX 07-0002)**

THAT PORTION OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST AND SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN IN PIERCE COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 6; THENCE EASTERLY ALONG THE NORTH LINE OF SAID SECTION A DISTANCE OF 310 FEET, MORE OR LESS, TO THE SOUTHWESTERLY MARGIN OF SR-16 AND THE TRUE POINT OF BEGINNING; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY MARGIN A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE NORTH LINE OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF SAID SECTION 6; THENCE EASTERLY ALONG SAID NORTH LINE A DISTANCE OF 1740 FEET, MORE OR LESS, TO THE WEST LINE OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 6; THENCE NORTHERLY ALONG SAID WEST LINE A DISTANCE OF 1565 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE NORTH 400 FEET OF THE SOUTHEAST QUARTER OF SAID SECTION 6; THENCE WESTERLY ALONG SAID SOUTH LINE A DISTANCE OF 660 FEET, MORE OR LESS, TO THE WEST LINE OF THE EAST HALF OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 6; THENCE NORTHERLY ALONG SAID WEST LINE AND THE WEST LINE OF THE EAST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 6 A DISTANCE OF 2370 FEET, MORE OR LESS, TO THE SOUTHWESTERLY MARGIN OF BURNHAM DRIVE; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY MARGIN A DISTANCE OF 1430 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID SECTION 6; THENCE CONTINUING NORTHWESTERLY ALONG SAID SOUTHWESTERLY MARGIN A DISTANCE OF 120 FEET, MORE OR LESS, TO THE SOUTHERLY MARGIN OF 96<sup>TH</sup> STREET NW; THENCE SOUTHWESTERLY ALONG SAID SOUTHERLY MARGIN A DISTANCE OF 420 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID SECTION 6; THENCE WESTERLY ALONG SAID NORTH LINE A DISTANCE OF 1725 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

**Exhibit B**  
**96<sup>th</sup> STREET ANNEXATION (ANX 07-0002)**  
**ANNEXATION AREA MAP**





**Subject:** Public Hearing and First Reading of Ordinance - Joint Use Parking in Mixed Use Developments (ZONE 08-0010)

**Proposed Council Action:** Review ordinance and approve at second reading.

**Dept. Origin:** Planning

**Prepared by:** Jennifer Kester  
Senior Planner *JK*

**For Agenda of:** February 9, 2008

**Exhibits:** Draft Ordinance; Planning Commission Recommendation; Application Packet; Letter from Chamber

Initial & Date

**Concurred by Mayor:** \_\_\_\_\_

**Approved by City Administrator:** *RJK*

**Approved as to form by City Atty:** approved by e-mail 1/30/2009

**Approved by Finance Director:** N/A

**Approved by Department Head:** *TD 1/31/09*

Expenditure	Amount	Appropriation
Required	Budgeted	Required
0	0	0

**INFORMATION / BACKGROUND**

Attached for the Council's consideration are proposed amendments to the Chapter 17.72 GHMC, Off-Street Parking and Loading Requirements.

On August 22, 2008, Gateway Capital LLC filed a text amendment application to revise how required parking is calculated for mixed use developments, as defined by a new mixed use development definition. Mixed use developments that provide common parking areas would be able to share required spaces for several different uses when those uses include both daytime and nighttime peak use. The parking required for either the daytime peak uses or the nighttime peak uses, whichever is smaller, could be reduced by 50 percent.

This amendment is proposed to be applicable to the RB-1, RB-2, B-1, B-2, C-1, DB, PCD-C, PCD-BP, PCD-NB, ED and MUD zoning districts.

The Planning Commission held work study sessions on this amendment on October 2, 2008; October 16, 2008, November 6, 2008; January 7, 2009; and, January 15, 2009. The Commission public hearing was held on January 7, 2009. There was no testimony at the public hearing. On January 15, 2009, The Planning Commission voted unanimously to recommend approval of the text amendment. A copy of the Commission recommendation is attached.



After the Commission's recommendation, the City Attorney recommended a minor language modification to new GHMC subsection 17.72.080(A)(3), which has been incorporated into the ordinance. The modification did not change the intent of the language; only made the provision clearer.

**POLICY CONSIDERATIONS**

Zoning text amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. There are no criteria for approval of a zoning text amendment, but the Council should generally consider whether the proposed amendment furthers the public health, safety and welfare, and whether the proposed amendment is consistent with the Gig Harbor Municipal Code, the Comprehensive Plan and the Growth Management Act (chapter 36.70A RCW). Zoning text amendments are considered a Type V legislative action (GHMC 19.01.003).

**Gig Harbor Comprehensive Plan:**

Goal 3.2.3 of the Gig Harbor Comprehensive Plan states:

**3.2.3. Limit asphalt areas.**

*Allow and encourage shared parking between developments*

**Gig Harbor Municipal Code:**

Chapter 17.72 Off-Street Parking and Loading Requirements includes the following provisions for joint use parking:

**17.72.060 Joint use of required parking spaces for the downtown business (DB) and the waterfront commercial (WC) districts.**

*A. One parking area may contain required spaces for several different uses. Except as otherwise provided in this chapter, the required space assigned to one use may not be credited to any other use which will require parking space simultaneously.*

*B. To the extent that developments that wish to make joint use of the same parking spaces operate at different times, the spaces may be credited to both uses.*

*C. Joint use of parking as specified under this chapter shall be by written agreement between the developments using the parking facilities. The agreement shall be subject to the approval of the city. Said agreement shall be filed with the Pierce County auditor as a covenant running with the land and is deemed binding between the assenting parties. The parking agreement shall have a minimum term of five years and shall specifically provide that the party whose parking will be eliminated or reduced (the "affected party") by the agreement's termination shall notify the city at least six months prior to such termination. The affected party shall secure off-street parking sufficient to meet the code-required parking for the use.*

The Design Manual includes the following language related to common parking:

**17.99.100 Activity center standards.**

*Development within activity centers shall be as follows:*

**B. Identify locations for common parking lots and/or garages.**

*To facilitate clustering of nonresidential structures, provide common parking in all new binding site plans.*

**Staff/Planning Commission Analysis:**

The following is a synopsis of the issues discussed and reviewed by the Planning Commission:

During the work-study sessions the Planning Commission reviewed the shared parking models of nine (9) different municipalities and a consultant's report on shared parking provided by the applicant

In general, the Planning Commission felt that shared parking, when appropriately applied is beneficial to a community. Property can be used more efficiently and as a result, less land is consumed by impervious surface and stormwater ponds and, more trees can be retained.

The proposed amendment will help reduce commercial sprawl and prevent parking lots from dominating the urban setting which is a goal of the City.

The applicant originally proposed that the shared parking for mixed use development provision apply only to the RB-1, RB-2, B-1, B-2, C-1, DB, PCD-C, and PCD-NB zoning districts, excluding the waterfront zones, MUD, PCD-BP and ED zoning districts. The staff and Commission agreed that waterfront zones should be excluded. Given the current process to update the Shoreline Master Program and related development regulations, it would be premature to apply this provision to the waterfront zones. However, the Commission recommended that the MUD, PCD-BP and ED zones be included in the provision as those zones allow a mix of daytime and nighttime uses. The applicant agreed and included those zones in the amendment that went to the Commission for final recommendation.

Finally, the Planning Commission supported the applicant's proposal to limit the application of this provision to mixed use developments reviewed under one site plan or binding site plan process. The Commission felt it was inappropriate to apply this regulation across multiple site plans as the Commission is unsure how multiple property owners might coordinate access and uses as well as how the City would track such multi-site parking reductions. If this provision is adopted and tested by several traditional mixed use developments, it may be appropriate to revisit this limitation.

**ENVIRONMENTAL ANALYSIS**

The SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the proposed amendments on December 10, 2008 as per WAC 197-11-340(2).

**FISCAL CONSIDERATION**

None

**BOARD OR COMMITTEE RECOMMENDATION**

The Planning Commission is recommending approval of the proposed text amendments.

**RECOMMENDATION / MOTION**

**Move to:** Staff recommends Council review the ordinance and approve at second reading.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE CALCULATION FOR REQUIRED PARKING FOR MIXED USE DEVELOPMENTS IN THE RB-1, RB-2, B-1, B-2, C-1, DB, PCD-C, PCD-BP, PCD-NB, ED AND MUD ZONING DISTRICTS; ALLOWING SHARED PARKING SPACES AND REDUCING THE REQUIRED PARKING SPACES IN THOSE ZONES WHEN MIXED USE DEVELOPMENTS INCLUDE BOTH DAYTIME AND NIGHTTIME PEAK USES AND PROVIDE COMMON PARKING AREAS; ADDING A NEW DEFINITION FOR MIXED USE DEVELOPMENT; ADDING SECTIONS 17.04.558 AND 17.72.080 OF THE GIG HARBOR MUNICIPAL CODE.

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WHEREAS, Goal 3.2.3 of the Gig Harbor Comprehensive Plan states: **Limit asphalt areas.** Allow and encourage shared parking between developments; and

WHEREAS, the City believes that shared parking, when appropriately applied will be beneficial to the City. Property can be used more efficiently and as a result, less land will be consumed by impervious surface and stormwater ponds and more trees can be retained; and

WHEREAS, allowing shared parking and reducing the number of required parking spaces will help reduce commercial sprawl and prevent parking lots from dominating the urban setting which are goals of the City; and

WHEREAS, the City desires to reduce the required parking spaces for mixed use developments which include uses which experience different peak uses times; and

WHEREAS, the City desires to limit the reduction of required parking spaces in mixed use developments to 50% of parking required for either the daytime peak uses or the nighttime peak uses, whichever is smaller, in order to ensure that adequate parking spaces are provided at all hours of the day; and

WHEREAS, the City desires to allow mixed use development joint use parking in all zoning districts which allow a mix of daytime and nighttime uses, with the exception of the waterfront zones; and

WHEREAS, the City does not want to apply this provision to the waterfront zones as the City is currently in the process of updating its Shoreline Master Program and related development regulations; and

WHEREAS, on November 13, 2008, a copy of this Ordinance was sent to the Washington Department of Community, Trade and Economic Development, pursuant to RCW 36.70A.106; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on December 10, 2008 which was not appealed; and

WHEREAS, the City Planning Commission held work study sessions on the joint use parking in mixed use developments on October 2, 2008; October 16, 2008, November 6, 2008; January 7, 2009; and, January 15, 2009; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on January 7, 2009 and made a recommendation of approval to the City Council on January 15, 2009; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on February 9, 2009; and

WHEREAS, on \_\_\_\_\_, 2009, the City Council adopted this Ordinance at second reading during a regular City Council meeting; Now, therefore;

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. A new Section 17.04.558 of the Gig Harbor Municipal Code is hereby added to the Gig Harbor Municipal Code, to read as follows:

**17.04.558 Mixed use development**

"Mixed use development" means a building or group of buildings that includes more than one type of use in the same site plan or binding site plan. Mixed use developments may include a combination of uses such as restaurant, retail (sales level 1), office (government administration office, financial institutions, professional services), commercial entertainment and/or residential.

Section 2. A new Section 17.72.080 of the Gig Harbor Municipal Code is hereby added to the Gig Harbor Municipal Code, to read as follows:

**17.72.080 Joint use of required parking spaces for mixed use developments within the RB-1, RB-2, B-1, B-2, C-1, DB, PCD-C, PCD-BP, PCD-NB, ED and MUD zoning districts.**

A. Mixed use developments that provide common parking areas may share required spaces for several different uses when those uses include both daytime and nighttime peak uses as defined below. When calculating the total required parking for the mixed use development, the

parking required for either the daytime peak uses or the nighttime peak uses, whichever is smaller, may be reduced by 50 percent.

1. For the purposes of this section, the following uses may be considered daytime uses: government administrative office; financial institutions; professional services; retail stores (sales level 1); industrial level 1 uses; restaurants that the Planning Director determines have principal operating hours during the day; and similar primarily daytime uses as determined by the Planning Director.

2. For the purposes of this section, the following uses may be considered nighttime uses: House of religious worship; clubs; commercial entertainment, restaurants that the Planning Director determines have principal operating hours during the night; taverns; and similar primarily nighttime uses as determined by the Planning Director.

3. All uses do not have to be categorized as a daytime or nighttime peak use. No reduction applies to uses that experience peak levels during both the daytime and nighttime.

B. When the use or uses change within a mixed use development and additional parking spaces are required as a result, it is unlawful and a violation of this chapter to begin or maintain such use until such time as the required off-street parking provisions of this chapter are met.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be 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 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 \_\_\_\_, 2009.

CITY OF GIG HARBOR

\_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

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Molly Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

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Angela Belbeck, City Attorney

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO:



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND MEMBERS OF THE CITY COUNCIL  
FROM: HARRIS ATKINS, CHAIR, PLANNING COMMISSION  
SUBJECT: ZONE 08-0010 – JOINT USE PARKING IN MIXED USE DEVELOPMENTS  
DATE: JANUARY 15, 2009

*Harris Atkins*  
1/15/09

**BACKGROUND / INFORMATION:**

Gateway Capital LLC filed a text amendment application to revise how required parking is calculated for mixed use developments, as defined by a new mixed use development definition. Mixed use developments that provide common parking areas would be able to share required spaces for several different uses when those uses include both daytime and nighttime peak use. The parking required for either the daytime peak uses or the nighttime peak uses, whichever is smaller, could be reduced by 50 percent.

The Planning Commission held work study sessions on this amendment on October 2, 2008; November 6, 2008; January 7, 2009; and, January 15, 2009. The Commission public hearing was held on January 7, 2009.

During the work-study sessions the Planning Commission reviewed the shared parking models of nine (9) different municipalities and a consultant's report on shared parking provided by the applicant

In general, the Planning Commission feels that shared parking, when appropriately applied is beneficial to a community. Property can be used more efficiently and as a result, less land is consumed by impervious surface and stormwater ponds and, more trees can be retained.

The proposed amendment will help reduce commercial sprawl and prevent parking lots from dominating the urban setting which is a goal of the City.

Goal 3.2.3 of the Gig Harbor Comprehensive Plan states:

**3.2.3. Limit asphalt areas.**  
*Allow and encourage shared parking between developments*

The Planning Commission supports the applicant's proposal to limit the application of this provision to mixed use developments reviewed under one site plan or binding site plan process. It would be premature to apply this regulation across multiple site plans as the Commission is unsure how multiple property owners might coordinate access and uses as well as how the City would track such multi-site parking reductions.

**RECOMMENDED AMENDMENTS:**

The following section would be added to Chapter 17.72 GHMC, Off-Street Parking and Loading Requirements.

**17.72.080 Joint use of required parking spaces for mixed use developments within the RB-1, RB-2, B-1, B-2, C-1, DB, PCD-C, PCD-BP, PCD-NB, ED and MUD zoning districts.**

A. Mixed use developments that provide common parking areas may share required spaces for several different uses when those uses include both daytime and nighttime peak uses as defined below. When calculating the total required parking for the mixed use development, the parking required for either the daytime peak uses or the nighttime peak uses, whichever is smaller, may be reduced by 50 percent.

1. For the purposes of this section, the following uses may be considered daytime uses: government administrative office; financial institutions; professional services; retail stores (sales level 1); industrial level 1 uses; restaurants that the Planning Director determines have principal operating hours during the day; and similar primarily daytime uses as determined by the Planning Director.

2. For the purposes of this section, the following uses may be considered nighttime uses: House of religious worship; clubs; commercial entertainment, restaurants that the Planning Director determines have principal operating hours during the night; or taverns; and similar primarily nighttime uses as determined by the Planning Director.

3. All uses do not have to be categorized as a daytime or nighttime peak use. Some uses experience peak levels during both the daytime and nighttime.

B. When the use or uses change within a mixed use development and additional parking spaces are required as a result, it is unlawful and a violation of this chapter to begin or maintain such use until such time as the required off-street parking provisions of this chapter are met.

The following section would be added to Chapter 17.04 GHMC, Definitions.

**17.04.558 Mixed use development**

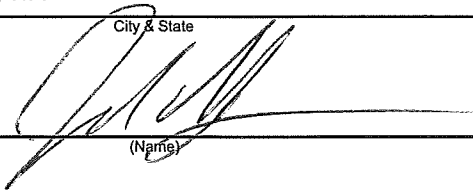
"Mixed use development" means a building or group of buildings that includes more than one type of use in the same site plan or binding site plan. Mixed use developments may include a combination of uses such as restaurant, retail (sales level 1), office (government administration office, financial institutions, professional services), commercial entertainment and/or residential.



<p><b>CITY OF GIG HARBOR APPLICATION</b></p>	<p><b>CITY USE ONLY</b></p>
<p><input checked="" type="checkbox"/> <i>ZONING CODE</i> <b>Comprehensive Plan Text Amendment</b></p> <p><input type="checkbox"/> <b>Comprehensive Plan Map Amendment</b></p>	<p>Date Received: <u>Zone - 08 - 0010</u></p> <p>By: <u>Cinza</u></p> <p>Receipt # <u>1033.00</u> By: _____</p>

**Name of project / proposal:** Zoning Code Text Amendment to allow for joint use parking in mixed use developments

<p><b>Applicant:</b> Gateway Capital, LLC- Kristin Udem <small>(Name)</small></p> <p>4423 Pt Fosdick Dr NW, #306 <span style="float: right;">851-4557</span></p> <p style="text-align: center;"><small>Street Address Phone</small></p> <p>Gig Harbor, WA <span style="float: right;">98335</span></p> <p style="text-align: center;"><small>City &amp; State Zip</small></p> <p><b>Owner:</b> Gateway Capital, LLC <small>(Name)</small></p> <p>4423 Pt. Fosdick Dr. NW, #306 <span style="float: right;">851-4557</span></p> <p style="text-align: center;"><small>Street Address Phone</small></p> <p>Gig Harbor, WA <span style="float: right;">98335</span></p> <p style="text-align: center;"><small>City &amp; State Zip</small></p>	<p style="text-align: center;"><b>Property Location:</b></p> <p>Address: <u>City-wide commercial districts</u></p> <p>Section: _____ Township: _____ Range: _____</p> <p>Assessor's Tax Parcel Number: _____</p> <p>Full Legal Description (attach separate sheet if too long)</p> <p>Acres or Parcel Size _____</p>
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<p><b>I(We):</b> </p> <p style="text-align: center;"><small>(Name)</small></p> <p>_____ <small>Signature Date</small></p> <p>_____ <small>Signature Date</small></p> <p>I do hereby affirm and certify, under penalty of perjury, that I am one (or more) of the owners or owner under contract of the herein described property and that the foregoing statements and answers are in all respects true and correct on my information and belief as to those matters, I believe it to be true.</p>	<p><b>Utilities:</b></p> <p>1. Water Supply (Name of Utility if applicable)</p> <p style="margin-left: 20px;">a. Existing: _____</p> <p style="margin-left: 20px;">b. Proposed: _____</p> <p>2. Sewage Disposal: (Name of Utility if applicable)</p> <p style="margin-left: 20px;">a. Existing: _____</p> <p style="margin-left: 20px;">b. Proposed: _____</p> <p>3. ACCESS: (name of road or street from which access is or will be gained.)</p>
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Current Comprehensive Plan Designation: \_\_\_\_\_ Requested Comprehensive Plan Designation: \_\_\_\_\_

Existing land use: Describe (or illustrate separately) existing land use, including location of all existing structures and setbacks ( in feet) from property lines.

CITY OF GIG HARBOR  
AUG 22 2008

The proposed text changes are shown as a new section for chapter 17.72.

**17.72.080 Joint use of required parking spaces for mixed use developments within the RB-1, RB-2, B-1, B-2, C-1, DB, PCD-C, and PCD-NB zoning districts.**

A. Mixed-use developments that provide common parking areas may share required spaces for several different uses when the uses involved have both daytime and nighttime peak use times as defined below. When calculating the total required parking, the parking for either the day time peak uses or the nighttime peak uses, whichever is smaller, may be reduced by 50 percent.

1. Daytime uses established. For the purposes of this section, the following uses are considered as daytime uses: government administrative office; financial institutions; professional services; retail stores (sales level 1); industrial level 1 uses; and similar uses are determined by the Planning Director.

2. Nighttime uses established. For the purposes of this section, the following uses are considered as nighttime uses: House of religious worship; clubs; commercial entertainment, restaurants; or taverns; and similar primarily nighttime uses as determined by the Planning Director.

3. All uses do not have to be categorized as a daytime or nighttime peak use. Some uses experience peak levels during both the daytime and nighttime.

Currently, the Gig Harbor Municipal Code does not have a definition for Mixed Use. Below is the proposed definition for Chapter 17.04:

Mixed Use Developments are developments that combine more than one type of use on the same site. These developments may include a combination of restaurant, retail, office, commercial entertainment and/or residential.

CITY OF GIG HARBOR  
AUG 22 2008

Item 4 Written Statement for Text Amendment Application

- a. Gateway Capital, LLC is requesting a Zoning Code text amendment to the parking requirements contained in GHMC 17.72, that would add a new section of code to allow for joint use or shared parking spaces for mixed use developments when they contain uses that have different times of peak parking demands. The purpose of this request is to more efficiently utilize commercial property by reducing excess parking requirements. By adding flexibility to the parking requirements, when appropriate, less land would be developed with impervious surface which would help the environment by reducing drainage runoff and by reducing the amount of radiant heat that is generated from paved surfaces that enters the environment (heat island effect). Additionally, by having requirements that allow joint use parking for compatible uses, it would allow for a more efficient development of land which ultimately will help to reduce sprawl and represent an aesthetic which is more consistent with the City's Design Manual which contains requirements that prevent parking lots from dominating Gig Harbor's urban setting.

Many cities have codes that allow for joint use parking for uses that have different times of peak parking demand. This is a growing national trend. Another growing trend is for cities to even identify specific uses which have peak parking demands during the daytime and specific uses with peak parking demand in the nighttime. Uses such as general office, retail stores and banks have peak demands during daytime hours while uses such as restaurants and theaters have peak nighttime demands. Houses of religious worship generally have peak demands on evenings and weekends. When multiple uses are located within the same project site, it is the ideal situation for sharing the required parking spaces.

In addition to the environmental and design benefits, more efficient parking provides a more positive public perception of a commercial development's vitality as well as the municipality it is located within. When there are vast underutilized parking lots, consumers have a perception that it is an underperforming development. When parking lots are more fully utilized, there is a positive perception that it is a popular shopping/dining area. In addition to providing a local tax base along with amenities for local residences, the vitality of commercial developments provides an aesthetic benefit to the community by having a well maintained development.

- b. This amendment would be consistent with the Washington State Growth Management Act because it would encourage more efficient and responsible use of land. Allowing joint use parking reduces the amount of impervious parking surfaces required for site development which helps minimize stormwater run-off treatment, preserve land for landscaping,

and/or natural vegetation and open spaces. More efficient use of commercial land would also help reduce suburban sprawl. In addition to these land use benefits that are consistent with the Comprehensive Plan, more efficient use of parking commensurate with other similar projects of its kind would reduce the “heat island effect” caused from excessive and unnecessary large asphalt areas. These environmental benefits are consistent with Washington State’s goals to protect the environment.

- c. This amendment would be consistent with adopted county wide planning policies because it would encourage a more efficient use of commercial property within the urban growth boundary by not creating unused and unneeded parking. Additionally, adverse impacts to the environment would be reduced.
- d. The proposed amendment to allow for joint use parking for uses with differing parking demands at mixed use developments would further the purpose of the City’s comprehensive plan because it would allow for a more efficient use of land. This amendment to reduce the creation of unneeded parking spaces would help create an urban pattern where development could be more compact and less divided by large “seas of asphalt”. This encourages pedestrian activity and allows for more land for landscaping and common areas. Using flexible performance standards would also allow for a decrease in impervious coverage which reduces stormwater run off/treatment and excess radiant heat. The environmental benefits as well as the urban design benefits that help create a sense of place and define the community are consistent with the goals identified in the comprehensive plan.
- e. The proposed amendment is internally consistent with the City’s comprehensive plan as well as other adopted city plans and codes. The proposal to amend the parking requirements to allow for shared parking for mixed use developments is consistent with the following specific comprehensive plan policies:

**Community Design Goal 3.1.1 Create outdoor “people” spaces.**

The proposed amendment for shared parking would help reduce unnecessary parking which would allow for the land to be used for uses such as outdoor people spaces. Additionally, reducing large areas of asphalt would help to facilitate pedestrian movement throughout developed sites by providing varying interests for site visitors which recognize the pedestrian over motorized vehicles.

**Community Design Goal 3.2.3 Limit asphalt areas: “Allow and encourage shared parking between developments”**

The proposal to allow shared parking for mixed use developments that contain uses that have opposing peak parking demands would allow for a more

efficient use of land. Shared parking standards would allow for a reduced amount of unused parking spaces and asphalt areas. Reduced asphalt areas would benefit the urban form as well as the environment.

**Environment Goal 4.4.4 Stormwater – development standards**

*“Prevent surface water contamination and erosion of natural surface drainage channels due to ill-conceived or poorly designed urban development. Promote the use of storm water retention ponds and holding areas, natural drainage and percolation systems, permeable surface improvements, clustered developments and other concepts which will reduce stormwater volumes and velocities.”* The proposed text amendment to allow for shared parking would be consistent with this plan policy because it would reduce the need to create additional, unneeded parking and impervious surfaces.

In addition to being consistent with the comprehensive plan, this proposed text amendment would be consistent with the existing zoning code. The request would allow for a more efficient use of space and would not allow uses that are otherwise not allowed within the zone. This proposed amendment would enable reduced areas of asphalt that would reduce the “heat island” effect and stormwater run-off.

- f. The proposed text amendment would meet concurrency requirements for transportation because it would not increase trips to the site; it would merely enable a more efficient use of the site.
- g. A SEPA checklist has been submitted with this application. Critical areas review would not be required with this request.



DAVID EVANS  
AND ASSOCIATES INC.

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## MEMORANDUM

**DATE:** November 3, 2008

**TO:** Kristin Udem  
Gateway Capital, LLC  
4423 Pt. Fosdick Drive NW, Suite 100  
Gig Harbor, WA 98335

**FROM:** Alan M. Tebaldi, P.E.

**SUBJECT:** Joint Use Parking Proposal for Gig Harbor

**PROJECT:** GACA0000001

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In response to your memorandum dated October 21, 2008, I have reviewed the submittal packet you prepared for the City of Gig Harbor and have developed recommendations for a proposed formula for calculating a joint use parking reduction. I have limited my review to joint use parking reductions as a result of differing peak hours between uses, consistent with the proposed code language you presented to the Planning Commission.

I reviewed joint use parking codes for a number of municipalities in the Puget Sound area and found that their policies generally follow three methodologies. The first methodology identifies daytime and nighttime uses and allows a percent of the daytime use parking requirement to be provided by the nighttime use, and vice-versa. Seattle, Tacoma and Puyallup each use this methodology, although each allows a different reduction. Seattle allows a 90% reduction, Puyallup allows a 75% reduction and Tacoma allows a 50% reduction. This methodology is very simple to apply, but is not as sensitive to the specific combination of joint uses as the other two methodologies.

The second methodology used by municipalities requires an analysis to quantify the expected peak parking demand at various times of the day for the proposed joint uses. Some municipalities (Bellevue and Issaquah) allow a reduction to the greater of the daytime use or nighttime use parking requirement, but only if there is no overlap of operating hours. Where operating hours overlap, both municipalities allow a 10% reduction of required parking under specific conditions. Most of the other municipalities employing this methodology require a full traffic study to identify expected parking demand throughout the day and establish the joint use parking requirement as the highest peak parking demand. This methodology is more labor intensive to both the developer, who must prepare the analysis, and the city, which must review and approve the analysis. In my opinion, the benefits of this site specific analysis do not justify the extra expense and time commitment.

The third methodology, used by the City of Auburn, provides a table showing percentage of parking demand by land use category for daytime, evening, nighttime and weekend use. This table is used to calculate a joint use parking demand for the various time periods. The joint use parking requirement is the greatest of those calculated numbers.

Kristin Udem  
November 3, 2008  
Page 2

Attached for your consideration is a shared parking report prepared by the Victoria Transport Policy Institute (VTPI), an independent research organization dedicated to developing innovative and practical solutions to transportation problems. This report provides a good overview of shared parking issues. Please note that Table 3 provides recommended parking demand percentages very similar to the Auburn code.

In order to remain consistent with the proposed language you previously submitted to the Planning Commission, I would recommend the first methodology for calculating the joint use parking requirement. To be conservative, I would suggest using the 50% reduction adopted by the City of Tacoma. That level of reduction is also consistent with the figures used by the VTPI and the City of Auburn. I have attached the applicable section of the City of Tacoma code for your reference.

If the Planning Commission prefers a more detailed formula, I would recommend utilizing the City of Auburn methodology. That would require revising the proposed language you previously submitted to the Planning Commission since the Auburn code does not specifically identify daytime and nighttime uses. I have attached the applicable section of the City of Auburn code for your reference.

Please let me know if I can be of further service.

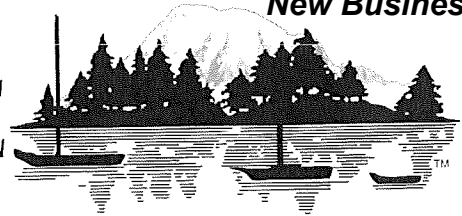
Attachments/Enclosures: Victoria Transport Policy Institute Shared Parking Report  
Excerpt from City of Tacoma Municipal Code  
Excerpt from City of Auburn Municipal Code

Initials: AMTE

File Name: P:\G\GACA0000001\0800REC\0830Deliverables\Joint Use Parking IMemorandum 11-03-08.doc

GIG HARBOR  PENINSULA AREA

# CHAMBER OF COMMERCE



December 16, 2008

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

RECEIVED  
CITY OF GIG HARBOR  
JAN 29 2009  
COMMUNITY  
DEVELOPMENT

RE: Parking Text Amendment

Dear Planning Commission Members:

The Gig Harbor Peninsula Area Chamber of Commerce supports the two parking text amendments to Chapter 17, which are being considered to increase use of joint parking in mixed-use developments within some zoning districts in the City of Gig Harbor.

The Chamber supports these amendments, which will benefit businesses and economic development throughout the City of Gig Harbor. We believe that these changes are required in order for our mixed-use developments to more efficiently utilize their parking assets, respond to changing consumer demands for services and products, and to maintain an economically viable mix of businesses in the community.

The Chamber believes that these amendments will allow for more efficient development of land, which ultimately helps to reduce sprawl and represents an aesthetic which is more consistent with the City's Design Manual.

These amendments also benefit the environment, by reducing the amount of paved surfaces and reducing drainage runoff.

The amendments are based on solid research and best practices from other municipalities. This is a positive step forward in resolving some of the parking management issues that we face in the City of Gig Harbor. We thank you for your consideration and support of these text amendments.

Sincerely,

GHPA CHAMBER OF COMMERCE

Kathy Endres  
President