

Gig Harbor City Council Meeting

**April 13, 2009
6:00 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
April 13, 2009 – 6:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of Mar. 23, 2009.
2. Receive and File: a) Operations Committee Meeting Minutes March 19, 2009; b) Parks Commission Minutes March 4, 2009; c) Public Benefit Rating System; d) Intergovernmental Affairs Minutes February 9, 2009.
3. Public Art Placement – “Ring in the Salmon” Bell at Donkey Creek Park.
4. Re-appointments to Building Code Advisory Board.
5. Re-appointments to the Civil Service Commission.
6. Proclamation – Earth Week / Arbor Day.
7. Resolution – Surplus Property.
8. Harbor Hill Water Tank Property – Quit Claim Deed.
9. Skansie Reservoir Repainting Project – Public Works Contract and Materials Testing Contract Authorization.
10. Hunt-Wollochet Signal Repair Project Materials Testing Authorization/Construction Testing Laboratories, Inc.
11. NetShed Documentation Services Contract.
12. RCO Grant – Austin Estuary Restoration Project.
13. Liquor Licenses: a) LLC Change – Inn at Gig Harbor; b) Assumption – Brix 25 Inc.
14. Approval of Payment of Bills for April 13, 2009: Checks #60631 through #60770 in the amount of \$737,145.83.
15. Approval of Payroll for the month of March: Checks #5394 through #5417 and direct deposits in the total amount of \$369,663.26.

PRESENTATIONS: Earth Week / Arbor Day Proclamation.

OLD BUSINESS:

1. Second Reading of Ordinance – Harbor Hill Water Tank and Mainline Latecomers Agreement.
2. Second Reading of Ordinance – Creating a Federal Drug Investigation Fund.

NEW BUSINESS:

STAFF REPORT:

1. Harborview Drive Road Closure Informational Update.

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Finance / Safety Committee: Mon. Apr 20th at 4:00 p.m.
2. City Council Worksession - 2009 Workplan: Mon. Apr 20th at 5:30 p.m.
3. Operations Committee: Thu. Apr. 16 at 3:00 p.m.
4. Parks Appreciation Day: Sat. Apr. 18th 9:00 a.m. – Noon.
5. Boards & Commission Candidate Review: Mon. Apr. 27th at 4:30 p.m.
6. Volunteer Appreciation Event: Mon. Apr. 27th at 5:00 p.m.
7. GH North Traffic Options Committee – Wednesday, May 20th, at 9:00 a.m.

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF MARCH 23, 2009

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

CALL TO ORDER: 6:01 p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of Mar. 9, 2009.
2. Receive and File: a) Parks Commission Minutes of Jan. 7 and Feb. 4, 2009; b) GHPD Monthly Report. c) Salary Commission Minutes March 11, 2009.
3. Correspondence / Proclamations: a) Parks Appreciation Day; b) AWC Retro Refund Check.
4. Liquor Licenses: a) Renewals: GH Farmers Market Assoc.; Qdoba Mexican Grill; The Green Turtle; Harbor Greens; Gig Harbor Farmers Market; Maritime Inn. b) Application in Lieu of Current Privilege: The Inn at Gig Harbor.
5. Resolution No. 787– Surplus Equipment.
6. Hearing Examiner Services Contract – Second Amendment.
7. Re-appointment to Arts Commission.
8. Borgen Parcel for Cushman Trail Restroom Site – Property Purchase.
9. Public Art Placement – “Ring in the Salmon” Bell at Donkey Creek Park.
10. Hunt/Wollochet Signal Project – WA Water Right-of-Way Agreement.
11. Wastewater Treatment Plant Improvement Project - Change Order No. 1.
12. Approval of Payment of Bills for March 23, 2009: Checks #60505 through #60630 in the amount of \$585,966.28.

Mayor Hunter announced that number nine, Public Art Placement has been moved to the next meeting to allow for clarification of an issue.

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

OLD BUSINESS:

1. Public Hearing and First Reading of Ordinance - Harbor Hill Water Tank and Mainline Extension Latecomers Agreement. David Stubchaer, Public Works Director, presented a brief history and described the changes to this ordinance since it came before Council last. He explained that Franciscan Health Systems has agreed to make payment outside the Latecomer’s Agreement to avoid the 5% administration fee. He said that Staff met with Ben Pearson from the Sportsman’s Club to review the results of a revised model, adding that the new model still requires the water tank and waterline in order to meet commercial fireflow regulations.

Mr. Stubchaer addressed the issues stated in a letter submitted by Tom Sturgeon. He explained that the fee is based on the average gallons per day / per person use and so

the fee calculated is still correct based upon Mr. Sturgeon's approved preliminary plat. The second issue stated by Mr. Sturgeon is that he was not allowed to utilize the MUD zoning benefits during application. Per Tom Dolan, the reason he was denied is because he used the Planned Residential Development standards in lieu of the MUD criteria. Mr. Sturgeon further stated that he could erect water tower storage on his property at a much lower cost. Mr. Stubchaer responded to this by saying this would not be allowed because this isn't part of the Comprehensive Water Plan; system-wide improvements agreed upon in the 1996 Pre-Annexation Agreement were required. Finally, Mr. Sturgeon questioned whether OPG followed the appropriate RCWs that allow for a Latecomers Agreement. Mr. Stubchaer said that the RCW doesn't specify bid requirements, but Mr. Chadwell has said that they obtained three bids and used the lowest.

Councilmember Franich asked about Mr. Sturgeon's request to be exempted because his property is being developed as residential. Mr. Stubchaer responded that although the plat is mostly residential, it still has the MUD overlay zone. Mr. Sturgeon shared in a meeting that this plat is a placeholder, and he may go forward at some time or he may make changes. The Latecomer's Agreement is based upon the zoning but the pro-rata share is calculated on the preliminary plat and the number of lots. He further explained that the reason that the Northcreek Plat was excluded is because it is zoned residential and meets current fireflow requirements.

Mayor Hunter opened the public hearing at 6:14 p.m.

Ben Pearson – 9721 Burnham Drive. Mr. Pearson, Treasurer for the Gig Harbor Sportsman's Club, spoke on behalf of the 1100+ members in asking to be excluded from the Latecomer's Agreement. He said that they already are part of the Burnham Waterline Latecomer's; they helped build it and will pay for it when they connect. He noted that this is all the water they need to develop their property. Mr. Pearson then said that staff has a double standard in regards to Latecomers Agreements. He explained that when built, the Burnham Waterline supplied sufficient fireflow to the properties. Then the city adopted a Comprehensive Water Plan that increased the requirement for commercial fireflow, and so a booster pump was installed. To further build out Gig Harbor North area, a water tank was installed and the booster pump which supplied fireflow to everyone along Burnham / Borgen / Harbor Hill was turned off. He explained that the double standard is that Northharbor Business Park connected to the Burnham Water Line and then continued to build out their property even after the water tank was operational, but they are not being asked to participate in this current Latecomers. Those that haven't yet tapped in are being required to pay again for the water that they already purchased. Mr. Pearson said he reviewed the State Municipal Sewer and Water Act and the city's ordinances; there is nothing that authorizes staff to charge twice for water. He then explained that the city's ordinance defines a latecomer as a property owner that is not party to the duly-executed Latecomer's Agreement; so by this definition, and because they already have an executed Latecomer's Agreement, the Sportsman's Club cannot be included in this agreement. He again asked to be

excused, along with the ten other property owners along Burnham Drive from this Latecomer's Agreement.

Mr. Pearson responded to questions from Councilmember Malich by saying that they haven't paid yet because they haven't had a reason to tap into the line. He said their share of the Burnham Waterline will be \$54,000 when they do connect. The second Latecomer's Agreement will be \$172,000.

Councilmember Young asked the City Attorney for clarification on paying towards two Latecomers Agreements. Angela Belbeck clarified that yes, you can participate in multiple agreements. She further clarified the definitions by saying the parties to a Latecomer's Agreement are the developer/builder and the city. The property owners in the assessment area are not actually parties to the agreement.

Councilmember Franich commented that he agrees with Mr. Pearson that this doesn't seem fair. Mr. Pearson responded that the unfair part is that those who tapped into the original line are not being asked to participate in this second agreement.

Councilmember Payne asked how many years are left on original Latecomers Agreement. Mr. Stubchaer answered that there are eight years left on the fifteen year agreement. He further explained that the original agreement was for the transmission line and this second agreement is for capacity to meet the current Comprehensive Plan requirements for fire flow. This has changed over time; anyone who connects now has to meet the current requirements.

John Chadwell – Olympic Property Group. Mr. Chadwell explained that when that area developed it needed the waterline to be connected to the city's water system and so a line was run up Burnham to Gig Harbor North and to the water tank. It appears that the Sportsman's Club is being charged twice because the system was built in two pieces; it's two parts of the same required system-wide improvements. He said that Mr. Pearson is correct that timing made a difference because when you implement a Latecomer's Agreement it is a "snapshot in time." If someone has hooked up already, they aren't included in the second round.

Mr. Chadwell used trip capacity as a similar example of participation at the current requirement level; what matters is the model in place today. He further said that Latecomers Agreements allow for an orderly development pattern so infrastructure can be built when needed. He explained that OPG paid the lion's share for these improvements and to be equitable, they are asking other property owners that benefit to pay their share. He then referred to the letter from Tom Sturgeon, saying that each property owner could not build their own water tank due to the economy of scale of one large tank. Mr. Chadwell emphasized that all property owners, unless they are already hooked up to the Burnham line, are paying their fair share. He pointed out that if a property owner chooses not to develop then they don't have to pay; if they develop then it becomes another cost of developing. He finalized by saying that they have been as

equitable as possible using defensible standards. He asked that the agreement be approved.

Mr. Garrison asked if shooting is a non-conforming use. Mr. Dolan responded that the property is zone R-1 with a MUD Overlay. He said he was unsure, adding that it may well be non-conforming.

Doug Tensler – 9721 Burnham Drive. Mr. Tensler, President of Gig Harbor Sportsman's Club, asked for clarification if the city approved Gig Harbor North. He said at one point the Gig Harbor Sportsman's Club had water and fireflow; it was conformed and approved. He agreed that they could have connected during that "snapshot in time." He said that they didn't make the decision to let Gig Harbor North grow and need more water...somebody else made that decision and the requirement for a water tank for Gig Harbor North. He said that the Sportsman's Club still has water and fireflow, but now the requirements have changed, and they are being asked to pay for something that they have already been given. He said he just wants to understand if that is correct.

Councilmember Payne said that the benefit isn't received until you hook up. In order to achieve the benefit now, the infrastructure demands are greater.

Mr. Tensler said it was by somebody else's choice; the city's choice, not theirs. He said that he just wanted to make sure that was on record.

The Mayor closed the public hearing at 6:32 p.m. This will return for a second reading at the next meeting.

2. Second Reading of Ordinance – Burnham / Sehmel Annexation. Tom Dolan, Planning Director, presented the background for this annexation. He said that Council asked staff to come back with a recommendation to resolve the inconsistency in the pre-annexation zoning and the Comp Plan designation for the property.

Mr. Dolan said that the City Attorney has prepared an opinion that says that if Council wants to re-examine the pre-annexation zoning, it would require starting the annexation process all over which would take several months. He said Staff's recommendation is for Council to approve the annexation tonight and initiate an area-wide rezone, which could be accomplished quickly. He pointed out that there is no guarantee what recommendation will come from the Planning Commission.

Councilmember Conan asked about parcels on the southeast corner that appear to be left out of the annexation area in Exhibit B. Mr. Dolan explained that there are some parcels that are outside the annexation area. He said he doesn't have the history for why they weren't included but said he would come back with answers.

Councilmember Payne asked about marine services. Mr. Dolan explained that this use is not currently allowed in the city's ED zoning designation, but there is a proposal to

allow this use in three different areas. He said the intent is to have the ED/PCDBP uses Ordinance to Council by the second meeting in April.

Paul Garrison – 8306 131st Street NW. Mr. Garrison presented background for property in his ownership for forty years. He said that twenty-five years ago they went through a site plan process and since that time they have operated a business there. With a stroke of the pen, he said, Council would destroy this. He mentioned the three steel buildings and caring for his handicapped daughter, voicing concern that the whole thing will get shut down, including all the jobs. He believes there is a solution to this, adding that he has done a lot of research. In reading the RCWs he found that it calls for 75%. He asked if staff had checked the RCWs or the City Code before doing this.

Tom Dolan responded that the requirement both in the state and city code is 60%.

Mrs. Garrison came forward and read RCW 35.13.130 which states “The petition must be signed by the owners of not less than 75% in value according to the assessed valuation for general taxation of the property for which annexation is petitioned.”

Ms. Belbeck, City Attorney, replied that this citation doesn’t apply to code cities such as Gig Harbor; the governing RCW is 35.A. which requires 60%.

Mr. Garrison then said that in their research they have found several inconsistencies; the biggest is that they will immediately be turned into a non-conforming use and can’t change without permission from the city.

Mr. Dolan responded that if you want to change from one non-conforming use to another, the Gig Harbor Municipal Code requires Hearing Examiner approval. However, if there are no changes to the use of the property and the use was legally established under County provisions, then they would remain a legal non-conforming use and would be allowed to continue; what triggers the new zoning is a change in use.

Councilmember Malich asked Mr. Garrison to explain his concern with being shut down. Mr. Garrison shared that they have most of their property rented now and said he could try and get the others rented before the ordinance becomes effective.

Council assured him that his existing businesses could continue. Mr. Garrison then voiced concern about insurance coverage for non-conforming uses. He responded that they aren’t planning on changing the buildings, but they do want to bring in Lighthouse Marine and do landscaping. Mr. Garrison said that the pallet business is doing all right, but they won’t be there long if they are non-conforming. He then talked about the vandalism to his mobile homes after one day of being vacant. He explained that he would like to put in something nice that would be an asset to the adjacent park, but if limited to residential use, they will have to replace the vandalized house with another mobile and see if they can keep the druggies from busting in again. He asked the City Attorney if they could challenge the decision if the ordinance is passed.

Ms. Belbeck explained that she couldn't offer legal advice. Councilmember Young responded that the challenge period was during the 3-year process leading up to this decision.

Mr. Garrison continued to say that 95% of the people didn't realize that they might be getting rezoned as well as annexed. He cited the RCW requirement for a Comp Plan update for the annexation area or else there has to be an area-wide rezone within 60 Days. This could be a lot more expensive than correcting this obvious error.

Dino Foremiller - 2641 64th Street. Mr. Foremiller said that there are only three parcels zoned Commercial EC with Pierce County but which will become residential. He shared his plans to build a 2500 square foot building on his property but said he won't be able to do that if it's zoned residential. He said because it's only three parcels and not the entire annexation area he was told that it would cost \$4000 to get it rezoned. He asked the Council for assurance that the rezone will be approved. He then said that he is located right across from Home Depot and kitty-corner from the hospital and now is being told his property will be residential. He asked if the \$4000 could be waived.

Betty Garrison – 8306 131st Street NW, Wauna. Ms. Garrison said if this is passed, Council is asking the property owners to “trust them” to do the rezone within 60 days to maybe get back what they have. She emphasized that this is her livelihood and her children's inheritance and said that she would like to leave them something worthwhile; not just a bad taste about government. She said this could cost both sides tens of thousands of dollars just to get back to where they should be. She further explained that the city's zoning ordinance says that the Comprehensive Plan is to govern future annexation of parcels within the UGA. She said that the land use map supporting the Comprehensive Plan shows her property as zoned ED. She said the discrepancy should be straightened out before the property is annexed rather than waiting for future acts.

MOTION: Move to adopt Ordinance No. 1156 approving the Burnham / Sehmel Annexation.
Young / Ekberg -

Councilmember Young agreed that there are mistakes just now coming to light, but the annexation is too far along to change. He explained the process for the city to commence an area-wide rezone of the ED properties, commenting that if all goes well the recommendation will be back for Council's approval within two months. He said that the Comprehensive Plan does indicate the proper zoning on these properties. He further explained that because this has been a very long process and the applicant has been extremely patient in agreeing to expand the boundaries to suit the city; we cannot continue to delay this any longer. He said we just don't have the tools to fix this before the annexation takes place.

Councilmember Conan agreed, saying he too understands that the zoning problem is a mistake that didn't come to Council's attention until it was too far along in the process.

He said that the area-wide rezone is a solution that will take some trust, adding that the Planning Commission has time to work on it. He pointed out that marine services aren't currently an allowed use in the ED zone, and so proposed amendments to this zoning designation will come about at the same time as the area-wide rezone is approved. He spoke in favor of sending this to the Planning Commission.

Councilmember Ekberg pointed out that this option allows a quicker resolution than if the annexation process were to begin again. Councilmember Payne added that this annexation already has been one of the lengthiest processes in Gig Harbor and he empathizes with the proponent, who has been very patient. He said Council will respond to the issues raised and added that he hopes Mrs. Garrison will be able to trust that the process will be done expeditiously. He spoke in favor of the annexation moving forward.

Councilmember Franich said that he agrees that the zoning was overlooked. He noted that in his opinion the Urban Growth Area should be smaller to avoid additional demand on city services. He said that the whole key to annexation is obtaining sewer, which leads to more development, and more people and more burden on the city.

MOTION: Move to adopt Ordinance No. 1156 approving the Burnham / Sehmel Annexation.

Young / Ekberg – six voted in favor. Councilmember Franich voted no.

MOTION: Move to commence an area-wide rezone within the Economic Development area off Burnham / Sehmel Drive.

Young / Ekberg – unanimously approved.

NEW BUSINESS:

1. First Reading of Ordinance – Creating a Federal Drug Investigation Fund. Mike Davis, Chief of Police, presented the background information for this ordinance creating a second fund for Federal drug seizure monies for budget and reporting purposes. He reported that currently there is \$60,740.22 in federal seizure dollars. This will return at the next meeting for a second reading.

STAFF REPORT:

Chief Davis report that the city was just notified that we are eligible for an \$11,200 Justice Assistance Grant. This money can be used for hiring or equipment associated with the court system. He said that he is considering using the funds to replace computers in the report room and to assist in the initiation of the CourtSmart Video arraignment.

Chief Davis then reported on a second grant opportunity. The Federal COPS Grant Program has money set aside to put more officers on the street and to rehire those that may have been let go due to the recession. He said it is a nation-wide competitive grant that would pay the wages and benefits for an officer for three years. The caveat is that

the city would be required to keep that officer on after the three year period and would need to pay for a vehicle, training and equipment for each officer. He said that in light of the current and future growth and the increase in calls for service, this would be an opportunity to help achieve the goal of having two officers on duty at all times. He asked for Council's direction on whether he should expend the time and effort to apply for this grant.

After further discussion on the cost in staff time to apply and budget constraints, Chief Davis was directed to move forward with the grant application process and if chosen, a decision to participate could be made at budget time.

PUBLIC COMMENT: No one came forward to speak.

MAYOR'S REPORT / COUNCIL COMMENTS:

Councilmember Malich reported on an article in The Tacoma News Tribune regarding building density being problematic for Fire Departments. He said that he thinks that should be addressed here.

Dick Allen – Planning Commission. Mr. Allen said at the last meeting, the commissioners talked about the development standards in the MUD zone which require five foot setbacks. He said that this appears to be a carry-over from the old zoning and Jennifer Kester, Senior Planner, has agreed to consult with the Building Director to determine the legality of the standard as well as to discuss building materials. This information will come back to the Planning Commission for further discussion.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Planning & Building Committee – Monday, Apr. 6th at 5:15 p.m.
2. Operations & Public Projects Committee – Thursday, Apr. 16th at 3:00 p.m.
3. Finance / Safety Committee: Mon. Apr. 20th at 4:00 p.m.
4. Council Workstudy Session- 2009 Work plan – Mon. Apr. 20th at 5:30 p.m.
5. Boards & Commission Candidate Review: Mon. Apr. 27th at 4:30 p.m.
6. Volunteer Appreciation Event: Mon. Apr. 27th at 5:00 p.m.
7. GH North Traffic Options Committee – Wednesday, May 20th at 9:00 a.m.

EXECUTIVE SESSION: To discuss potential litigation per RCW 42.30.110(1)(i).

MOTION: Move to go into Executive Session at 7:35 p.m. for approximately fifteen minutes

Payne / Conan – unanimously approved.

MOTION: Move to return to regular session at 7:50 p.m.

Conan / Payne – unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 7:50 p.m.

Conan / Payne – unanimously approved.

CD recorder utilized:
Tracks 1001 – 1032

Derek Young, Mayor Pro Tem

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, March 19, 2009 Time: 3:30 p.m. Location: Public Works Conf Rm Scribe: Maureen Whitaker

Commission Members and Staff Present: Councilmembers Steve Ekberg, Jim Franich and Tim Payne; Rob Karlinsey, City Administrator; David Stubchaer, PW Director; Steve Misiurak, City Engineer; Jeff Langhelm, Sr. Engineer; Jennifer Kester, Sr. Planner; and Maureen Whitaker, staff.

Others Present: David Fisher, GHHWA; Carola Stark, GHHWA Executive Director; John McMillan, GHHWA; Warren Belfany, GHHWA; John Chadwell, OPG;

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
1. Jerisich Park Improvements— Carola Stark & David Fisher	<p>Mr. Fisher presented a preliminary design of the improvements to Jerisich Park. He explained that the goal of the improvements were to remove the clutter by relocating the news boxes and dumpster/enclosure and relocating the Fishermen’s Memorial slightly. The major cost would be moving the Fishermen’s Memorial slightly forward, if it can be moved, and enclosing it within a circular fountain with benches around it. It is understood that the artist would be contacted first, as the piece would need to be cut and reinstalled which changes the overall design slightly. The existing planter would remain in the same location to minimize relocating the existing utilities. The overall look of the improvements would create an open plaza with pavers or as a fundraising effort could include bricks. Also proposed was an arched sandblasted sign over the entrance to Jerisich Dock, consistent with existing City signage.</p> <p>Ms. Stark stated that the preliminary design would be</p>	<p>The councilmembers and Public Works Director David Stubchaer suggested the following considerations:</p> <ol style="list-style-type: none"> 1) Will the arched sign over the dock be double-sided? 2) Relocation of mail box is not shown on the preliminary design. 3) Concern that the fountain could take up valuable space. Some thought that it would create a pleasing open plaza appearance. 4) Can impervious pavers be used in plaza area? Typically the grassy area is very wet and slippery during rain

Topic / Agenda Item


Main Points Discussed

**Recommendation/Action
Follow-up (if needed)**

	<p>presented to the DRB and Parks Commission for their review and input. Ms. Stark also suggested that her organization would also work on getting other private organizations involved in funding and assisting in building parts of this project.</p> <p>There was discussion about moving however keeping the anchor monument and plaque at the site.</p>	<p>events.</p> <p>5) Would the electrical panel be moved? Summer events use this power source frequently. GHHWA should contact City field superintendent Greg Foote to discuss.</p> <p>6) Light for flag pole – need to consider alternative.</p> <p>7) Driveway at bus stop for dumpster is not ADA compliant – needs to be made ADA compliant.</p> <p>8) Need new driveway for dumpster.</p> <p>9) Lift station and manhole were discussed – too costly to move.</p> <p>10) New code for fire line – Public Works (PW) needs to make some modifications – need to coordinate this work.</p> <p>11) New pump-around location is in the same place as the proposed dumpster. Project should be closely coordinated with PW.</p>
<p>2. Sewer Capacity</p>	<p>Rob Karlinsey opened the discussion with the question brought up by Councilmember Young: “Is there anything that the City can do to free up sewer capacity now?”</p> <p>The following options were discussed:</p> <ol style="list-style-type: none"> 1. Recent WWTP Improvements (2 New Blowers installed and Onshore/Outfall Improvements) 	<p>The following responses were voiced by Council Committee and staff:</p>

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
	<ul style="list-style-type: none"> A. Must be issued in an orderly process. 2. Land Use Applications in Pipeline – 275 ERUs have been reserved (projects not yet approved but sewer capacity is reserved). <ul style="list-style-type: none"> A. Include expiration dates on sewer reservations (example Snohomish Co.) <ul style="list-style-type: none"> i. Allow permit extensions in exchange for giving up reserved CRCs until WWTP is complete. B. Allow for selling and/or transferring of CRCs? 3. Approved Land Use Permits that already have expiration dates – 2,178 ERUs reserved by approved land use permits. <ul style="list-style-type: none"> A. Allow permit extensions in exchange for temporarily giving up CRCs until WWTP comes on line. This would require an agreement to be consistent with GMA. B. Allow permit extensions in exchange for paying connection fees now. (Currently connection fees are charged at the time of construction) C. Allow for selling or transferring of CRCs? <p>Jennifer Kester discussed a proposed Standard Operating Procedure for the issuance of Sewer CRCs prior to the completion of the WWTP upgrades (see enclosed memorandum). Ms. Kester’s memo intends to map out a proposed process for issuing CRCs to projects thereby allocating the additional sewer ERUs. She stated that once the process is agreed upon, it can be codified and CRC issuance can occur.</p>	<ul style="list-style-type: none"> 1A. Orderly process is essential. 2. i. Depending on freed-up capacity and completion of WWTP, may not be worth pursuing. 2.B.Does this option create hoarding and black market selling? 3.A. Have a short sunset clause for sewer only. <p>Councilmember Franich expressed concern about current limited staff time. He asked if there were any pressing reasons why we this needed to be done. Jeff Langhelm responded that he continues to receive calls from people wanting to build single-family residences but are unable due to sewer capacity. Councilmember Ekberg was in favor of having a process for the small projects and single-family residences to get sewer.</p>
3. Sewer Exception Code Revision Ordinance	Jeff Langhelm passed out a draft ordinance that introduced the new 200-ft. rule that was inadvertently left	Councilmember Franich expressed concern for property

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
	<p>out of Ordinance 911, adopted by Council in 2002. This would address the on-site sewer needs of new buildings and structures to be constructed on individual lots created prior to GMA if either of the factual situations exist:</p> <p>The subject lot is not abutting on any roadway where an existing public sewer is located in the roadway OR</p> <p>The subject lot is not within 200 linear feet as measured from the nearest property line along the path of sewer main construction to an existing public sanitary sewer AND</p> <p>The subject lot is in its current configuration was created prior to July 1, 1990, AND</p> <p>The septic system to be constructed will serve no more than one single-family dwelling unit or no more than one building or no more than one structure on the lot meeting the criteria outlined in the ordinance AND</p> <p>The property owner shall record a notice against the lot, providing notice to all subsequent purchasers that the City's approval of a septic system under these procedures will not affect the City's ability to enforce any of the requirements of the ordinance, (including the requirement to connect to the public sewer in the future) against the lot at any time in the future, as long as the conditions do not change.</p>	<p>owners with small land-locked lots. The Council Committee agreed that this should be brought forward to full City Council for consideration. Mr. Langhelm agreed to present two options/versions for full City Council consideration.</p>
4. Radar Speed Signs	Councilmember Franich explained that he asked that this item be placed on the agenda for discussion. He believed that the radar speed sign on Burnham /	Councilmember Franich asked how long can speed data be collected.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
5. Speed Studies on Burnham and Soundview	<p>Harborview Drive could be malfunctioning because of its flashing speed. He asked if the sign could be adjusted to begin flashing at 29-30 mph rather than a 26-28 mph.</p> <p>Mr. Stubchaer reported that Public Works Engineering is currently gathering speed and volume data along Burnham Drive and Soundview Drive in the existing 25 mph speed zones. Once the data is collected, staff will consider the factors in accordance with the WAC and MUTCD and document the results in an Engineering and Traffic investigation. He stated that it is anticipated that the investigation will be completed by approximately April 15th. If changes to the existing speed zones are warranted, a draft ordinance will be prepared and presented at the April 16th Operations and Public Projects Committee meeting. In accordance with WAC Ch. 468-95-045, the following factors need to be considered for setting speed limits greater or less than the basic speed law or the maximum lawful speed limit:</p> <ol style="list-style-type: none"> 1. 85th Percentile Speed 2. Road Characteristics (shoulder condition, grade alignment, sight distance) 3. Pace Speed 4. Roadside Development and Environment 5. Parking Practices 6. Pedestrian Activity 7. Accident History (for at least a 12 month period) 8. Other Factors (route development, comprehensive plan) 	
Meeting adjourned at 5:35 p.m.	<p>Respectfully submitted: </p> <p style="text-align: center;">Maureen Whitaker</p>	

CITY OF GIG HARBOR COMMITTEE OUTLINE MINUTES

Parks Commission

Date: March 4, 2009 Time: 5:30 p.m. Location: Community Rooms A&B Scribe: Terri Reed

Commission Members and Staff Present: Commissioners: Michael Perrow, Jacquie Goodwill, Peter Hampl and Emily Cross; Staff Members: David Stubchaer, Kristin Moerler and Terri Reed.

Others Present: _____

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
Approval of Minutes	Approval of January 7, 2009 Minutes Approval of February 4, 2009 Minutes	Motion: Move to approve January 7, 2009 and February 4, 2009 minutes as presented. Hampl / Cross – unanimously approved.
OLD BUSINESS:		
PROS Plan Update	<p>City Planner, Kristin Moerler, distributed a draft outreach plan, timeline and survey for the PROS Plan update.</p> <p>The proposed method of distribution for the survey was discussed. Member Goodwill expressed her concerns with getting a random population sample and public input using Survey Monkey.</p> <p>Public Works Director Stubchaer asked the Commission for direction on the survey.</p> <p>Suggestions were made for the stakeholder group list.</p>	<p>Motion: Move that if we are going to do a survey, that we do a survey that provides us with a random sampling that gives the opportunity for valid survey results.</p> <p>Goodwill / Cross – Unanimously approved.</p> <p>Commission members will forward any comments on the survey questions to Kristin Moerler or Terri Reed.</p>
Adopt-A-Planter Program	<p>A list of the City-maintained planters and photos were distributed by staff. The program was briefly discussed and the constraints.</p> <p>Terri Reed gave staff input that the program would be best run if completely managed by an outside group.</p>	<p>Member Goodwill will contact the GHHWA about the possibility of taking on and managing this project from April through September each year.</p> <p>Staff will check on budget for planter materials.</p>

Consent Agenda - 2b

Topic / Agenda Item

Main Points Discussed

**Recommendation/Action
Follow-up (if needed)**

Parks Appreciation Day (PAD) 2009	Commission Chair Perrow gave an update on the planning for PAD. Posters and postcards will be available soon.	Parks Commission members made their park selections: <ul style="list-style-type: none"> • Austin Estuary/Donkey Creek Park – Perrow/Tarabochia • BMX/Volleyball/Crescent Creek Park - Goodwill • Adam Tallman Trail – Cross • Wilkinson Farm Park – Borgen
NEW BUSINESS:		
Park Security	Commission Chair Perrow would like to have some security issues in City parks addressed.	Staff will invite the Police Department to attend the April meeting to offer input and discuss options. Commission members will bring a list of the concerns they would like to discuss.
PARK UPDATES:		
	Commission Chair Perrow mentioned some concerns expressed by PenMet Parks about the Sand Volleyball Courts.	Staff and Commission Chair Perrow will make a site visit to review and assess the conditions of the park.
	The Parks Commission thanked Peter Hampl for his service to the City and contribution to City parks.	
PUBLIC COMMENT:	Gary Williamson was present and distributed the Friends of Wilkinson Farm (FWF) suggested ideas for getting the inventory of the barn completed.	Motion: Move to endorse the plan recommendations for initial steps to inventory and salvage Wilkinson barn artifacts of historical significance. Goodwill / Motion amended: ask that this furthermore be a collaborative effort between the City of Gig Harbor, the Harbor History Museum and the FWF. Goodwill / Hampl – unanimously approved.
NEXT PARKS MEETING:		
ADJOURN		April 1, 2009 @ 5:30 p.m. Motion to adjourn at 7:04 p.m. Hampl / Cross

Consent Agenda - 2b



Subject: Public Benefit Rating System (PBRs) and Historic Properties in Pierce County

Proposed Council Action: Approve and authorize the Mayor to add the City of Gig Harbor to the list of Pierce County cities that are requesting a change to the PBRs rating system.

Dept. Origin: Administration

Prepared by: Lita Dawn Stanton
Special Projects *ABS*

For Agenda of: April 13, 2009

Exhibits:

	Initial & Date
Concurred by Mayor:	_____
Approved by City Administrator:	<i>PSK 4/8/09</i>
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

At the February 23, 2009 meeting regarding Public Benefit Rating System (PBRs), Councilman Derek Young requested more information. After reviewing the details, Councilman Young agreed to add the City of Gig Harbor to the list of other Pierce County cities (Lakewood, Puyallup, Steilcoom and Tacoma) that are requesting the PBRs review. The proposed change would allow historic properties to qualify under the existing preservation category of the program. Specifically, the City of Gig Harbor will ask that Pierce County Council review these changes by adding PBRs as an agenda item to Pierce County Council's regular meeting for discussion and public input.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

Planning and Building Committee recommended approval at their February 2nd meeting.

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to add the City of Gig Harbor to the list of Pierce County cities that are requesting a change to the Public Benefit Rating System.



TO: City Council

FROM: Lita Dawn Stanton

DATE: February 23, 2009

RE: Historic Preservation and a Pierce County Public Benefit Rating System (PBRs)

I've attached information on a request initiated by the City of Tacoma and approved by the Cities of Lakewood, Puyallup and the Town of Steilacoom for an amendment to Pierce County's **Public Benefits Rating System**. I am hoping that the City of Gig Harbor will support a formal dialogue to review the proposed amendment.

The attached sheet prepared by Sharon Winters offers a description of the existing allowances provided under RCW 84.34. The change would provide incentives to properties owners that are willing to register and maintain their structures as historic. Without this amendment, a historic landmark can never qualify for the tax benefits that this system was designed to provide.

Also attached is a Case Study prepared by Reuben McKnight, the Historic Preservation Officer from the City of Tacoma.

Please review the information and if you have any questions, give me a call. My objective is to add our name to the list of other cities that are requesting this as an **agenda item** for the Community Development Committee of County Council chaired by Terry Lee in order to get the issue into a public forum for further discussion. Your approval now does not obligate the City to use the PBRs.

Thank you.

**REVISION TO PIERCE COUNTY'S PUBLIC BENEFIT RATING SYSTEM (PBRS)
FOR HISTORIC REGISTER PROPERTIES**

prepared 1/14/09 Sharon Winters

Statement: Current policy in Pierce County is to assess land based on market value for the highest and best use. In other words, a property containing a single family residential structure in an area zoned for higher density may be taxed at the same square footage rate as an adjacent high-rise apartment building. This creates a situation in which the taxation rate may assume a much higher property income than is actually present; this situation may have the effect of enabling demolition of historic properties. RCW 84.34 allows county governments to assess property at a rate reduced from "highest and best use" for the purposes of conservation of open space lands, environmentally sensitive areas, agricultural and rural landscapes, and historic landmarks. In Pierce County's program, historic landmarks and archaeological sites are accorded low priority status and are thus seldom eligible for property tax reductions.

Status: Both Clark and King County award higher points to encourage preservation of historic landmarks; King County's Open Space Current Use Assessment program allows up to 50% reduction in property tax assessment for historic buildings. The Tacoma Historic Preservation Office is currently working with Pierce County officials to make a similar change.

Recommendation: Amend the county's PBRS to award higher points to owners of properties listed on a local Register of Historic Places, thus supporting preservation goals outlined in state and city policy.

-- Approved as a part of its Public Policy Agenda 11/08 by the Historic Tacoma Board of Directors

Background: Pierce County Code Chapter 2.114 Current Use Assessment Administrative Procedures identifies archaeological and historic landmark sites as a low priority in the program, awarding one point. In order to qualify for the program, a property must tally at least 3 points to be come eligible for a property tax reduction. Once eligible, properties within an Urban Growth Area as designated by the County's Comprehensive Plan, can receive an additional 5 bonus points. An appendix at the end of Chapter 2.114 notes that an accumulation of 3 points creates a 20% reduction, 6 points, a 30% reduction, etc. A property tax reduction of 30% or more would make it possible for more owners of Register-listed properties to retain and continue to re-use their historic structures, as opposed to needing to sell their property for new development due to high land values.

Revenue impact: Though making more properties eligible for property tax reductions appears to reduce much-needed tax revenues, this is not the case. City and county government cannot increase tax revenues by more than 1% each year. Even with modest inflation and slow development, the county and cities will likely bump against this 1%, so reducing taxes for a select set of properties should have no effect on city and county government revenues.

Support: The City of Tacoma has adopted as a priority the revision of the county's PBRS to include higher priority points for historic sites. The City has broached the topic with Councilman Tim Farrell, District 4 (Tacoma), but no further action has been taken, mostly due to staff workload issues. City contact: Reuben McKnight, Historic Preservation Officer, City of Tacoma, 253.591.5365, reuben.mcknight@ci.tacoma.wa.us

Goal: Our joint goal is to make the preservation of historic landmark sites a medium or high priority in the county's PBRS, awarding historic landmark sites at least 3 points, thus making those properties eligible for property tax reduction.

Possible Strategies:

Package this initiative with efforts to increase commitment of County Council to use new HB1386 court filing fees for building and enhancing the county's historic preservation program. The primary strategy will be to talk with individual Council members about economic development opportunities. We also hope to get this discussion into the public arena by doing a presentation before the Community Development committee of County Council or a Council study session. Potential partners in this effort include: Pierce Co. Heritage League, local Certified Local Governments (Steilacoom, Gig Harbor, Puyallup, Lakewood, Tacoma), Landmarks Commissions, and Historic Tacoma. Advisory: Derek Chisholm, Parametrix, 503.233.2400, dchisholm@parametrix.com

**Current Use Tax Assessment Reform
Pierce County**

Proposal:

Amend Pierce County Code 2.114, Ordinance 98-114s, known as the Public Benefit Rating System, so that historic landmarks and archaeological sites are within the Medium Priority category. Currently historic sites and archaeological sites are scored as Low Priority (see figure below).

The PBRs ranks various open space features, and is composed of high, medium, and low priority resources, bonus categories, and a super bonus category. A minimum of three (3) priority resources points is necessary to qualify for the program and a maximum of fifteen (15) priority points is allowed. The number of PBRs points correlates to a percent of market value reduction during the period of continued eligibility.

Currently, it is not possible for a historic site to qualify for the Current Use Assessment Program unless another medium or high priority resource is also on the site.

PRIORITY RESOURCE CATEGORIES	POINTS
High Priority: Critical Salmon Habitat, Fish & Wildlife Habitat, Marine Waters, Streams, Wetlands, Estuaries & Tidal Marshes, Wooded Areas	5 points each
Medium Priority: Agricultural Lands, Aquifer Recharge Areas, Flood Hazard Areas, Lakes, Private Open Space Passive Recreation, Privately Owned and Operated Recreational Facilities, Private Trails & Corridors	3 points each
Low Priority: Archaeological Sites, Historic Landmark Sites, Landslide Hazard Areas (Steep Slopes), Private Parks & Private Golf Courses w/Developed Facilities, Scenic View Points & Corridors, Seismic Hazard Areas, Volcanic Hazard Area	1 point each

BONUS CATEGORIES	POINTS
Public Access Granted (Note: Some priority resource categories require public access.)	5 points
Conservation/Historic Easement Granted in Perpetuity (forever)	10 points
Site Within a Designated Urban Growth Area (UGA) or the Comprehensive Urban Growth Area (CUGA)	5 points
Site is Adjacent to (abuts) or Creates Linkage with Another Open Space Parcel	5 points

POINTS	0-2	3	6	9	12	15	18	20	25+
% Reduction of Market Value	0%	20%	30%	40%	50%	60%	70%	80%	90%

Issue Statement:

The existing PBRs provides no incentive for property owners to preserve and maintain historic sites in areas where development pressures are increasing.

- Under the PBRs, it is virtually impossible for the owner of a historic building to qualify for Current Use Tax Assessment within an urban area, even though RCW 84.34 clearly recognizes that historic sites are within the scope and intent of the state enabling legislation.
- While habitat areas and marine resources are clearly a critical issue for conservation, preservation of historic and archaeological sites should be considered a higher priority than golf courses and private parks.
- Historic properties in many areas are, in fact, far below the highest and best use and therefore are by definition lower intensity uses.

Existing tax assessment policy is in direct conflict with existing preservation policy. Amending the PBRs would remove this conflict.

- Under the standard valuation procedures used by the County, properties are assessed and valued at highest and best use. For owners of historic properties that are significantly under the allowable density, this means that the land assessment is taxed at the same rate as nearby properties that are fully built out.
- As a result, some historic properties are taxed at a much higher rate than what is justified by the lease income. This creates a disincentive to landmark historic properties, and also puts some owners in financial jeopardy.
- The net effect is that while County and local governments encourage preservation as a public policy through their respective preservation programs, the County is also penalizing property owners who make long term commitments to preserve a historic property in its current form.

Nearby county governments have already used the Current Use Tax Assessment Program to encourage historic preservation, in addition to other critical conservation issues.

- Pierce County would not be the first to recognize the utility of this incentive to encourage preservation. King and Clark Counties have already developed their programs to encourage historic preservation.
- No legislative changes to State Law are required to make this proposed amendment to the Pierce County PBRs.

This amendment would not pose a significant impact upon property tax revenues.

- The program would require that the property be a designated landmark, which is a higher standard requiring additional criteria be met.
- In addition, many historic properties are already within appropriate zoning and use categories. Only those properties that are underutilized due to their historic status would qualify.

Existing property tax incentives for historic rehabilitation do not address the needs of all historic properties.

- Currently the only property tax incentive available to property owners is the Special Tax Valuation (STV) incentive, which requires a minimum capital investment of 25% of the assessed building value to qualify.

- The incentive is based on the amount invested in the property, requiring substantial projects.
- It does not benefit properties for which no substantial work is proposed, meaning that low income, low revenue properties, or properties that need no major construction, cannot utilize this program.

Supporters of this proposal include local governments within Pierce County as well as independent historic preservation organizations.

- The City of Tacoma has included reform to the Current Use PBRs in its draft Downtown Plan, currently being reviewed by the Tacoma Planning Commission for adoption in its 2008 Comprehensive Plan updates.
- The Cities of Lakewood, Puyallup, and Gig Harbor, as well as the Town of Steilacoom, support this proposal.
- The Washington Trust for Historic Preservation, the statewide citizen-based historic preservation advocacy group, supports this proposed amendment.
- Historic Tacoma, Tacoma's independent nonprofit citizen advocacy group

Case Study #1: Tacoma



The Henry Drum House in Tacoma is a 3600 square foot house built in 1888, that is listed on the Tacoma, Washington and National Registers of Historic Places. It sits on a 10,000 square foot view lot that is zoned high density residential (90' height maximum with up to 6 FAR). The land is taxed at the same rate as the 15,000 square foot mid-rise apartment building next door, at slightly over \$50/square foot. Therefore, the lot is theoretically underdeveloped by about 56,000 SF. In 2007, a new 5 story condo building was constructed two lots south on a 6000 square foot lot with 25,000 SF of living space. Below are estimates of the potential benefit of the program on this property.

Example Property	Henry Drum House, 9 Saint Helens
Jurisdiction	Tacoma
Base Zoning (Ht/FAR)	Downtown Residential (90'/6)

Historic Status	City/State/National Registers
2009 Assessed Land Value	\$ 601,500.00 ¹
2009 Taxes on Land	\$ 7,022.43
Potential Current Use Points ²	3 Priority Resource Points (Historic Site)
	10 Bonus Points (Conservation/Historic Easement)
	5 Bonus Points (Within designated UGA)
Potential Current Use Valuation on Land	\$ 180,450.00 ³
Potential Taxes on Land under PBRs	\$ 2106.73
Annual Savings	\$ 4915.70

Comparable Example Programs

Clark County: <http://www.clark.wa.gov/longrangeplan/historic/documents/current-use-tax-benefits.pdf>

King County: <http://dnr.metrokc.gov/wlr/LANDS/incentiv.htm>

¹ Does not include value of the building.
² Under the revised PBRs
³ This valuation would roll the assessed land value back to its assessed value prior to 2006.



**Meeting Minutes
Intergovernmental Affairs Committee
February 9, 2009**

In attendance:

Councilmember Conan
Councilmember Payne
Councilmember Young
City Administrator Karlinsey
Peter Katich, Senior Planner
Dale Learn, GTH – GA, via teleconference
Briahna Taylor, GTH – GA, via teleconference

The meeting convened at 4:30 p.m.

The main purpose of this meeting was to review the Schedule and Talking Points for Paul Conan's and Tim Payne's trip to Washington DC on February 10, 2009. After clarification of the HUD/EDI request and re-authorization approach Dale Learn dropped from the meeting.

Briahna Taylor reviewed amendment draft language of the pending Shoreline Moratoria Bill; essentially describing renewal limitations. Peter Katich advised that the City's Shoreline Master Program initially mandated to be updated by December 2011, has been granted a one-year extension to December 2012.

Taylor gave status reports on WWRP requests; WWTP and Eddon Boat, as well as updates on AWC's position on other pertinent legislation.

The meeting adjourned at 5:30 p.m.



Subject: "Ring In The Salmon" Bell at Donkey Creek Park Public Art Placement

Proposed Council Action: Approve and authorize the Mayor to execute the Artists Services contract with Tom Torrens Sculpture Design, Inc.

Dept. Origin: Administration
Prepared by: Lita Dawn Stanton
Special Projects
For Agenda of: March 23, 2009
Exhibits: Contract and Exhibits

Concurred by Mayor: Initial & Date
CLH 3/18/09
Approved by City Administrator: *RJK*
Approved as to form by City Atty: *Belbeck/e-mail*
Approved by Finance Director: *DR 3/18/09*
Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required \$ 8,491.25	Budgeted \$ 32,300.00	Required \$ -0-

INFORMATION / BACKGROUND

In 2008, the Gig Harbor Arts Commission (GHAC) approved the Tom Torrens "Ring In The Salmon" Bell sculpture as part of the Arts Commission Project Support Program. The 9½ feet tall fabricated steel bell with fiberglass fish will be installed near the sidewalk within the garden area (adjacent to the restrooms) at Donkey Creek Park. The installation will be completed by June 30, 2009.

FISCAL CONSIDERATION

The cost of for the Torrens Bell is identified in the 2009 Budget, Public Art Capital Projects Fund.

BOARD OR COMMITTEE RECOMMENDATION

The Parks Commission voted in favor of this project.

RECOMMENDATION / MOTION

Move to: Approve and authorize the contract with Tom Torrens Sculpture Design, Inc. for the "Ring In The Salmon" Bell.



**ARTIST SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
TORRENS SCULPTURE & DESIGN, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and TORRENS SCULPTURE & DESIGN, INC. a CORPORATION, organized under the laws of the State of Washington (hereinafter the "Artist").

RECITALS

WHEREAS, the City desires that the Artist perform services necessary to create and place a piece of artwork at DONKEY CREEK PARK (the "Site"); and

WHEREAS, the City does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of the Artist to provide the necessary services for the project; and

WHEREAS, the Artist has represented to the City that the Artist has the education, training and expertise to provide the necessary services for the project and has signified a willingness to furnish artistic services to the City;

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

Section 1. Retention of Artist - Scope of Work

The City hereby retains the Artist to provide the artistic services herein described, and the Artist agrees to provide artwork to the City, as described in **Exhibit A**, attached hereto and incorporated herein.

A. The Artist shall provide the City with the Artwork by performing all services and work on or before the deadlines established in **Exhibit B** attached hereto and incorporated herein.

B. The Artist shall determine the artistic expression, scope, design, size, material, texture, color and location of the artwork within the guidelines set forth by the Gig Harbor Arts Commission, approved by the City and as described in **Exhibit A**.

C. The City may request revisions to the artwork for practical (non-aesthetic) reasons beyond the scope of the proposal. The City recognizes that additional fees may be charged for additional services provided by the Artist that are not included herein (or in any of the Exhibits).

D. The Artist reserves the right to make minor changes to the Artwork as deemed aesthetically and structurally necessary. The Artist shall present any significant changes, such

as (1) changes in scope, design, color, size, material or texture of the artwork; (2) change of location on the site; or (3) changes in preparation or maintenance of the artwork, to the City for review and approval. Any revisions submitted by the Artist and approved in writing by the City, shall be incorporated in this Agreement.

Section 2. Duration/Time for Completion

This Agreement shall commence upon execution by the duly authorized representatives of both parties and shall terminate on June 30, 2009, unless sooner terminated as provided herein. The Artist shall notify the City when the Artwork is completed and is ready for delivery and installation by the Artist. The Artist shall deliver and install the completed Artwork at the Site on or before June 30, 2009.

Section 3. Review of Work in Progress

The City or its representatives shall have the right, at reasonable times, to view the Artwork during the fabrication and installation. The Artist shall submit written progress reports (if requested by the City) to the City, so that the City can determine the completion of the phases of the Artwork, as set out in Section 4, Payment.

Section 4. Payment

A. The City shall pay the Artist eight thousand four hundred ninety-one dollars and twenty-five cents (\$8,491.25) for completed work and/or services related to this Agreement and the Artwork, only as provided hereunder. Such payment shall be full compensation for the Artwork, including all work and services described in this Agreement, and any Exhibits attached hereto. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. This amount includes all applicable sales/use tax, and all other costs contemplated in this Agreement, such as transportation, insurance, etc.

B. The City shall make progress payments to the Artist, after verification of completion of each of the phases of the work, as set forth in **Exhibit B**. In order to receive payment, the Artist shall notify the City of the completion of a particular phase through the submission of an invoice. The City shall determine whether a particular phase is complete, and if it is complete, the City shall pay the invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Artist 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.

C. Final payment will be made after the City determines that the Artwork is complete. In order to obtain final payment, the Artist shall provide the City with the Artist's resume, an artist specification sheet, a technical description of the Artwork, and the Artist's maintenance recommendations for the Artwork.

D. The Artist shall be responsible to pay all fees, materials, supplies, equipment, labor of assistants, communications between the Artist and the City, studio space, travel, sustenance, transportation, storage, rentals and installation necessary to fulfill the requirements of this Agreement.

Section 5. Warranty as Original; Prohibitions on Copies of Artwork

The Artist acknowledges that the City has commissioned the Artwork that is the subject of this Agreement. The Artist warrants that the Artwork is solely the result of the artistic effort of the Artist, is unique and original, has not been accepted for sale elsewhere, is free and clear of any liens from any source, and does not infringe upon any copyright. The Artist reserves the rights to remain the owner of drawings, molds, clay maquettes, and models of the work. The Artist gives permission to the City to reproduce photographs of the work for brochures, newsletters or other media as produced and distributed by the City. The Artist reserves all rights under copyright laws to the work, but shall make no exact duplications to full scale of the Artwork.

Section 6. 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 or profession that encompasses the specific service or artwork provided to the City hereunder, no agent, employee, representative or sub-consultant of the Artist 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 Artist 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 Artist. The Artist 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 Artist performs hereunder.

Section 7. Assignment, Transfer, Subcontracting

Neither the City nor the Artist shall assign or transfer an interest in this Agreement without the prior written consent of the other party. The Artist may subcontract portions of the Artwork at the Artist's expense, provided that said subcontracting shall not affect the design, appearance or visual quality of the Artwork and that such work is carried out under the personal supervision of the Artist.

Section 8. Termination

A. Termination of Agreement. The City may terminate this Agreement with or without cause at any time prior to completion of the work described herein. Termination shall be effective immediately upon the Artist's receipt of the City's written notice or such date stated in the City's notice, whichever is later. Such notice may be delivered to the Artist in person or by certified mail.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Artist to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section 4 above. After termination, the City may take possession of the Artwork and all supplies and materials in the Artist's possession which were paid for by the City pursuant to this Agreement. Upon termination, the City may hire another Artist to take over the work and prosecute the same to completion, by contract or otherwise.

Section 9. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Artist, its sub-contractors, or any person acting on behalf of such Artist or sub-consultant shall not, by reason of race, religion, color, sex, 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 10. Indemnification

The Artist shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Artist's own risk, and the Artist shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Artist for use in connection with the work. The Artist shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Artist's work when completed shall not be grounds to avoid any of these covenants of indemnification. In addition, the Artist shall indemnify and defend the City in any suit or claims for infringements of copyrights and patents rights, and shall hold the City harmless from loss on account thereof.

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

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

Section 11. Artist's Warranties

The Artist warrants that the installed Artwork shall be AS depicted in **Exhibit A** herein, and that the Artwork will be free from defects or other faults in material and workmanship, including any defects consisting of inherent vice or qualities which cause or accelerate deterioration of the Artwork. The Artist further warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance recommendations provided by the Artist to the City.

If either party recognizes faults or defects in the Artwork, it shall be brought to the immediate attention of the Artist. The Artist shall be responsible to correct any defects or faults in the Artwork that are brought to the Artist's attention within the warranty period of one (1) year after the date of final payment. This warranty shall apply only to the Artwork or the portion of the Artwork completed and installed by the Artist.

If any defects or faults appear during the warranty period, the Artist shall repair or replace the defect(s) at the Artist's sole cost and expense. The Artist shall not be responsible for any damage to the Artwork which is caused by the City, third parties or acts of God.

Section 12. Ownership of the Artwork

All ownership, rights, title and interest in the Artwork shall pass to the City upon the City's final payment to the Artist, or upon termination, as set forth herein.

Section 13. Repairs and Maintenance

A. The City recognizes that regular maintenance of the Artwork is essential to the integrity of the Artwork. The City shall reasonably assure that the Artwork is properly maintained and protected, taking into account the written instructions and recommendations of the Artist, and shall reasonably protect and maintain the Artwork against deterioration with time and abuse of vandals.

B. The City shall be responsible for making all necessary repairs or restoration of the Artwork, except as provided under the Artist's Warranty herein. However, the City's responsibility for repairs and restoration of the Artwork is, by law, contingent upon receipt of adequate appropriations for this purpose.

C. Where possible, the Artist shall be consulted as to his/her recommendations regarding repairs and restorations of the Artwork, during the lifetime of the Artist. To the extent practical and in accordance with accepted principles of conservation, the Artist may be given the opportunity to accomplish repairs and restorations and shall be paid a reasonable fee for such services, if utilized.

Section 14. Insurance

A. The Artist 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 Artist's own work including the work of the Artist's agents, representatives, employees, sub-consultants or sub-contractors, and including damage to the Artwork until the date the City accepts (in writing) the installed Artwork. The responsibility for and risk of damage to or loss of the Artwork during fabrication, transportation, and installation up to the date of the City's written acceptance shall be solely that of the Artist.

B. Before beginning work on the Artwork described in this Agreement, the Artist shall provide evidence, in the form of a Certificate of Insurance, of insurance coverage to satisfy the requirements of this Agreement.

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

D. The City reserves the right to receive a certified and complete copy of all of the Artist's insurance policies.

E. It is the intent of this Agreement for the Artist'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.

F. The Artist shall request from his/her 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 Artist's coverage.

Section 15. Compliance with Law

The Artist 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.

Section 16. 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.

Section 17. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City's Public Works Director and the City shall determine the term or provision's true intent or meaning. The Public Works Director shall also decide all questions that 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 Artist under any of the provisions of this Agreement which cannot be resolved by the Public Works Director's determination in a reasonable time, or if the Artist does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

Section 18. Written Notice

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

ARTIST
Tom Torrens
TORRENS SCULPTURE & DESIGN, INC.
PO Box 1819
Gig Harbor, WA 98335
(800) 766-7736

CITY OF GIG HARBOR
David Stubchaer
Public Works Director
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

Section 19. 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 Artist.

Section 20. Severability

If any provision of this Agreement or any provision of the Exhibits to this Agreement are found by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions of this Agreement which can be given effect without the invalid or unconstitutional provision. To this end, the provisions of this Agreement are declared to be severable.

Section 21. 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 on this _____ day of _____, _____.

ARTIST:

THE CITY OF GIG HARBOR

By: _____
Its: _____

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**CITY OF GIG HARBOR
DONKEY CREEK ART PROJECT PROSSAL**

“RING IN THE SALMON”

by

Tom Torrens Sculpture Design, Inc.



TOM TORRENS SCULPTURE DESIGN, INC.

P.O. Box 1819, Gig Harbor, WA 98335

Copyrighted by Tom Torrens Sculpture Design, Inc. © 2007

**CITY OF GIG HARBOR
DONKEY CREEK ART PROJECT PROSSAL**

Page 2

“RING IN THE SALMON”

Dimensions: Approximately 9 ½ feet tall x 40” wide x 40” deep

Materials: Fabricated Steel
Stainless Steel Circular Base
Fiberglass Fish Image

Fabricated elements to be included are listed below.

1. A 30 inch flat diameter base made from 3/16 inch stainless steel plate to solve the concern of rust stains on the sidewalk.
2. Three holes to be drilled into the stainless steel base for the city’s installation of the sculpture to concrete.
3. Bell to be welded on the sculpture to prevent theft.
4. Chain attached to the bell sticker to prevent theft.
5. The hollow fiberglass salmon image to be filled with resin to provide a solid material for best possible protection against damage.
6. Locking collar with set screw device to prevent theft of the salmon image.
7. Steel and stainless steel elements to be finished with anti-graffiti powder coat surface in a weathered brown color.
8. Bolts in same color finish for installation will be provided to the city.
9. Assisting the city at time of installation.



TOM TORRENS SCULPTURE DESIGN, INC.

P.O. Box 1819, Gig Harbor, WA 98335
Copyrighted by Tom Torrens Sculpture Design, Inc.

EXHIBIT B

Consent Agenda - 3 PROFORMA INVOICE



TOM TORRENS SCULPTURE DESIGN, INC.
P.O. BOX 1819
GIG HARBOR, WA 98335

Voice: 800-786-7736
Fax: 253-265-2404

Number
33623- Revised #2

Invoice Date:

Feb 9, 2009

Duplicate

Page

1

Sold To: CITY OF GIG HARBOR
3510 GRANDVIEW STREET
GIG HARBOR, WA 98335

Ship To: CITY OF GIG HARBOR
3510 GRANDVIEW STREET
GIG HARBOR, WA 98335

Customer ID	Customer PO	Payment Terms	
RIS 09984	BOB SULIVAN	1/3, 1/3, 1/3	
Sales Rep ID	Shipping Method	Ship Date	Due Date
TORRENS, DONNA	Tom to deliver	5/19/09	3/11/09

Quantity	Item	Description	Unit Price	Extension
1.00	CUSTOM	CUSTOM ITEM: PYRAMID BASE WITH FIBERGLASS FISH/ Weathered Brown Finish/ includes delivery to site.	5,500.00	5,500.00
1.00	MISC	3/16" Stainless Steel Base Revision W/ 3 holes, materials, in-bound delivery & labor.	650.00	650.00
1.00	MISC	Bell welded hook		
1.00	MISC	Chain welded to bell striker, materials & labor	50.00	50.00
1.00	MISC	Decorative Balls above Salmon, materials & labor	125.00	125.00
1.00	MISC	Salmon filled with foam Resin, materials & labor	150.00	150.00
1.00	MISC	Anti-Graffiti Powder Coated Paint /includes transportation to sub-contractor	750.00	750.00
1.00	MISC	Administration costs for contract revisions \$ copyright application to date	500.00	500.00

Subtotal
Sales Tax
Freight

Continued
Continued

Total Invoice Amount
Payment/Credit Applied

Continued

TOTAL

Continued

Check/Credit Memo No:

**Consent Agenda - 3
PROFORMA INVOICE**



TOM TORRENS SCULPTURE DESIGN, INC.
P.O. BOX 1819
GIG HARBOR, WA 98335

Voice: 800-786-7736
Fax: 253-265-2404

Number
33623- Revised #2

Invoice Date:
Feb 9, 2009
Page
2

Duplicate

Sold To: CITY OF GIG HARBOR
3510 GRANDVIEW STREET
GIG HARBOR, WA 98335

Ship To: CITY OF GIG HARBOR
3510 GRANDVIEW STREET
GIG HARBOR, WA 98335

Customer ID	Customer PO	Payment Terms	
RIS 09984	BOB SULIVAN	1/3, 1/3, 1/3	
Sales Rep ID	Shipping Method	Ship Date	Due Date
TORRENS, DONNA	Tom to deliver	5/19/09	3/11/09

Quantity	Item	Description	Unit Price	Extension
1.00	MISC	Installation assistance, not to exceed 2 hours		
1.00	MISC	Digita phtographghy & Design Services to date	50.00	50.00
3.00	MISC	Stainless installation bolts	19.42	58.26
<p>INSTALLATION DATE: May 19, 2009 or 60 days after contract in signed. Artist reserves the right to finish before 60 days and will notify the city.</p> <p>ORIGINAL WORK - Artist has notified the City of Gig Harbor, the Original Design was produced and sold in 2007 for the Charity Event "Salmon Enchanted Evening".The Copyright Registration was applied for using the original design in</p>				

	Subtotal	Continued
	Sales Tax	Continued
	Freight	
	Total Invoice Amount	Continued
Check/Credit Memo No:	Payment/Credit Applied	
	TOTAL	Continued

**Consent Agenda - 3
PROFORMA INVOICE**



TOM TORRENS SCULPTURE DESIGN, INC.
P.O. BOX 1819
GIG HARBOR, WA 98335

Voice: 800-786-7736
Fax: 253-265-2404

Number
 33623- Revised #2

Invoice Date:
 Feb 9, 2009

Duplicate

Page
 3

Sold To: CITY OF GIG HARBOR
 3510 GRANDVIEW STREET
 GIG HARBOR, WA 98335

Ship To: CITY OF GIG HARBOR
 3510 GRANDVIEW STREET
 GIG HARBOR, WA 98335

Customer ID	Customer PO	Payment Terms	
RIS 09984	BOB SULIVAN	1/3, 1/3, 1/3	
Sales Rep ID	Shipping Method	Ship Date	Due Date
TORRENS, DONNA	Tom to deliver	5/19/09	3/11/09

Quantity	Item	Description	Unit Price	Extension
		2007. The City of Gig Harbor acknowledges this Sculpture is a slight variation of the original design and will have all the same rights and privileges of the original design if and when the copyright registration is issued. Copyright Application was sent to the US Copyright Office in September 2008. The Artist acknowledges no other variations of the original design will be created. CITY OF GIG HARBOR - must notify the Artist of any additional fees or costs of permits required by the City not included in the Performa Invoice so the Artist may include those fees in the final		

	Subtotal	Continued
	Sales Tax	Continued
	Freight	
	Total Invoice Amount	Continued
Check/Credit Memo No:	Payment/Credit Applied	
	TOTAL	Continued

**Consent Agenda - 3
PROFORMA INVOICE**



TOM TORRENS SCULPTURE DESIGN, INC.
P.O. BOX 1819
GIG HARBOR, WA 98335

Voice: 800-786-7736
Fax: 253-265-2404

Number
 33623- Revised #2

Invoice Date:
 Feb 9, 2009

Duplicate

Page
 4

Sold To: CITY OF GIG HARBOR
 3510 GRANDVIEW STREET
 GIG HARBOR, WA 98335

Ship To: CITY OF GIG HARBOR
 3510 GRANDVIEW STREET
 GIG HARBOR, WA 98335

Customer ID	Customer PO	Payment Terms	
RIS 09984	BOB SULIVAN	1/3, 1/3, 1/3	
Sales Rep ID	Shipping Method	Ship Date	Due Date
TORRENS, DONNA	Tom to deliver	5/19/09	3/11/09

Quantity	Item	Description	Unit Price	Extension
		invoice for payment.		
		TERMS OF PAYMENT		
		1) 1/3 payment due at time of contract acceptance,.		
		2) 1/3 payment due after final fabrication inspection and before powdercoating begins.		
		3) Final payment due 30 days after installation date per contract.		

	Subtotal	7,833.26
	Sales Tax	657.99
	Freight	
	Total Invoice Amount	8,491.25
Check/Credit Memo No:	Payment/Credit Applied	
	TOTAL	8,491.25



Subject: RE-APPOINTMENT TO BUILDING CODE ADVISORY BOARD

Proposed Council Action:

A motion to re-appoint Tom Bates, Mike Bitterling and Jim Zuzy to the Building Code Advisory Board.

Dept. Origin: Administration

Prepared by: Boards/Commission Review Committee

For Agenda of: April 13, 2009

Exhibits: Re-appointment Requests
Initial & Date

Pro Tem
Concurred by Mayor: DT

Approved by City Administrator: PKK

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

Three members of the Building Code Advisory Board have reached the end of their four-year term. Each has submitted a letter asking to be re-appointed. An ad was placed on the city's website asking for other interested parties to submit letter of interest. The only letters received were from the incumbent members.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

The following recommendation came from the Board and Commission Candidate Review Committee.

RECOMMENDATION / MOTION

Move to: Re-appoint Tom Bates, Mike Bitterling and Jim Zuzy to serve another four-year term on the Building Code Advisory Board.



COMMUNITY DEVELOPMENT DEPARTMENT

CITY OF GIG HARBOR

BUILDING CODE ADVISORY BOARD RECRUITMENT

Mayor Chuck Hunter is issuing a call to serve on the Gig Harbor Building Code Advisory Board. The position is strictly voluntary and is not compensated and serves a four-year term.

The Building Code Advisory Board holds open public hearings and makes final decisions on appeals of administrative determinations where alternate materials or methods of construction are proposed, makes final decision on interpretations of the codes adopted and makes recommendations to the Gig Harbor City Council on the adoption of new codes and amendments. The Building Code Advisory Board will meet twice annually or as necessary to hear appeals or make decisions on interpretations.

Persons interested in serving on the Building Code Advisory Board should submit a letter of interest and completed application to the Mayor, City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335 no later than 4:30 P.M. on Thursday, March 19, 2009.

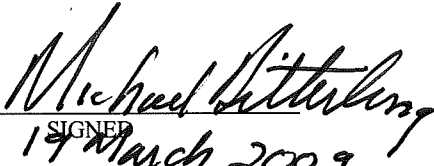
City of Gig Harbor
3510 Grandview St
Gig Harbor, WA 98335

Re: Re-appointment to the Building Code Advisory Board for the City of Gig Harbor

Dear Mayor Hunter,

My term on the Building Code Advisory Board will come to an end on March 31, 2009.
It is my wish to be considered for another term.

Sincerely,



SIGNED
17 March 2009

DATE

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

Re: Re-appointment to the Building Code Advisory Board for the City of Gig Harbor

Dear Mayor Hunter,

My term on the Building Code Advisory Board will come to an end on March 31, 2009.
It is my wish to be considered for another term.

Sincerely,



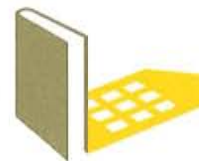
SIGNED
11 March 2009

DATE

RECEIVED
CITY OF GIG HARBOR
MAR 11 2009
COMMUNITY
DEVELOPMENT

RECEIVED
MAR 16 2009
CITY OF GIG HARBOR

Consent Agenda - 4



BLRB architects

March 11, 2009

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

RE: Re-Appointment to the Building Code Advisory Board
For the City of Gig Harbor

Dear Mayor Hunter:

My term on the Building Code Advisory Board will come to an end on March 31, 2009.
It is my wish to be considered for another term.

Sincerely,

Thomas L. Bates, FAIA, LEED® AP
Managing Principal

vkm.corp.corres.040



**Subject: RE-APPOINTMENT TO
CIVIL SERVICE COMMISSION**

Proposed Council Action:

A motion to re-appoint Bert Beneville,
Pat Gregory, and Bill Owel to the
Gig Harbor Civil Service Commission

Dept. Origin: Administration

Prepared by: Boards/Commission
Review Committee

For Agenda of: April 13, 2009

Exhibits: Re-appointment Requests

Initial & Date

Concurred by Mayor: *Pro Tem:* DP 3/27

Approved by City Administrator: PK

Approved as to form by City Atty: _____

Approved by Finance Director: 3/26/09

Approved by Department Head: 3/25/09

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

INFORMATION / BACKGROUND

Three members of the Civil Service Commission have reached the end of their six-year term. Each has submitted a letter asking to be re-appointed. An ad was placed on the city's website asking for other interested parties to submit letter of interest. The only letters received were from the incumbent members.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

The following recommendation came from the Board and Commission Candidate Review Committee.

RECOMMENDATION / MOTION

Move to: Re-appoint Bert Beneville, Pat Gregory and Bill Owel to serve another six-year term on the Civil Service Commission.



ADMINISTRATION

CITY OF GIG HARBOR CIVIL SERVICE COMMISSION RECRUITMENT

The City of Gig Harbor is issuing a call to serve on the Civil Service Commission. The position is strictly voluntary, is not compensated and serves a six-year term.

The Civil Service Commission governs the administration of the Civil Service System to assure compliance with RCW 41.08 and 41.12 and meets on an as-needed basis throughout the year.

Persons interested in serving on the Civil Service Commission should submit a letter of interest and completed application to the Civil Service Secretary, City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335 no later than 4:30 P.M. on Thursday, March 26, 2009.

From: beneville/bomhoff [berjango@comcast.net]
Sent: Wednesday, March 18, 2009 1:27 PM
To: Towslee, Molly
Subject: Re:
Attachments: image003.png

Molly
I Would like to continue
Bert Beneville

----- Original Message -----

From: Towslee, Molly
To: Bert Beneville ; Bill Owel ; Pat Gregory
Cc: Davis, Michael L
Sent: Wednesday, March 18, 2009 8:43 AM

Good morning Civil Service Commissioners,

I just realized that your terms expired in January. I hope that you are interested in serving another six-year term. If you are, please send a letter (or e-mail) to my attention to that effect.

It's our policy here to run an ad asking for interested people, even though we are happy with those who are serving and we want them to continue to serve.

This allows us to establish a list in case something happens and there is an opening. Please don't be surprised if you see something on our website asking for interest in this commission. I'll post it for a short time and hope that you will submit your letter of interest during that period.

If you have any question, please let me know,

Molly Towslee, City Clerk
253.853-7613 Direct Line

---CONFIDENTIALITY NOTICE---THIS MESSAGE AND/OR THE DOCUMENT(S) ACCOMPANYING THIS ELECTRONIC TRANSMISSION MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR USE OF THE CONTENTS OF THIS TRANSMISSION IS PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US BY TELEPHONE, MAIL OR ELECTRONIC MAIL, AND DESTROY THIS COMMUNICATION.

From: taxman8823@juno.com
Sent: Wednesday, March 18, 2009 12:39 PM
To: Towslee, Molly
Cc: berjango@comcast.net; ngreg@harbornet.com; Davis, Michael L
Subject: Re: Civil Service Commissioner

Molly
I'm willing to serve another 6 year term
Bill Owel

[Digital Photography - Click Now.](#)

From: Nancy Gregory [ngreg@harbornet.com]
Sent: Wednesday, March 18, 2009 10:44 AM
To: Towslee, Molly; 'Bert Beneville'; 'Bill Owel'
Cc: Davis, Michael L
Subject: RE:
Attachments: image001.gif

Molly:

I would like to continue serving as a Civil Service Commissioner for the City of Gig Harbor. If I can assist you in any other way feel free to contact me at any time.

Patrick C. Gregory

-----Original Message-----

From: Towslee, Molly [mailto:TowsleeM@cityofgigharbor.net]
Sent: Wednesday, March 18, 2009 8:44 AM
To: Bert Beneville; Bill Owel; Pat Gregory
Cc: Davis, Michael L
Subject:

Good morning Civil Service Commissioners,

I just realized that your terms expired in January. I hope that you are interested in serving another six-year term. If you are, please send a letter (or e-mail) to my attention to that effect.

It's our policy here to run an ad asking for interested people, even though we are happy with those who are serving and we want them to continue to serve.

This allows us to establish a list in case something happens and there is an opening. Please don't be surprised if you see something on our website asking for interest in this commission. I'll post it for a short time and hope that you will submit your letter of interest during that period.

If you have any question, please let me know,

Molly Towslee, City Clerk
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**PROCLAMATION OF THE MAYOR
OF THE CITY OF GIG HARBOR**

To establish the 4th week in April of each year as “Earth Week” in Gig harbor in celebration of the gifts humanity receives from a healthy urban forest.

WHEREAS, trees provide oxygen necessary for life on earth, and

WHEREAS, one acre of forest absorbs six tons of carbon dioxide and produces four tons of oxygen per year, enough for 18 people, and

WHEREAS, trees absorb and store carbon dioxide which helps control global warming, and

WHEREAS, trees and their roots help prevent erosion, landslides and absorb storm water runoff, and

WHEREAS, trees replenish our topsoil with nutrients necessary for native plants to flourish, and

WHEREAS, trees provide habitat for wildlife and filter groundwater to keep our streams clean, and

WHEREAS, our urban forest is the very signature of our livable community, and

WHEREAS, an Arbor Day celebration will encourage the planting of trees, and

WHEREAS, the forests provide the lungs of the planet, sanctuary for the soul and an economic engine,

NOW THEREFORE, I, Charles Hunter, Mayor of Gig Harbor, declare the week of April 19th through 25th as

EARTH WEEK

In honor of the establishment of the Gig Harbor/Key Peninsula Arbor Day Foundation and designating Saturday, April 25, 2005 as Gig Harbor’s Annual Arbor Day celebration.

Mayor Charles Hunter, City of Gig Harbor

Date



Subject: Resolution – Surplus Equipment

Dept. Origin: Public Works-Operations

Proposed Council Action:

Adopt Resolution No. 788 to Surplus an Ideal Truck Crane and an Aluminum Tool Box.

Prepared by: David Stubchaer, P.E.
Public Works Director

For Agenda of: April 13, 2009

Exhibits: Resolution No. 788

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

RSK

Approved as to form by City Atty:

Approved by Finance Director:

OR 4/8/09

Approved by Department Head:

DS 4/9/09

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

INFORMATION / BACKGROUND

Staff requests authorization to surplus the following equipment: One Ideal Truck Crane, Model #LIB 2001R, Serial #2001R-0100-3111, and an Aluminum Tool Box.

This equipment is obsolete.

FISCAL CONSIDERATION

Proceeds from the auctioning of these items will go to the general fund.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt Resolution No. 788 to Surplus an Ideal Truck Crane and an Aluminum Tool Box.

RESOLUTION NO. 788

**A RESOLUTION OF THE CITY OF GIG HARBOR
DECLARING CITY EQUIPMENT SURPLUS AND ELIGIBLE
FOR SALE.**

WHEREAS, the Gig Harbor City Council has determined that city-owned equipment is surplus to the City's equipment needs and has been or is in need of being replaced with new equipment; and

WHEREAS, the City may declare such equipment surplus and eligible for sale;

NOW, THEREFORE, the City Council of the City of Gig Harbor hereby resolves as follows.

To declare as surplus:

	EQUIPMENT		SERIAL / Asset ID number	Mileage
1	Ideal Truck Crane		LIB 2001R/2001R-0100-3111	N/A
1	Aluminum Tool Box		N/A	N/A

PASSED ON THIS 13th day of April, 2009.

APPROVED:

MAYOR CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 03/30/09
PASSED BY THE CITY COUNCIL: 04/13/09
RESOLUTION NO. 788



Business of the City Council
City of Gig Harbor, WA

Subject: Harbor Hill Water Tank Site – Quit Claim Deed

Proposed Council Action: Approve the Quit Claim Deed submitted by OPG Properties LLC for parcel number 0222308001.

Dept. Origin: Public Works
Prepared by: Willy Hendrickson
Engineering Technician

For Agenda of: April 13, 2009

Exhibits: Quit Claim Deed
Site Location Exhibit
Vicinity Map

Initial & Date

Concurred by Mayor:

Approved by City Administrator: PK 4/8

Approved as to form by City Atty: approved by email

Approved by Finance Director: N/A

Approved by Department Head: DF 4/8/09

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
----------------------	---	-----------------	---	------------------------	---

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 water tank that serves the Gig Harbor North area that has been accepted and turned over to the City. In addition, Olympic Property Group (OPG) has granted to the City a road access easement to maintain the water tank.

The City already owns the water tank and Olympic Property Group has agreed to Quit Claim to the City a 100'x110' parcel of land (Lot 1, parcel number 0222308001) of the 'Gig Harbor Short Plat' (short plat recording number 2009021355006) on which the water tank is constructed.

The City's standard Quit Claim Deed has been reviewed and approved as to form by City Attorney, Angela Belbeck.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Staff recommends approval of the Harbor Hill Water Tank Site Quit Claim Deed.

WHEN RECORDED, RETURN TO:

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

**QUIT CLAIM DEED
(HARBOR HILL WATER TANK SITE)**

Grantor: OPG Properties LLC, a Washington limited liability company

Grantee: City of Gig Harbor, a Washington municipal corporation

Abbreviated Legal Description:

Lot 1 of the Short Plat recorded under recording number 200902135006, Records of Pierce County, Washington.

Complete legal description is at page 3 (Exhibit A) hereto.

Assessor's Property Tax Parcel Account Numbers:

0222308001

Reference to Related Documents:

None.

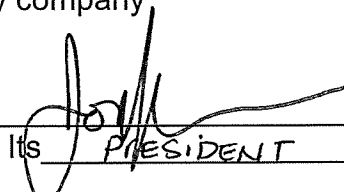
**QUIT CLAIM DEED
(HARBOR HILL WATER TANK SITE)**

The Grantor, OPG Properties LLC, a Washington limited liability company, for and in consideration of ten dollars (\$10.00) in hand paid, conveys and quitclaims to the Grantee City of Gig Harbor, a Washington municipal corporation, all interest the Grantor has on this date in the real property legally described on Exhibit A attached hereto, situate in Pierce County, State of Washington, SUBJECT TO AND EXCEPTING all agreements, conditions, covenants, declarations, easements, encumbrances, restrictions, and other matters of record, which shall remain in full force and effect.

Dated and effective as of February 17, 2009.

GRANTOR:


OPG PROPERTIES LLC, a Washington limited liability company

By  _____
Its PRESIDENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

On this 17 day of FEBRUARY, 2009, before me, a Notary Public in and for the State of Washington, personally appeared JON ROSE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the President of OPG PROPERTIES LLC to be the free and voluntary act and deed of said limited liability company for the uses and purposes mentioned in the instrument.

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



NOTARY PUBLIC in and for the State of
Washington, residing at Poulsbo
My appointment expires 12/15/2010
Print Name SARAH J. STEFFEN

ACCEPTED BY CITY OF GIG HARBOR:

By: _____
Mayor Charles L. Hunter

ATTEST:

Molly Towslee, City Clerk

EXHIBIT A

Description of Property

Lot 1 of the Short Plat recorded under recording number 200902135006, Records of Pierce County, Washington.

SITE LOCATION EXHIBIT

1002430160
MILTON AMERICAN
CONSTRUCTION

DIV. 50
REC #200511305006

45TH AVE CT NW

4002430270
REFERENCE

4002430180
LORIGON CORP

40024301
LORIGON C

4002430270 REFERENCE

644.33

N 88°35'02" W

1318.47

20' POWERLINE EASEMENT
PER REC #200607260697

WETLAND "I",
PSSI
0.26 AC.

N 88°13'07" W
100.00
N 01°46'53" E
110.00
LOT 1
N 88°13'07" W
100.00

T.P.O.B. LOT 1

N 20°25'31" W
183.96

N 01°46'53" E
110.00

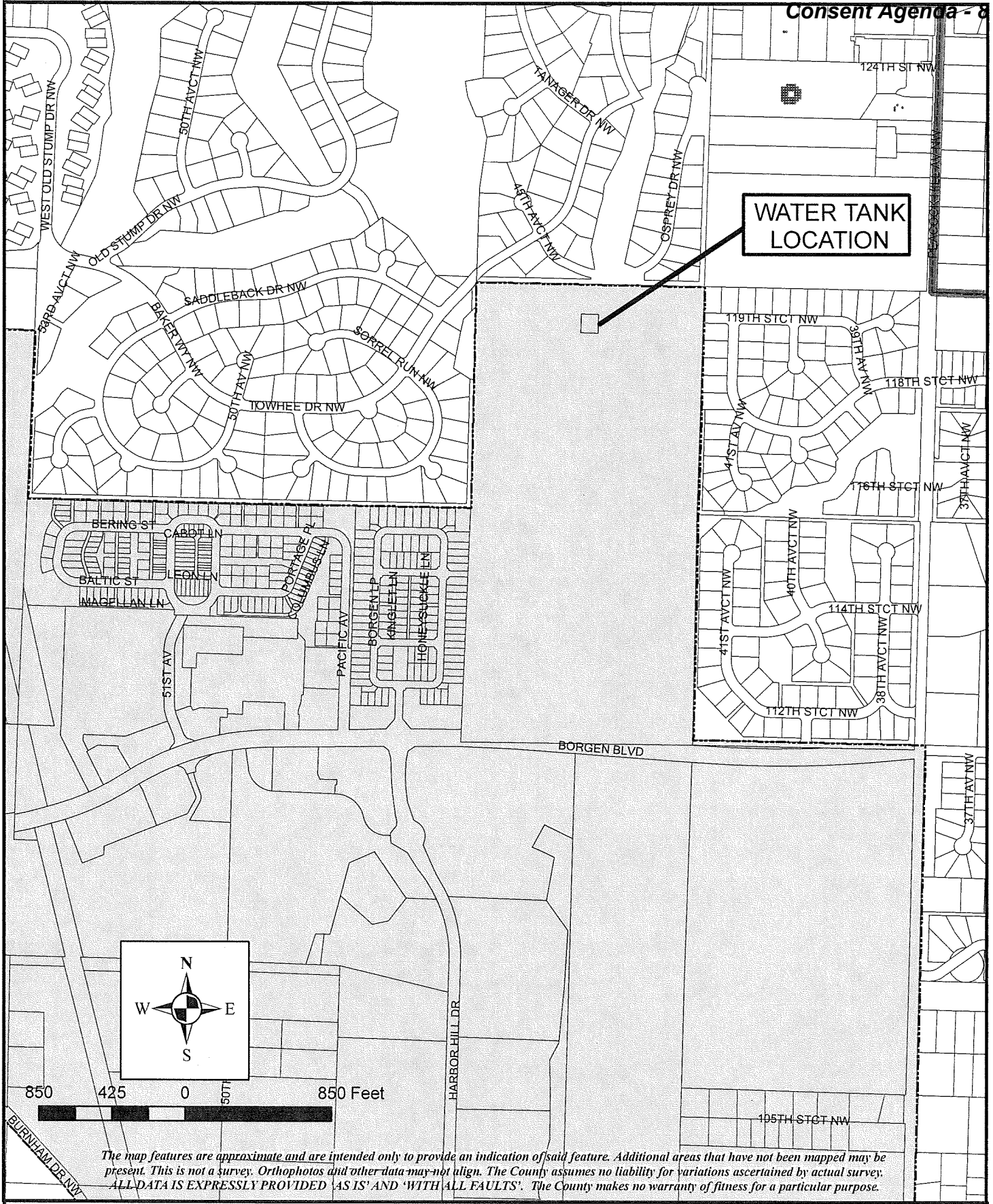
30' WATERLINE AND ACCESS ESMT.
PER REC. #200607260698

LOT 2

WETLAND "G"
PUB
0.07 AC.

WET

SF # 200902135006



The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos and other data may not align. The County assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSLY PROVIDED AS IS AND WITH ALL FAULTS. The County makes no warranty of fitness for a particular purpose.

**HARBOR HILL WATER TANK SITE
VICINITY MAP**



Subject: Skansie Reservoir Repainting Project-Public Works Contract Award and Materials Testing Contract Authorization.

Proposed Council Action: Authorize the Award of the Public Works Contract to Coatings Unlimited Inc. in the amount of \$142,892.88 and the material testing contract to Greenman-Pedersen, Inc. in the amount of \$8,522.00 for the Skansie Reservoir Repainting Project.

Dept. Origin: Public Works Department

Prepared by: Jeff Olsen
Construction Inspector

For Agenda of: April 13, 2009

Exhibits: Contract, Scope, and Fee

Initial & Date

Concurred by Mayor:

Approved by City Administrator: POK 4/8/09

Approved as to form by City Atty: _____

Approved by Finance Director: _____

Approved by Department Head: JLH 4/8/09

Expenditure Required	\$151,206.88	Amount Budgeted	\$200,000	Appropriation Required	\$0
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INFORMATION / BACKGROUND

The 2008 Budgeted water capital objective #6 provided for the repainting of the interior/exterior surfaces on the East Tank and interior surface of the Skansie Water Reservoir. On March 4, 2008, City staff along with a paint coatings expert examined the interior of the East tank and found it to be in good condition and not in need of repainting. This contract provides for the interior repainting of the Skansie Water Reservoir which falls into the category of Standard Maintenance Operation.

The City originally bid this project on November 18, 2008. In light of differences in opinion on product specification and substitution, and in order to provide better clarity in its specifications City Staff recommended rejection of all bids by Resolution No. 782. Council passed this Resolution on January 12, 2009.

This project received quotation proposals utilizing the City's small works roster process (Resolution No. 750) on March 19, 2009. A total of 4 potential contractors provided bid prices ranging from \$142,892.88 and \$157,943.14. The three lowest bid results are provided below:

Low Bidder	Coatings Unlimited Inc.	\$142,892.88
2 nd Low Bidder	Washington Industrial Inc.	\$145,015.07
3 rd Low Bidder	National Industrial Inc.	\$150,541.53

Additionally, the City requested a scope and fee from Greenman-Pedersen, Inc. for Special Inspection of paint application and preparation for this project.

FISCAL CONSIDERATION

The 2008 City of Gig Harbor Capital Budget allocated \$200,000.00 for this project under Objective #6. The funding summary is shown in the table below.

Skansie Reservoir Interior Repainting Project	
Public Works Contract (Coatings Unlimited, Inc.)	\$ 142,892.88
Special Inspection Contract (Greenman-Pedersen Inc.)	\$ <u>8,522.00</u>
Total	\$ 151,414.88

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize the award and execution of the Public Works contract to repaint the interior of the Skansie Water Reservoir to Coatings Unlimited, Inc. in the amount not to exceed One Hundred Forty-Two Thousand, Eight Hundred Ninety-Two Dollars and Eighty-Eight Cents (\$142,892.88) as well as authorize consultant services contract for special inspection to Greenman-Pedersen, Inc. in the amount not to exceed Eight Thousand Five Hundred Twenty-Two Dollars and Zero Cents (\$8,522.00), both including retail sales tax.

**SKANSIE RESERVOIR REPAINTING PROJECT
CWP-0804
PUBLIC WORKS CONTRACT**

THIS AGREEMENT, made and entered into, this ____ day of _____, 2009, by and between the City of Gig Harbor, a Charter Code city in the State of Washington, hereinafter called the "City", and Coatings Unlimited, Inc., organized under the laws of the State of Washington, located and doing business at 18420 68th Avenue South, Suite #110, Kent, WA 98032, hereinafter called the "Contractor."

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties hereto covenant and agree as follows:

1. The Contractor shall do all of the work and furnish all of the labor, materials, tools, and equipment necessary to complete the Interior near-white blasting, clean, and repainting of the Skansie Tank and shall perform any changes in the work, all in full compliance with the contract documents entitled "Skansie Reservoir Repainting Project (CWP-0804)," which are by this reference incorporated herein and made a part hereof; and agrees to accept payment for the same in accordance with the said contract documents, including the schedule of prices in the "Quotation Proposal," the sum of One Hundred Forty-Two Thousand, Eight Hundred Ninety-Two Dollars and Eighty-Eight Cents (\$142,892.88) subject to the provisions of the Contract Documents and the Standard Specifications for the Skansie Reservoir Repainting.
2. Work shall commence and contract time shall begin on the first working day following the tenth (10th) calendar day after the date the City executes the Contract, or the date specified in the Notice to Proceed issued by the City Engineer, whichever is later. All physical contract work shall be completed within thirty (30) working days.
3. The Contractor agrees to pay the City the sum of \$ 714.46 per day for each and every day all work remains uncompleted after expiration of the specified time, as liquidated damages.
4. The Contractor shall provide for and bear the expense of all labor, materials, tools and equipment of any sort whatsoever that may be required for the full performance of the work provided for in this Contract upon the part of the Contractor.
5. The term "Contract Documents" shall mean and refer to the following: "Quotation Proposal," "Specifications," "Contract," "Performance Bond," "Maintenance Bond," "Payment Bond," "Notice to Proceed," "Change Orders" if any, and any documents referenced or incorporated into the Contract Documents, including, but not limited to the Washington State Department of Transportation's "2008 Standard Specifications for Road, Bridge, and Municipal Construction," including the American Public Works Association (APWA) Supplement to Division 1, and the American Water Works Association (AWWA) "Standard for Painting Steel Water-Storage Tanks", D102-03.
6. The City agrees to pay the Contractor for materials furnished and work performed in the manner and at such times as set forth in the Contract Documents.

- 7. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, assigns, agents, subcontractors, and employees, does hereby agree to the full performance of all of the covenants herein contained upon the part of the Contractor.
- 8. It is further provided that no liability shall attach to the City by reason of entering into this Contract, except as expressly provided herein.

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed the day and year first hereinabove written:

CITY of GIG HARBOR:

CONTRACTOR:

 Chuck L. Hunter, Mayor
 City of Gig Harbor

Date: _____

Print Name: _____

Print Title: _____

Date: _____

ATTEST:

 City Clerk

APPROVED FOR FORM:

 City Attorney

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
Greenman-Pedersen, Inc.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Greenman-Pedersen, Inc., a corporation organized under the laws of the State of New York (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the Skansie Reservoir Repainting Project (CWP-0804) 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 Schedule of Rates**, 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 Eight thousand Three Hundred Fourteen Dollars and zero cents. (\$8,314.00) 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 – Scope of Work and Schedule of Rates**. 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 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:
Greenman-Pedersen, Inc.
ATTN: Web Chandler
6218 Boardman RD NW
Olympia, WA 98230
(360) 866-2206

City of Gig Harbor
ATTN: Stephen Misiurak, P.E.
City Engineer
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 in **Exhibit A** 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 _____, 2009.

CONSULTANT
By: [Signature]
(print name) BW Chandler 4/7/09
Its: Greenman-Pedersen Inc

CITY OF GIG HARBOR
By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



Subject: Hunt-Wollochet Signal Repair Project
Materials Testing Authorization to Construction
Testing Laboratories, Inc.

Proposed Council Action: Authorize the award and execution of a consultant services contract for the Hunt-Wollochet Dr Signal Repair with Construction Testing Laboratories, Inc., for construction materials testing services in an amount not to exceed Two Hundred Ninety-Three Dollars and no cents (\$293.00).

Dept. Origin: Public Works Department

Prepared by: Jeff Olsen
Construction Inspector

For Agenda of: April 13, 2009

Exhibits: Consultant Services Contract

Concurred by Mayor: _____
Initial & Date

Approved by City Administrator: POK

Approved as to form by City Atty: _____

Approved by Finance Director: DP 4/8/09

Approved by Department Head: RS 4/8/09

Expenditure Required	\$293.00	Amount Budgeted	\$0	Appropriation Required	\$0
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INFORMATION / BACKGROUND

This project includes construction of a new signal pole, Pedestrian Pole, electrical service and associated hardware damaged during a motor vehicle accident on 6-1-2007. Immediately following the accident the City constructed temporary facilities until the permanent facilities could be designed and constructed. The proposed consultant services contract is for the materials testing of the concrete bases associated with the placement of the permanent facilities.

FISCAL CONSIDERATION

The funding source for this project is the motor vehicles operator insurance.

BOARD OR COMMITTEE RECOMMENDATION

RECOMMENDATION / MOTION

Move to: Authorize the award and execution of a consultant services contract for the Hunt-Wollochet signal repair Project with Construction Testing Laboratories, Inc. for construction materials testing services in an amount not to exceed Two Hundred Ninety-Three dollars and no cents (\$293.00).



CONSTRUCTION TESTING LABORATORIES, INC.



1202 East D Street, Suite 101, Tacoma, WA 98421
Telephone (253) 383-8778
Facsimile (253) 383-2231
www.cctlwa.com

March 27, 2009

Mr. Jeffery Olsen
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Subject: Proposal for Construction Materials Testing and Special Inspection for the CSP-0708 Hunt-Wollochet Signal Repair Project Gig Harbor, Washington,

Dear Mr. Olsen,

Construction Testing Laboratories, Inc. (CTL) is pleased to provide this proposal for inspection services on the subject project. CTL is operated by Professional Engineers and our inspectors and laboratory are accredited with such organizations as WABO, ICC, A2LA, AASHTO, ACI, NICET and also maintain current certification with the Army Corps of Engineers, ACOE. Our radiation safety plan is approved for the 2009 year by the Fort Lewis Radiation Safety Officer.

We at CTL look forward to continuing our professional relationship with your firm. Your project is important to us. CTL will assign a project manager to your project to track budgets and assign field inspectors. The project manager will also be available to attend pre-construction meetings or answer questions when the need arises, these services will be provided at no additional cost to you. Our fees also include report typing and mail distribution. **With a three hour minimum for our services, we can save you money on unnecessary charges.**

Please feel free to call with any questions you may have. I may be reached at (253) 383-8778.

Sincerely,
Construction Testing Laboratories, Inc.

A handwritten signature in black ink, appearing to read 'Lloyd Detterich', written in a cursive style.

Lloyd Detterich
Branch Manager

Construction Testing Laboratories, Inc.
1202 East D Street Suite 101
Tacoma, WA 98421

Hunt-Wollochet Signal Repair
Page 2 of 3
March 27, 2009

Scope of Services

CTL will provide special inspection and construction materials testing in general accordance with the International Building Code and instructions from the client's representative and/or engineer of record. Services anticipated on this project are reinforced concrete inspection. The following table is an estimated budget for these services:

UNITS	DESCRIPTION	UNIT RATE	EXTENSION
CONCRETE			
3 Hours	Concrete Technician	\$49.00	\$147.00
4 Each	Compression Samples	\$18.00	\$72.00
1 Each	Sample Pick Up	\$49.00	\$49.00
1 Each	Mileage Charge	\$25.00	\$25.00
TOTAL ESTIMATE CONCRETE			\$293.00

The estimated budget is based on the bid assumptions on page 3.

Hunt-Wollochet Signal Repair
Page 3 of 3
March 27, 2009

The above estimated budget is subject to the bid assumptions below.

BID ASSUMPTIONS

1. *All services will be billed on a bi-monthly basis. Terms are net 30 days.*
2. *Inspections will be billed portal to portal from our Tacoma office with a three hour minimum.*
3. *A premium of 1.5 will be charged for work performed outside our regular work hours (7 am to 4 pm Monday through Friday). A premium of 2x will be charged for work on Sundays and Holidays.*
4. *24 hour notice is requested to schedule inspectors.*
5. *Services requested but not listed herein will be billed our current standard unit rates*

Attachments: General Terms and Conditions

Upon acceptance, please sign proposal and return at your earliest convenience. Also our office will contact you for mail distribution so copies of reports can be sent to your engineers/owners if you so desire.

Construction Testing Laboratories, Inc.
Respectfully Submitted,

Lloyd Detterich
Branch Manager

Dennis Smith
Project Manager

Agreed To This _____ Day of _____, _____
(year)

By: _____

Title: _____

Firm: _____

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
Construction Testing Laboratories, Inc.**

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

RECITALS

WHEREAS, the City is presently engaged in the Hunt-Wollochet Signal Repair Project (CSP-0708) 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 Schedule of Rates**, 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 Two hundred Ninety-three dollars and zero cents. (\$293.00) 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 – Scope of Work and Schedule of Rates**. 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 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:

Construction Testing Laboratories, Inc.
ATTN: Lloyd Detterich, Branch Manager
1202 East D St, Suite 101
Tacoma, WA 98421
(253) 383-8778

City of Gig Harbor

ATTN: Stephen Misiurak, P.E.
City Engineer
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 in **Exhibit A** 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 _____, 2009.

CONSULTANT

CITY OF GIG HARBOR

By: _____
(print name) _____
Its: _____

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



Subject: Net Shed Documentation Memorandum of Agreement (MOA) for the Historic American Engineering Record (HAER) project.

Proposed Council Action: Approve and authorize the Mayor to execute the MOA with the National Park Service.

Dept. Origin: Administration
Prepared by: Lita Dawn Stanton
Special Projects
For Agenda of: April 13, 2009
Exhibits: MOA

Concurred by Mayor: _____ Initial & Date
Approved by City Administrator: PK 4/6/09
Approved as to form by City Atty: BY EMAIL
Approved by Finance Director: DF 4/2/09
Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required \$ 15,000.00	Budgeted \$ 15,000.00	Required \$ -0-

INFORMATION / BACKGROUND

Every year, the Washington State Department of Archaeology and Historic Preservation (DAHP) provides federal pass-through grants to local certified governments (CLG) for preservation projects. The City applied for and received 2009 funding to do a Historic American Engineering Record (HAER) on 17 of Gig Harbor's historic net sheds. Todd Croteau, the HAER Maritime Program Coordinator, from the National Park Service will be the City's consultant.

FISCAL CONSIDERATION

This is a no-match reimbursement grant from DAHP so there will be no cost to the City.

BOARD OR COMMITTEE RECOMMENDATION

The Design Review Board approved the recommendation to apply for funding of this project.

RECOMMENDATION / MOTION

Move to: Approve and authorize the MOA with Todd Croteau of the National Park Service to complete the Documentation of the Gig Harbor's Historic Net Sheds.

MEMORANDUM OF AGREEMENT

between the

CITY OF GIG HARBOR

and the

HERITAGE DOCUMENTATION PROGRAMS

NATIONAL PARK SERVICE

U.S. DEPARTMENT OF THE INTERIOR

for the

2009 GIG HARBOR NET SHED DOCUMENTATION PROJECT

I. BACKGROUND

Under the authority of the 1935 Historic Sites Act and the 1966 National Historic Preservation Act, as amended in 1980, Heritage Documentation Programs (HDP) assists in the preservation of significant resources by recording historic buildings, structures and landscapes, and transmitting the documentation to an architectural, engineering and landscape archive at the Library of Congress. HDP is comprised of three surveys: the Historic American Buildings Survey (HABS), the Historic American Engineering Record (HAER), and the Historic American Landscapes Survey (HALS); and the Cultural Resources Geographic Information Systems (CRGIS). Documentation by the surveys provides baseline data using measured drawings, large-format photographs, and historical reports that assists in planning efforts for rehabilitation and restoration, and facilitates the interpretation of buildings, structures, and landscapes. HABS, HAER and HALS documentation meets all requirements of the Secretary of the Interior's Standards for Architectural and Engineering Documentation. CRGIS provides cultural resource managers with tools and data for conducting spatial analyses critical for making resource management decisions, combining spatial technologies and information management systems for the identification, evaluation, documentation, protection and preservation of cultural resources and landscapes.

II. PURPOSE

The purpose of this document is to define an agreement between the CITY OF GIG HARBOR ("CITY") and HDP to jointly sponsor a Documentation Project following the Standards and Guidelines of the Secretary of the Interior and HABS/HAER/HALS.

The intent of this project is to document 17 Net Sheds listed on Gig Harbor's 2006 Inventory of Historic Net Sheds with descriptive narratives, measured drawings and large format black-and-white archival photographs for inclusion in the HABS/HAER/HALS collection at the Library of Congress.

III. SCOPE OF WORK

A. Measured Drawings: will include general site plans, elevations, and floor plans (where possible). Drawings will be prepared in AutoCAD and will be plotted out on 24x36-inch Mylar sheets. There will be approximately 1-2 sheets for each net shed. The CITY will receive full-sized and reduced copies.

B. Written Pages: will include historical context narrative and a physical description of the site and features of each shed. There will be approximately two pages for each short-form history and 5-10 pages of context on the net sheds. The CITY will assist in the preparation of the written pages.

C. Large-format photos: will include 3-5 views of each shed including exteriors and interiors (where possible). The photos will be archivally processed 4x5-inch format. The CITY will receive a binder of contact prints and photo caption pages.

IV. HDP AGREES TO:

- Prepare measured drawings
- Produce large-format photographs
- Edit history pages submitted by CITY

V. The CITY AGREES TO:

- Transfer funding to cover the cost of salaries, travel and supplies to complete the work.
- Coordinate access to the net sheds
- Provide staff guidance and assistance in the field as required.
- Provide review and comment on work.

VI. TIME SCHEDULE

Work can begin upon signature of agreement. Work will be completed within one (1) year of the date of final signature; documentation will be transmitted to the Library of Congress at the first scheduled transmittal for Virginia documentation.

VII. RECORDS

The original documentation product will be placed in the HABS/HAER/HALS Collection of the Prints and Photographs Division at the Library of Congress, Washington, DC, where it will be accessible to the public. One archival copy set will be transmitted to the CITY. The records will be held in the public domain.

VIII. FUNDING

The CITY agrees to transfer \$15,000 to HDP to prepare the documentation . This covers all expenses incurred by HDP and consultants under this Memorandum of Agreement.

IX. RESPONSIBLE INDIVIDUALS

Todd Croteau
HDP National Park Service
1201 Eye Street, NW 7th Floor
Washington, D.C. 20005
Telephone: (202) 354-2167
Fax: (202) 354-6473
Email: todd_croteau@nps.gov

Lita Dawn Stanton
Historic Preservation Coordinator
CITY OF GIG HARBOR
3510 Grandview Street
Gig Harbor, WA 98335
Ph: (253) 853-7609
Email: stantonl@cityofgigharbor.net

X. APPROVALS

Richard O'Connor, Chief
Heritage Documentation Programs
National Park Service
1201 Eye Street, NW 7th Floor
Washington, D.C. 20005
Telephone: (202) 354-2186
Fax: (202) 354-6473
Richard_O'connor@nps.gov

Mayor Chuck Hunter
CITY OF GIG HARBOR
P.O. Box 97
3510 Grandview Street
Gig Harbor, WA 98335
Ph: (253) 853-7611
Email: hunterc@cityofgigharbor.net

XI. SIGNATURES

Richard O'Connor, Chief, Heritage Documentation Programs

Date

Mayor Charles L. Hunter

Date

ATTEST:

Molly Towslee, City Clerk

Date



Subject: RCO Grant for the Austin Estuary Restoration Project

Proposed Council Action: Approve and authorize the Mayor to execute the Project Grant Agreement for the Austin Estuary Restoration Project (AKA Scofield Estuary Park) through the Aquatic Lands Enhancement Acct (ALEA) for \$454,566.91.

Dept. Origin: Administration
Prepared by: Lita Dawn Stanton
Special Projects
For Agenda of: April 13, 2009
Exhibits: Contract

Initial & Date

Concurred by Mayor: _____
Approved by City Administrator: ROK 4/6/09
Approved as to form by City Atty: BY EMAIL
Approved by Finance Director: QR 3/31/09
Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required	\$401,610.96	Required \$401,610.96
	Budgeted \$ -0-	

INFORMATION / BACKGROUND

In 2006, the City of Gig Harbor applied for funds from ALEA now known as the Recreation and Conservation Office (RCO) to restore and enhance Austin Estuary Park. In January of this year, the City was contacted by RCO and informed that funding was available to do the project. The scope of work is attached. The original scope has been revised to include rip-rap removal and restoration of the estuary in concurrence with the Donkey Creek Day-lighting Project. The required match for the project was met through the 2006 acquisition. \$52,955.95 for this project was expensed in 2008 and will be reimbursed to the City as part of the grant.

FISCAL CONSIDERATION

This is a reimbursement grant and may require a temporary funding source in order to proceed with the project.

BOARD OR COMMITTEE RECOMMENDATION

The Grant Request was approved by Council in 2006 (Resolution No. 665).

RECOMMENDATION / MOTION

Move to: Approve and authorize the Project Grant Agreement with RCO for the Austin Estuary Park Restoration Project.

**ALEA Project Agreement
Aquatic Lands Enhancement Acct**

Consent Agenda - 12

Project Sponsor: City of Gig Harbor
Project Title: Scofield Estuary Park

Project Number: 06-1916C
Approval Date: 2/25/2009

A. PARTIES OF THE AGREEMENT

This Project Grant Agreement (Agreement) is entered into between the Recreation and Conservation Funding Board (RCFB), P.O. Box 40917, Olympia, Washington 98504-0917 and City of Gig Harbor, 3510 Grandview St, Gig Harbor, WA 98335 (Sponsor) and shall be binding upon the agents and all persons acting by or through the parties.

B. PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the Aquatic Lands Enhancement Acct of the State of Washington's General Fund. The grant is administered by the RCFB to the Sponsor for the project named above.

C. DESCRIPTION OF PROJECT

The subject Project is described on the attached Project Summary.

D. TERM OF AGREEMENT

The Project Sponsor's on-going obligation for the above project is perpetual unless otherwise identified in this Agreement.

E. PERIOD OF PERFORMANCE

The Project reimbursement period shall begin on March 2, 2009 and end on February 24, 2012. No expenditure made before or after this period is eligible for reimbursement unless incorporated by written amendment into this Agreement.

F. PROJECT FUNDING

The total grant award provided by the RCFB for this project shall not exceed \$454,566.91. The RCFB shall not pay any amount beyond that approved for funding of the project. The Sponsor shall be responsible for all total project costs that exceed this amount. The contribution by the Sponsor toward work on this project at a minimum shall be as indicated below:

	<u>Percentage</u>	<u>Dollar Amount</u>
RCFB - Aquatic Lands Enhancement Acct	18.96%	\$454,566.91
Project Sponsor	81.04%	\$1,943,088.00
Total Project Cost	100.00%	\$2,397,654.91

G. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties to this Agreement are subject to this Agreement and its attachments, including the Sponsor's Application, Project Summary, Eligible Reimbursement Activities Report, Project Milestones, and the General Provisions, all of which are attached hereto and incorporated herein.

Except as provided herein, no alteration of any of the terms or conditions of this Agreement will be effective unless provided in writing. All such alterations, except those concerning the period of performance, must be signed by both parties. Period of performance extensions need only be signed by RCO's Director.

The Sponsor has read, fully understands and agrees to be bound by all terms and conditions as set forth in these documents.

H. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCO POLICIES

This Agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, including Chapter 79.24.580 RCW, Chapter 286 WAC and published agency policies, which are incorporated herein by this reference as if fully set forth.

I. ADDITIONAL PROVISIONS OR MODIFICATIONS OF THE GENERAL PROVISIONS

1. On July 1, 2007, the name of the Interagency Committee for Outdoor Recreation changed to the Recreation and Conservation Funding Board and the office name changed to the Recreation and Conservation Office. The General Provisions of the Project Agreement do not reflect this change. To allow immediate implementation of this project, the existing provisions are hereby incorporated into the agreement. All references to the Board refer to the Recreation and Conservation Funding Board. References to the Office refer the Recreation and Conservation Office.
2. Before reimbursement of any **property or development or restoration** related expenses, the sponsor must comply with Governor's Executive Order 05-05 regarding Archaeological and Cultural Resources for the scope of work approved in this Project Agreement. The Recreation and Conservation Office will issue a notice to proceed when appropriate documentation has been received.

In the event that archaeological or historic materials are discovered during project activities, work in the immediate vicinity must stop; the area must be secured, and the Sponsor must notify the concerned tribe's cultural staff and cultural committee, the Recreation and Conservation Office, and Department of Archaeology and Historic Preservation.

3. Requests for time extensions are to be made at least 60 days before the agreement end date. If a request for a time extension is not made at least 60 days before the agreement end date, the request *may be denied*. If the request is made after the agreement end date, the time extension *will be denied*.

J. FEDERAL FUND INFORMATION

(none)

K. PROJECT GRANT AGREEMENT REPRESENTATIVE

All written communications sent to the Sponsor under this Agreement will be addressed and delivered to:

Project Contact

Name: Lita Dawn Stanton
Title:
Address: 3510 Grandview St
Gig Harbor, WA 98335

RCFB

Recreation and Conservation Office
Natural Resources Building
PO Box 40917
Olympia, Washington 98504-0917
www.rco.wa.gov/rcfb/

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

L. ENTIRE AGREEMENT

This agreement, along with all attachments, constitutes the entire agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

M. EFFECTIVE DATE

This agreement, for project #06-1916C, shall be effective upon signing by all parties.

BY: Rachael Gargen, Deputy Director
Kaleen Cottingham, Director

DATE: 3/10/09

PROJECT SPONSOR

BY: _____

DATE: _____

TITLE: _____

Pre-approved as to form:

BY: /S/

Assistant Attorney General

Post-Evaluation Project Summary

TITLE: Scofield Estuary Park			NUMBER: 06-1916C (Combined)
			STATUS: Director Approved
SPONSOR: City of Gig Harbor			EVALUATION SCORE: 46.8182
			BOARD RANKING:
COSTS:			SPONSOR MATCH:
Aquatic Lands Enhancement Acc	\$454,567	19%	Appropriation \ Cash
Local	\$1,943,088	81%	Conservation Futures
Total	\$2,397,655	100%	

DESCRIPTION:

Located near the head of Gig Harbor Bay, this 7.8-acre estuary property will preserve 725 feet of natural shoreline along the city's historic waterfront on the Puget Sound. It will provide much needed public water access, marine viewing for photographers and shorebird watchers, and a passive waterfront experience.

The site offers dramatic views of the harbor and Mt. Rainier. Trails and observation landings will give the community year-round opportunities to see seven acres of natural tidelands at the salmon-spawning entrance to Donkey Creek. Interpretive signage will identify native birds, shellfish, shoreline vegetation, fish and wildlife that populate the site.

Scofield Estuary is partially hidden from the street with native vegetation where steep banks slope to the shore. Further north it flattens, stretching out onto a relatively flat sandbar-like area approximately five feet above sea level. The site is bordered by the city's popular 3-mile walking waterfront corridor used by joggers, local residents, and regional tourists. In 1996 the community listed the site for acquisition and later identified it in the 2001 Parks Plan.

Construction of the Harbor Museum will be just north and adjacent to the subject site. There are plans to work collaboratively to develop a shoreline railway system that connects Donkey Creek Park with the Museum and the Scofield Estuary. Future plans to daylight Donkey Creek where it intersects with Scofield tidelands will enhance and protect the entire riparian corridor.

LOCATION INFORMATION:

The project is located in the City of Gig Harbor.

COUNTY: Pierce

SCOPE (ELEMENTS):

Administrative costs	Landscaping	Sales Tax
Allowable land costs	Lighting	Signing
Architectural & Engineering	Park Furniture	Site Preparation
Cultural Resources	Parking	Trails
Fencing & Gates	Permits	Utilities
Incidentals	Roads	

ANTICIPATED ACREAGE:

ACREAGE TYPE	Acres To Be Acquired	Acres To Be Dev/Restored	Acres To Be Renovated
Tidelands	7.00		
Uplands	0.80	0.80	

FISCAL YEAR: 2008	DATE PRINTED: March 10, 2009
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Eligible Reimbursement Activities Report

Consent Agenda - 12

Project Sponsor: City of Gig Harbor
Project Title: Scofield Estuary Park

Project Number: 06-1916 C
Approval: 2/25/2009

Acquisition Items:

Worksite	Property	Element	Item
#1, Scofield Estuary Park	Scofield Estuary Park	Administrative costs	Administrative costs
#1, Scofield Estuary Park	Scofield Estuary Park	Allowable land costs	Land
#1, Scofield Estuary Park	Scofield Estuary Park	Incidentals	Appraisal and review
#1, Scofield Estuary Park	Scofield Estuary Park	Incidentals	Closing
#1, Scofield Estuary Park	Scofield Estuary Park	Incidentals	Cultural resources
#1, Scofield Estuary Park	Scofield Estuary Park	Incidentals	Demolition
#1, Scofield Estuary Park	Scofield Estuary Park	Incidentals	Hazardous substances assess
#1, Scofield Estuary Park	Scofield Estuary Park	Incidentals	Noxious weed control
#1, Scofield Estuary Park	Scofield Estuary Park	Incidentals	Signing
#1, Scofield Estuary Park	Scofield Estuary Park	Incidentals	Title reports/insurance

Development/Restoration Items:

Worksite	Element	Item	Unit	Quantity	Description
#1, Scofield Estuary Park	Architectural & Engineering	A & E development	Lump Sum	1.00	
#1, Scofield Estuary Park	Cultural Resources	Cultural resource survey	Lump sum	1.00	If needed
#1, Scofield Estuary Park	Fencing & Gates	Fencing - wood	Linear Ft	300.00	Split rail fencing (2 rail)
#1, Scofield Estuary Park	Landscaping	Grass - natural	Lump sum	1.00	replacement of natural estuarine grasses
#1, Scofield Estuary Park	Landscaping	Habitat enhancement	Lump sum	1.00	Supplement & Enhance Native Species
#1, Scofield Estuary Park	Landscaping	Top soil/mulch	Yds	1.00	
#1, Scofield Estuary Park	Landscaping	Transplanting & revegeta	Sq Ft	1,100.00	Includes adding snags and cedar logs
#1, Scofield Estuary Park	Landscaping	Transplanting & revegeta	Sq Ft	1,100.00	
#1, Scofield Estuary Park	Lighting	General security	Lump sum	1.00	Assume one 15' ped luminaire, service & sign lighting
#1, Scofield Estuary Park	Park Furniture	Benches	Each	4.00	6 ft Benches
#1, Scofield Estuary Park	Park Furniture	Bike racks	Each	1.00	
#1, Scofield Estuary Park	Park Furniture	Drinking fountain	Each	1.00	Aggregate Drinking Fountain
#1, Scofield Estuary Park	Park Furniture	Trash receptacles	Each	2.00	Concrete with Lid
#1, Scofield Estuary Park	Parking	Parking - asphaltic concrete	Spaces	2.00	2 ADA stalls
#1, Scofield Estuary Park	Permits	Permits	Lump sum	1.00	
#1, Scofield Estuary Park	Roads	Traffic barriers	Lump sum	1.00	Traffic control
#1, Scofield Estuary Park	Sales Tax	Sales Tax	Lump Sum	1.00	
#1, Scofield Estuary Park	Signing	General park signs	Lump sum	1.00	
#1, Scofield Estuary Park	Signing	Interpretive signs	Each	2.00	steel w/porcelain coating - Wetlands / Wildlife
#1, Scofield Estuary Park	Signing	Rules and regulations	Lump sum	2.00	
#1, Scofield Estuary Park	Signing	Trail signs	Each	2.00	
#1, Scofield Estuary Park	Site Preparation	Demolition	Lump sum	1.00	
#1, Scofield Estuary Park	Site Preparation	Erosion control	Lump sum	1.00	Temporary Erosion Control
#1, Scofield Estuary Park	Site Preparation	Mobilization	Lump sum	1.00	
#1, Scofield Estuary Park	Site Preparation	Top soil	Cubic Yds	300.00	
#1, Scofield Estuary Park	Trails	Sidewalks	Linear Ft	90.00	Approx 50'x10' wide frontage and 2-25'x5.5' transitions
#1, Scofield Estuary Park	Trails	Trails - crushed rock	Linear Ft	500.00	6 ft Wide 5/8 Crushed Rock
#1, Scofield Estuary Park	Trails	Trails - other	Lump sum	500.00	6-ft wide concrete pavers
#1, Scofield Estuary Park	Utilities	Electric transformers/pan	Lump sum	1.00	Power Panel for Sprinkler System
#1, Scofield Estuary Park	Utilities	Water backflow device	Each	1.00	

Legal Description

Project Sponsor: City of Gig Harbor
Project Title: Scofield Estuary Park

Project Number: 06-1916 C
IAC Approval: 02/25/2009

Worksite Name

Property Name

Legal Description

Worksite #1 Scofield Estuary Park
Scofield Estuary Park

Milestone Report By Project

Project Number: 06-1916 C
Project Name: Scofield Estuary Park
Sponsor: Gig Harbor City of
Project Manager: Kim Sellers

X	!	Milestone	Target Date	Comments/Description
		Acquisition Closing	03/01/2006	Waiver in place- W05-03
		Project Start	03/02/2009	
		Recorded Documents to Mgmt Agy	05/14/2009	Acquisition documents.
	!	Annual Project Billing	07/31/2009	
		RFP Complete/Consultant Hired	10/09/2009	
		Environmental Assess Complete	05/07/2010	RFP / Consultant Hired 4-7-09 to 6-6-09
		A&E Complete/Permits Submitted	06/21/2010	
		Plans/Specs Reviewed Mgmt Agy	07/12/2010	
	!	Annual Project Billing	07/31/2010	
		Bid Awarded	10/11/2010	
		Interpretive/Credit Sign	02/07/2011	
	!	Special Conditions Met	03/15/2011	Cultural Resources- RCO requires compliance with Governor's Executive Order #05-05 on cultural resources prior to any ground disturbance
	!	Construction Started	03/15/2011	Compliance with cultural resources required prior to any ground disturbing activities.
	!	Annual Project Billing	07/31/2011	
		Proposed Completion Date	10/25/2011	
	!	Project Complete	02/24/2012	
		Final Docs/Billing to Mgmt Agy	05/24/2012	

X = Milestone Complete

! = Critical Milestone

INVOICE VOUCHER

Consent Agenda - 12

Sponsor's Certificate. I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race, creed, color, national origin, handicap, religion or Vietnam era or disabled veterans status.

Agency Name
Recreation and Conservation Office P.O. Box 40917 Olympia, WA 98504-0917

Sponsor
City of Gig Harbor 3510 Grandview St Gig Harbor, WA 98335

BY _____

(TITLE) (DATE)

To Be Completed By Sponsor

Project Number	06-1916 C	Invoice #	1	From:	Billing Period	To:	This is a Final Billing?
Project Name	Scofield Estuary Park						Yes [] No []

CATEGORIES:	Project Agreement	Previous Expenditures To Date			Costs For This Billing		
		Expenditures	Non-Reimbursable Match	Total	Expenditures	Non-Reimbursable Match	Total
				\$0.00			
Land				\$0.00			
Incidentals				\$0.00			
Land/Inc Subtotal	\$2,254,566.91			\$0.00			
Admin Costs	\$0.00			\$0.00			
Acquisition Total	\$2,254,566.91			\$0.00			
				\$0.00			
Construction	\$119,240.00			\$0.00			
A&E	\$23,848.00			\$0.00			
Development Total	\$143,088.00			\$0.00			
	\$2,397,654.91			\$0.00			

FUNDING & EXPENDITURE FORMULA
For RCO Use ONLY

Agreement Information				Previous RCO Reimbursements			
Sponsor:	81.04%	\$1,943,088.00	Total Billed				
RCO Federal:			Share Billed				
RCO: ALEA	18.96%	\$454,566.91	Share Approved				
			Advance Balance				
			Match Owed Balance				
			Share Retained				
			Share Paid				
Agreement Total:	100.00%	\$2,397,654.91	Match Bank				

Doc Date	Current Doc. No.		Ref Doc#	Vendor Number	Vendor Message
				SWV0000349-00	06-1916 C

Tran Code	Fund	Appn Index	Prog Index	Sub Obj/SubSub Obj	Project #	Amount	Invoice #
210	02R	H13	95000	NZ			1

Certification For Payment

Project Manager/Date	Release Final Pmt []	Division Supervisor/Date	Accounting/Date
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Press Release Template

City of Gig Harbor offered grant to support the acquisition, improvement, or protection of aquatic lands for public purpose.

(Gig Harbor) - City of Gig Harbor was awarded a grant of \$454,566.91 from the Aquatic Lands Enhancement Acct. The grant was awarded by the Recreation and Conservation Funding Board (RCFB), and will be used for the following:

Gig Harbor will use this grant to purchase 7.8 acres of estuary near the head of Gig Harbor Bay, preserving 725 feet of shoreline along the city's historic Puget Sound waterfront. The land, which offers views of the harbor and Mount Rainier, will provide much-needed public access to the waterfront. Gig Harbor will build a pathway with observation landings to give the community year-round opportunities to see tidelands at the salmon-spawning entrance to Donkey Creek. Interpretive signs will identify wildlife and shoreline vegetation. Scofield estuary is bordered by the city's popular 3-mile walking waterfront corridor. Construction of the Harbor Museum will be just north and adjacent to the land. Gig Harbor will contribute \$1.9 million in cash and conservation futures.

There were twenty-three applications submitted for consideration in the Aquatic Lands Enhancement Acct. Each project went through an evaluation process prior to being recommended for funding. The RCFB Board approved funding for projects on Thursday, June 7, 2007.

Funding for the Aquatic Lands Enhancement Acct comes from leases on state-owned waterfront sites and sale of harvest rights for geoduck clams. City of Gig Harbor will leverage local contributions totaling \$1,943,088.00 with grant monies to implement the project. Total estimated project cost is \$2,397,654.91. RCFB is the state's administrator of the grant program.

Contact: Lita Dawn Stanton, (253) 853-7609 (sponsor project manager)

Kim Sellers, (360) 902-3082, kim.sellers@rcfco.wa.gov (RCFB project manager)

General Provisions

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SECTION 1. HEADINGS AND DEFINITIONS

- A. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- B. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

Acquisition - The gaining of rights of public ownership by purchase, negotiation, or other means, of fee or less than fee interests in real property.

Agreement - The accord accepted by all parties to the present transaction; the Agreement, supplemental agreement, intergovernmental agreement, monitoring plan, and/or a landowner agreement between the Funding Board and a Sponsor.

Applicant - Any agency or organization that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the Funding Board.

Application - The forms and support documents approved by the Funding Board or its Director for use by applicants in soliciting project funds administered by the Office.

Asset - Equipment purchased by the Sponsor or acquired or transferred to the Sponsor for the purpose of this Agreement. This definition is restricted to non-fixed assets, such as vehicles, computers or machinery.

Contractor - shall mean one not in the employment of the Sponsor who is performing all or part of the eligible activities for this projects under a separate Agreement with the Sponsor. The term "Contractor" and "Contractors" means Contractor(s) in any tier.

Development/Restoration - The construction, renovation, redevelopment, or installation of facilities to provide for outdoor recreation or natural resources.

Director - The Office Director or the Director's designee.

Funding Board - As identified in Paragraph A in the Agreement as either the (1) Interagency Committee for Outdoor Recreation (IAC) - The committee created under Chapter 79A.25.110 RCW includes eight members. Three are agency heads: the Commissioner of Public Lands, the Director of Parks and Recreation, and the Director of Fish and Wildlife (or their designees). Five, by appointment of the Governor with the advice and consent of the Senate, are members of the public at large who have demonstrated interest in and a general knowledge of outdoor recreation in the state; (2) Salmon Recovery Funding Board (SRFB) - The Board created under Chapter 77.85.110 RCW, is comprised of five governor-appointed voting members (one a cabinet-level appointment) and five non-voting state officials: the Commissioner of Public Lands, the Secretary of Transportation, the Director of the Conservation Commission, the Director of Fish and Wildlife, and the Director of Ecology (or their designees); or (3) Hatchery Scientific Review Group (HSRG) - The independent Board established by Congress to ensure hatchery reform programs in Puget Sound and Coastal Washington are scientifically founded and evaluated.

Office - Office of the Interagency Committee - The Office provides support to the IAC, SRFB, and HSRG. The Office includes the Director and personnel, created by Chapters 79A.25.110 and 79A.25.150 RCW and charged with administering this Agreement by Chapters 77.85.110 and 79A.25.240 RCW.

Landowner Agreement - A landowner agreement is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor for salmon recovery projects.

Milestone - Important date(s) tracked in the Agreement for monitoring the Project status.

Period of Performance - The time period specified in the Agreement, under Section E, Period of Performance.

Post Evaluation Summary - One of the documents used to summarize and describe the actions undertaken in the Agreement.

Project - The undertaking that is the subject of this Agreement and that is, or may be, funded in whole or in part with funds administered by the Office on behalf of the Funding Board.

Sponsor - The applicant who has been awarded a grant of funds and is bound by this executed Agreement; includes its officers, employees and agents.

SECTION 2. PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the Project as described in this Agreement, Post Evaluation Summary, the Sponsor's application, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the Funding Board. All submitted documents are incorporated by this reference as if fully set forth herein. The Order of Precedence is covered in Section 26.

Timely completion of the Project is important. Failure to do so, as set out in this Agreement, is a material breach of the Agreement.

SECTION 3. ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written consent of the Funding Board.

SECTION 4. RESPONSIBILITY FOR PROJECT

While the Funding Board undertakes to assist the Sponsor with the Project by providing a grant pursuant to this Agreement, the Project itself remains the sole responsibility of the Sponsor. The Funding Board undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the Project, as those phases are applicable to this Project, is solely that of the Sponsor, as is responsibility for any claim or suit of any nature by any third party related in any way to the Project.

SECTION 5. INDEMNIFICATION

To the fullest extent permitted by the law, the Sponsor expressly agrees to and shall indemnify, defend and hold harmless the State and its agencies, officials, agents and employees from and against all claims, actions, costs, damages, or expenses of any nature arising out of or incident to the Sponsor's or any Contractor's performance or failure to perform the Agreement. Sponsor's obligation to indemnify, defend and hold harmless also includes any claim by Sponsor's agents, employees, representatives or any Contractor or its employees. Sponsor's obligation to defend includes payment of any costs or attorneys' fees. Sponsor's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Sponsor, its Contractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Sponsor or its Contractors, agents, or employees. The Sponsor expressly agrees to waive his/her immunity under Title 51 RCW to the extent required to indemnify, defend, and hold harmless the State and its agencies, officials, agents or employees.

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not employees or agents of the Funding Board or the Office. The Sponsor will not hold itself out as nor claim to be an officer or employee of the Office or of the state of Washington by reason hereof, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under Chapters 41.06 or 28B.16 RCW.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

SECTION 7. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Office may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by the Office that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Sponsor in the procurement of, or performance under this Agreement. In the event this Agreement is terminated as provided above, the Office shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the

Agreement by the Sponsor. The rights and remedies of the Office provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Office makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes Hearing" clause of this Agreement.

In the event this Agreement is terminated as provided above, the Funding Board or the Office shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of the Funding Board or the Office provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Funding Board or the Office makes any determination under this clause may be reviewed as provided in the "Disputes" clause of this Agreement.

SECTION 8. ACKNOWLEDGMENT AND SIGNS

- A. Publications. The Sponsor shall include language which acknowledges the funding contribution of the program to this Project in any release or other publication developed or modified for, or referring to, the Project.
- B. Signs. The Sponsor also shall post signs or other appropriate media at Project entrances and other locations on the Project which acknowledge the program's funding contribution, unless exempted in Funding Board policy or waived by the Director.
- C. Ceremonies. The Sponsor shall notify the Office no later than two weeks before a dedication ceremony for this Project. The Sponsor shall verbally acknowledge the program's funding contribution at all dedication ceremonies.
- D. Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, Sponsors shall clearly state:
 - 1. The percentage of the total costs of the Project that is financed with federal money;
 - 2. The dollar amount of federal funds for the Project; and
 - 3. The percentage and dollar amount of the total costs of the Project that is financed by nongovernmental sources.

SECTION 9. COMPLIANCE WITH APPLICABLE LAW

The Sponsor will implement the Agreement in accordance with applicable federal, state, and local laws and regulations.

The Sponsor shall comply with, and the Office is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies, including, but not limited to, State Environmental Policy Act; Industrial Insurance Coverage; Architectural Barriers Act; permits (shoreline, Hydraulics Project Approval, demolition); land use regulations (comprehensive areas ordinances, Growth Management Act); federal and state safety and health regulations (Occupational Safety and Health Administration/Washington Industrial Safety and Health Act); and Buy American Act.

The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to, the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the Funding Board. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law.

No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships; for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

For habitat restoration projects funded in part or whole with National Marine Fisheries Service funding, Sponsor shall not commence with clearing of riparian trees or in-water work unless and until an ESA consultation is completed and delivered by National Marine Fisheries Service to the Sponsor. Violation of this paragraph shall not be the basis for any enforcement responsibility by the IAC.

SECTION 10. RECORDS MAINTENANCE

The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by the Office, personnel duly authorized by the Office, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

SECTION 11. ACCESS TO DATA

In compliance with chapter 39.29 RCW, the Sponsor shall provide access to data generated under this Agreement to the Office, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.

SECTION 12. TREATMENT OF ASSETS

- A. Assets shall remain in the possession of the Sponsor for the duration of the project or program. When the Sponsor discontinues use of the asset(s) for the purpose for which it was funded, the Office will require the Sponsor deliver the asset(s) to the Office, dispose of the asset according to agency policies, or return the fair market value of the asset(s) to the Office. Assets shall be used only for the purpose of this Agreement, unless otherwise provided herein or approved by the Office in writing.
- B. The Sponsor shall be responsible for any loss or damage to assets which results from the negligence of the Sponsor or which results from the failure on the part of the Sponsor to maintain and administer that property in accordance with sound management practices.

SECTION 13. RIGHT OF INSPECTION

The Sponsor shall provide right of access to its facilities to the Office, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

If a Landowner Agreement has been executed, it may further stipulate and define the Funding Board and the Office's right to inspect and access lands acquired or developed with Funding Board assistance.

SECTION 14. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in the monitoring and stewardship plans as approved by the Funding Board or the Office. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the Funding Board.

SECTION 15. DEBARMENT CERTIFICATION

The Sponsor certifies it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. If requested by the Office, the Sponsor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Sponsor for this Agreement shall be incorporated into this Agreement by reference.

SECTION 16. PROJECT FUNDING

- A. **Additional Amounts.** The Funding Board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the Funding Board or Director and incorporated by written amendment into this Agreement.
- B. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the effective date of this Agreement shall be eligible for grant funds, in whole or in part, unless specifically provided for by Funding Board policy. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- C. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the Funding Board may have under this Agreement, the amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

SECTION 17. PROJECT REIMBURSEMENTS

- A. **Compliance and Payment.** The obligation of the Office to pay any amount(s) under this Agreement is expressly conditioned upon strict compliance with the terms of this Agreement by the Sponsor.
- B. **Compliance and Retainage.** The Office reserves the right to withhold disbursement of the final ten percent (10%) of the total amount of the grant to the Sponsor until the Project has been completed and approved by the Director. A Project is considered "complete" when:
 - 1. all approved or required activities outlined in the Agreement are complete;
 - 2. on-site signs are in place (if applicable);
 - 3. a final Project report is submitted to the Office with the Sponsor's final request for reimbursement;
 - 4. the completed Project has been approved by the Office;
 - 5. final amendments have been processed; and
 - 6. fiscal transactions are complete.
- C. **Invoice Frequency.** Invoices are required at least once a quarter from state agency sponsors and at least once a year from all other sponsors. The year-end invoice should include expenditures through June 30, the last day of the State's fiscal year and be submitted no later than July 15th. Final reimbursement requests should be submitted to the Office within ninety (90) days of the completion of the Project, funding end date, or the termination date, whichever comes first.

SECTION 18. ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services to be provided under this Agreement are limited to salmon grants and must comply with SRFB policy.

SECTION 19. NON-AVAILABILITY OF FUNDS

If amounts sufficient to fund the grant made under this Agreement are not appropriated by the Washington State Legislature, or if such funds are not allocated by the Washington State Office of Financial Management (OFM) to the Office for expenditure for this Agreement in any biennial fiscal period, the Office shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or OFM occurs. If the Office participation is suspended under this section for a continuous period of one year, the Office's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

SECTION 20. RECOVERY OF PAYMENTS

In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, the Office reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.

The Sponsor shall reimburse the Office for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by the Office. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

SECTION 21. COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. The Office shall have the right, in the event of breach of this clause by the Sponsor, to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 22. PROVISIONS APPLYING TO DEVELOPMENT/RESTORATION PROJECTS

The following provisions shall be in force only if the Project described in this Agreement is for development/restoration of land or facilities for outdoor recreation, habitat conservation, or salmon recovery:

- A. **Construction Document Review and Approval.** The Sponsor agrees to submit one copy of all construction plans and specifications to the Office for review. Review and approval by the Office will be for compliance with the terms of this Agreement.
- B. **Contracts for Construction.** Sponsor shall award all contracts for construction using whatever method is appropriate and legal for the Sponsor.
- C. **Construction Contract Change Order.** Only change orders that significantly reduce or change the scope of the Project as described to and approved by the Funding Board or the Office must receive prior written approval.
- D. **Control and Tenure.** Appropriate control and tenure of the land proposed for use must be executed and documented.
- E. **Nondiscrimination.** Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this Project:

"During the performance of this contract, the Sponsor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."

SECTION 23. PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force only if the Project described in this Agreement is for the acquisition of interest in real property for outdoor recreation, habitat conservation, or salmon recovery purposes:

- A. Evidence of Land Value. Before disbursement of funds by the Office as provided under this Agreement, the Sponsor agrees to supply evidence to the Office that the land acquisition cost has been established per Funding Board policy.
- B. Evidence of Title. The Sponsor agrees to show the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Deed of Right to Use Land for Public Purposes. The Sponsor agrees to execute an instrument or instruments which contain:
 - 1. The legal description of the property acquired under this Agreement;
 - 2. A conveyance to the State of Washington of the right to use the described real property forever for the purpose identified in the Agreement; and
 - 3. A requirement to comply with applicable statutes, rules, and the Funding Board policies with respect to conversion of use.
- D. Assignment of Right. When acquiring a conservation easement, the Sponsor agrees to execute an instrument or instruments that contain:
 - 1. The legal description of the conservation easement acquired under this Agreement;
 - 2. An assignment to the State of certain rights for access to and stewardship of the property covered by the conservation easement;
 - 3. Acknowledgement of the right of the Funding Board and the Office for enforcement of the provisions of the conservation easement; and
 - 4. A statement that the Sponsor will retain all responsibility for obligations under the terms of the conservation easement.
- E. Real Property Acquisition and Relocation Assistance
 - 1. When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.
 - 2. When state funds are part of this Agreement, the Sponsor, if required by law, agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26.010 RCW, and Chapter 468-100 WAC.
 - 3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this Project, the Sponsor agrees to provide any housing and relocation assistance required.

SECTION 24. HAZARDOUS SUBSTANCES

- A. Definition. "Hazardous substance," as defined in Chapter 70.105D.020 (7) RCW, means:
 - 1. Any dangerous or extremely hazardous waste as defined in Chapter 70.105.010(5) and (6) RCW, or any dangerous or extremely dangerous waste designated by rule pursuant to Chapter 70.105 RCW;
 - 2. Any hazardous substance as defined in Chapter 70.105.010(14) RCW or any hazardous substance as defined by rule pursuant to Chapter 70.105. RCW;
 - 3. Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);
 - 4. Petroleum or petroleum products; and

5. Any substance or category of substances, including solid waste decomposition products, determined by the director [or director's designee of the department of ecology] by rule to present a threat to human health or the environment if released into the environment.
 6. The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.
- B. Certification. The Sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances and certify:
- (1) No hazardous substances were found on the site, or
 - (2) Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
- C. Responsibility. Nothing in this provision alters the Sponsor's duties and liabilities regarding hazardous substances as set forth in Chapter 70.105D RCW.
- D. Hold Harmless. The Sponsor will defend, protect and hold harmless the Office and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property being acquired.

SECTION 25. RESTRICTION ON CONVERSION OF FACILITY TO OTHER USES

The Sponsor shall not at any time convert any real property acquired or any facility developed pursuant to this Agreement to uses other than those purposes for which assistance was originally approved, without the approval of the Funding Board or Director, in compliance with applicable statutes, rules, and Funding Board policies as identified in this Agreement. It is the intent of Funding Board's conversion policy that all lands acquired and all lands developed with funding assistance from the Funding Board remain in the public domain in perpetuity unless otherwise identified in the Agreement.

- A. By Funding Board policy a conversion may occur under any of the following circumstances:
1. Conveyance. Property interests are conveyed for purposes inconsistent with the intent of the Agreement and the funding source.
 2. Use. Non-eligible uses (public or private) are made of the Project area, or portion thereof.
 3. Eligibility. Non-eligible facilities are developed within the Project area without prior approval of the Funding Board or the Office.
 4. Termination of Use/Non-Conformance. The property acquired or project developed no longer meets or conforms to the intent of the Agreement or the funding source.
- B. Element Change. When approved by the Funding Board or Director, certain elements may be deleted from the Agreement without invoking the requirement to replace the elements. Such deletions are allowed when the Funding Board or Director determines that the elements are not needed or cannot be retained due to one or more of the following conditions:
1. Obsolescence
 2. Extraordinary vandalism
 3. Acts of Nature
 4. Designed life expectancy reached
 5. Fire
 6. Property or property rights lost as a result of legal action
 7. ICC National Trails System Act reversion order (*National Trails System Act 8(d)*, 16 U.S.C. § 1247(d); WAC 286-27-060(2)).

SECTION 26. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

Sponsors must ensure that properties or facilities assisted with Funding Board funds, including undeveloped sites, are built, operated, used, and maintained:

- A. According to applicable federal, state, and local laws and regulations, including public health standards and building codes.
- B. In a reasonably safe condition for the project's intended use.
- C. Throughout its estimated life so as to prevent undue deterioration.
- D. In compliance with all federal and state nondiscrimination laws, regulations and policies.

Facilities open to the public must:

- E. Follow all state and federal accessibility guidelines.
- F. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
- G. Be available for use at reasonable hours and times of the year, according to the type of area or facility.

SECTION 27. INCOME AND INCOME USE

A. Income.

1. Compatible source. The source of any income generated in a Funding Board assisted Project or project area must be compatible with the funding source and the Agreement.
2. Fees. User and/or other fees may be charged in connection with land acquired or facilities developed with Funding Board grants if the fees are consistent with the:
 - (a) Value of any service(s) furnished;
 - (b) Value of any opportunity(ies) furnished; and
 - (c) Prevailing range of public fees in the state for the activity involved.

Excepted are Firearms and Archery Range Recreation Program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (Chapter 79A.252.210 RCW).

B. Income use. Regardless of whether income or fees in a Funding Board-assisted area (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the Agreement, unless precluded by state law, the revenue may only be used to offset:

1. the Sponsor's matching funds; and/or
2. the Project's total cost; and/or
3. the expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the Funding Board grant; and/or
4. the expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system; and/or
5. capital expenses for similar acquisition and/or development.

SECTION 28. PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Even so, the Funding Board discourages the imposition of differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

SECTION 29. PROVISIONS RELATED TO NON-PROFIT OR NOT-FOR-PROFIT SPONSORS

A non-profit or not-for-profit organization sponsor shall:

- A. Maintain a non-profit or not-for-profit status (including registering with the Washington Secretary of State) throughout the Sponsor's obligation to the Project as identified in this Agreement.
- B. Notify the Office prior to dissolution and within 30 days of dissolution the Sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities. A qualified successor is any party eligible to apply for funds in the subject grant program *and* capable of complying with the terms and conditions of this Agreement. The Office will process an amendment transferring the Sponsor's obligation to the qualified successor.
- C. Provide for operation and maintenance of the project. Should the Sponsor fail in this obligation for any reason, the Project will be considered converted or a failed project, and be subject to all remedies available to the Funding Board and the Office.

SECTION 30. LIABILITY INSURANCE REQUIREMENTS FOR FIREARM RANGE SPONSORS

- A. The Sponsor¹ shall procure an endorsement, or other addition, to liability insurance it may currently carry, or shall procure a new policy of liability insurance, in a total coverage amount the Sponsor deems adequate to ensure it will have resources to pay successful claims of persons who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.
- B. The liability insurance policy, including any endorsement or addition, shall name Washington State, the Funding Board, and the Office as additional insureds and shall be in a form approved by the Funding Board or Director.
- C. The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the Sponsor's obligation to the Project as identified in this Agreement.
- D. The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to the Office not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the Sponsor.
- E. The requirement of Subsection A through D above shall not apply if the Sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the Funding Board.
- F. By this requirement, the Funding Board and the Office does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based upon such death, injury, or damage, must look to the Sponsor, or others, for any and all remedies that may be available by law.

SECTION 31. REQUIREMENTS OF THE NATIONAL PARK SERVICE

If the Project has been approved by the National Park Service, United States Department of the Interior, for assistance from the Federal Land and Water Conservation Fund (LWCF), the Agreement General Provisions in Section 660.3 Attachment B of the *L&WCF Grants-in-Aid Manual* as now existing or hereafter amended are made part of this Agreement, and the Sponsor shall also abide by these Agreement General Provisions. Further, the Sponsor agrees to provide the Office with reports or documents needed to meet the requirements of the Agreement or Section 660.3 Attachment B of the *L&WCF Grants-in-Aid Manual*.

¹ As used in this Section, Sponsor refers to Firearms Range Sponsors.

SECTION 32. ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute, rule, or policy or procedure, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and/or state statutes, regulations, policies and procedures including applicable federal Office of Management and Budget (OMB) circulars and federal and state executive orders;
- B. Project Agreement including attachments;
- C. Additional Provisions or Modifications of General Provisions;
- D. General Provisions.

SECTION 33. AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

SECTION 34. LIMITATION OF AUTHORITY

Only the Office or Office's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the Office.

SECTION 35. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the Director, or the Director's designee, and attached to the original Agreement.

SECTION 36. APPLICATION REPRESENTATIONS -- MISREPRESENTATIONS OR INACCURACY OR BREACH

The Funding Board and the Office rely upon the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SECTION 37. TERMINATION AND OTHER REMEDIES

The Funding Board and the Office may require strict compliance by the Sponsor with the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules and Funding Board policies which are incorporated into this Agreement, and with the representations of the Sponsor in its application for a grant as finally approved by the Funding Board.

The Funding Board or the Director, may suspend, or may terminate, the obligation to provide funding to the Sponsor under this Agreement:

- A. In the event of any breach by the Sponsor of any of the Sponsor's obligations under this Agreement;
or
- B. If the Sponsor fails to make progress satisfactory to the Funding Board or Director toward completion of the Project by the completion date set out in this Agreement.

In the event this Agreement is terminated by the Funding Board or Director, under this section or any other section after any portion of the grant amount has been paid to the Sponsor under this Agreement, the Funding Board or Director may require that any amount paid be repaid to the Office for redeposit into the account from which the funds were derived.

The Funding Board and the Office may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the Project as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to the Office. No remedy available to the Funding Board or the Office shall be deemed exclusive. The Funding Board or the Office may elect to exercise any, any combination, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity.

SECTION 38. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Agreement, the Office may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, the Office shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

SECTION 39. DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the Funding Board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the Director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed upon, the third person shall be chosen by the Funding Board's Chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based upon written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

SECTION 40. ATTORNEYS' FEES

If either party brings litigation to enforce any term or condition of this Agreement, or as a result of this Agreement, the prevailing party shall be awarded its reasonable attorneys' fees together with necessary fees, expenses, and costs incurred for such litigation at both trial and appellate levels, as well as in obtaining execution of judgment. The reasonableness of such costs and attorneys' fees shall be determined by the court and not a jury.

SECTION 41. GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in Thurston County Superior Court. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

In the cases where this agreement is between the Funding Board and a federally recognized Indian tribe, the following Governing Law/Venue applies:

- A. The State of Washington agrees that it shall initiate any lawsuit against a federally recognized Indian tribe arising out of or relating to the performance, breach or enforcement of this agreement in Federal Court. Interpretation shall be according to the law of the State of Washington. In the event that the Federal Court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the parties agree to venue in Thurston County Superior Court, but the parties agree that the matter shall not be pursued in superior court unless there is a Federal Court determination that it lacks subject matter jurisdiction.
- B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from the action shall be binding and enforceable upon the parties. Any money judgment or award against the Tribe, tribal officers and members, or the State of Washington and its officers and employees may not exceed the amount provided for in Section F- Project Funding of the Agreement.
- C. The Tribe hereby waives its sovereign immunity as necessary to give effect to this section, and the State of Washington has waived its immunity to suit in state court. These waivers are only for the benefit of the Tribe and State and shall not be enforceable by any third party or by any assignee or delegate of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

SECTION 42. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

NOTICE OF LIQUOR LICENSE APPLICATION



RETURN TO:

WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 3/30/09

TO: MOLLY TOWSLEE, CITY CLERK
RE: CHANGE OF LLC MEMBER

UBI: 601-776-254-001-0001

License: 358941 - 1U County: 27
Tradename: THE INN AT GIG HARBOR
Loc Addr: 3211 56TH ST NW
GIG HARBOR WA 98335
Mail Addr: 3211 56TH ST NW
GIG HARBOR WA 98335-1359
Phone No: 253-851-6665 RANDY FORTIER

APPLICANTS:
THE INN AT GIG HARBOR, L.L.C.
PERROW, WADE H 1949-05-06
PERROW, ELIZABETH A (Spouse) 1950-07-23
EDMAN, GEORGE W 1955-09-21
EDMAN, LAURA H (Spouse) 1955-03-26

Privileges Applied For:
SPIRITS/BR/WN REST LOUNGE -

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

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

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE

NOTICE OF LIQUOR LICENSE APPLICATION



RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 4/01/09

DR

TO: MOLLY TOWSLEE, CITY CLERK

RE: ASSUMPTION
From HARBOR BRIX 25 INC.
Dbas BRIX 25 RESTAURANT

APPLICANTS:
MCKENZIE RIVER RESTAURANTS, INC.
DOHERTY, CATHERINE L 1967-01-10
DOHERTY, THADIUS M 1972-08-19

License: 074950 - 1U County: 27
UBI: 602-904-472-001-0001
Tradename: MCKENZIE RIVER RESTAURANT
Loc Addr: 7707 PIONEER WAY
GIG HARBOR WA 98335-1132

Mail Addr: 3507 15TH AVE CT NW
GIG HARBOR WA 98335-1668

Phone No.: 510-415-0024 KATIE DOHERTY

Privileges Applied For:
SPIRITS/BR/WN REST LOUNGE +

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

- 1. Do you approve of applicant ? YES NO
2. Do you approve of location ? YES NO
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken? YES NO
(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



Business of the City Council
City of Gig Harbor, WA

Old Business - 1

Subject: Second Reading - Harbor Hill Water Tank and Mainline Extension Latecomer's Agreement & Ordinance

Proposed Council Action: Review and approve the attached Ordinance establishing the pro rata shares and reimbursable expenses, providing for severability, and establishing an effective date for the Harbor Hill Water Tank and Mainline Extension Latecomer's Agreement.

Dept. Origin: Public Works
Prepared by: Willy Hendrickson Engineering Technician
For Agenda of: April 13, 2009
Exhibits: Ordinance Latecomer's Agreement

Initial & Date

Concurred by Mayor:
Approved by City Administrator: [Signature]
Approved as to form by City Atty: appr'd by email
Approved by Finance Director:
Approved by Department Head: [Signature] 4/8/09

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and values 0, 0, 0.

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.

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.

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 \$650,041.23, plus a 5% administrative fee as per Gig Harbor Municipal Code 13.35.070, if they have connected 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 March 23, 2009 Gig Harbor City Council meeting was sent via certified mail to each of the affected property owners listed in the Agreement on March 12, 2009, and advertised in the Gateway Newspaper on March 11, 2009.

Council heard public testimony at the February 9th and March 23rd Council meeting from Mr. Pearson representing the Sportsman Club property objecting to inclusion in the Agreement. Other letters from property owners included in the Agreement are included as attachments.

At its March 23rd meeting, Council also discussed a letter from Mr. Tom Sturgeon dated March 23, 2009 regarding his objections to the manner in which the pro-rata shares were calculated for his developments.

FISCAL CONSIDERATION

The City would collect the pro-rata shares as shown in the Agreement from each benefitted property owner on behalf of OPG. As per Gig Harbor Municipal Code 13.35.070, and as per section C of the Agreement, the City would also charge an additional 5% fee to the benefitted property owner to defray the City's administrative costs of billing, accounting, collecting, and disbursing to the developer the pro-rata shares.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Review and approve the attached Ordinance establishing the pro rata shares and reimbursable expenses, providing for severability, and establishing an effective date for the Harbor Hill Water Tank and Mainline Extension Latecomers Agreement.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, DETERMINING THE FINAL ASSESSMENT REIMBURSEMENT AREA AND PRO RATA SHARES OF REIMBURSABLE COSTS IN CONNECTION WITH THE HARBOR HILL WATER TANK AND MAINLINE EXTENSION LATECOMERS AGREEMENT; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, chapter 35.91 of the Revised Code of Washington authorizes cities to enter into latecomer agreements for the purpose of providing partial reimbursement of certain water and sewer improvement costs paid by a private party; and

WHEREAS, chapter 13.35 of the Gig Harbor Municipal Code authorizes the City to enter into latecomer agreements for water and sewer improvements; and

WHEREAS, OPG Properties LLC, a Washington limited liability company, performed certain improvements including construction of the Harbor Hill Water Tank and mainline extension in conjunction with development of its property;

WHEREAS, OPG Properties LLC applied to the City for a latecomer agreement for reimbursements of said water and sewer improvements; and

WHEREAS, the City Engineer determined that the application of OPG Properties LLC met the criteria set forth in chapter 35.91 of the Revised Code of Washington and chapter 13.35 of the Gig Harbor Municipal Code, and approved the application; and

WHEREAS, as authorized in GHMC 13.35.080, OPG Properties LLC proposed the method for determining the fair pro rata share assessment, as later adjusted and accepted by the City Engineer, and made a preliminary determination of the assessment reimbursement area and pro rata share of costs to affected property owners by selecting a method of cost apportionment based on the benefit of the improvements and the proportional share of the reserved tank volume for each of the affected property owners; and

WHEREAS, copies of the proposed latecomer agreement and pro rata share of costs were sent via certified mail to each affected property owner listed in the agreement on December 26, 2008, along with notice of the City Council's consideration on January 12, 2009, and the same was also advertised in the Gateway Newspaper on December 31, 2008; and

WHEREAS, since that time, the City found a need to adjust the pro rata share of costs and new documents and notice of the City Council's further consideration on February 9, 2009, were provided to affected property owners on January 29, 2009; and

WHEREAS, the City Council considered the latecomer agreement and pro rata share of costs on February 9, 2009; and

WHEREAS, based on comments received from affected property owners, the City further evaluated certain properties not included in the original proposed latecomer agreement by using the City's water system model to determine if said properties benefited from the water system improvements constructed by OPG to meet water system fire flow requirements; and

WHEREAS, based on said water system modeling, ten additional properties have been added to the agreement and fair pro rata shares adjusted accordingly; and

WHEREAS, copies of the revised proposed latecomer agreement and pro rata share of costs were sent via certified mail to each affected property owner listed in the agreement on March 12, 2009, along with notice of the City Council's consideration on March 23, 2009, and the same was also advertised in the Gateway Newspaper on March 11, 2009; and

WHEREAS, the City Council considered the latecomer agreement and pro rata share of costs on March 23, 2009, and again on April 13, 2009 and considered all testimony presented; now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR,
WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Assessment Reimbursement Area. The City Council hereby adopts as its final determination the preliminary determination of the assessment reimbursement area as recommended by the City Engineer and as identified on **Exhibit C** of the latecomer agreement attached hereto and incorporated herein by this reference.

Section 2. Reimbursable Costs. The City Council hereby adopts as its final determination the total cost calculations, allocations among the benefited properties, and pro rata shares of reimbursable costs as recommended by the City Engineer and as identified on **Exhibit D** of the latecomer agreement.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a

court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:

MAYOR CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 04/13/09
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

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

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

OPG Properties LLC

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)

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 21) hereto

Assessor's Property Tax Parcel or Account number:

0122254090, 0222303002, 0122254073, 0122254051, 0122254072, 0222312029,
0222312027, 0222312028, 0222316001, 0222316002, 0222316003, 0222316004,
0222312023, 0222313023, 0222313044, 0222314016, 0222313008, 0222313069,
0222313070, 0222313024, 0222313012, 0222313020, 0222313027, 0222313018,
0222313063,

See Attachment #1 for Additional Account Numbers

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,
4002880130, 4002880140, 4002880150, 4002880160, 4002880170, 4002880180,
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4002880250, 4002880260, 4002880270, 4002880280, 4002880290, 4002880300,
4002880310, 4002880320, 4002880330, 4002880340, 4002880350, 4002880360,
4002880370, 4002880380, 4002880390, 4002880400, 4002880410, 4002880420,
4002880430, 4002880440, 4002880450, 4002880460, 4002880470, 4002880480,
4002880490, 4002880500, 4002880510, 4002880520, 4002880530, 4002880540,
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4002880730, 4002880740, 4002880750, 4002880760, 4002880770, 4002880780,
4002880790, 4002880800, 4002880810, 4002880820, 4002880830, 4002880840,
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4002881090, 4002881100, 4002881110, 4002881120, 4002881130, 4002881140,
4002881150, 4002881160, 4002881170, 4002881180, 4002881190, 4002881200,
4002881210, 4002881220, 4002881230, 4002881240.

HARBOR HILL WATER TANK AND
MAINLINE EXTENSION LATECOMERS AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 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 580.38 gross acres located within sixty (60) 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 411.49 gross acres located within thirty-one (31) tax parcels and other property owners are liable for the fair share allocation of the Project Cost as to 168.89 gross acres located within twenty-nine (29) 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 (391,085 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 391,085 equals 0.014574837, multiplied by \$3,043,308.63 equals a Fair Pro Rata Share assessment of \$44,355.73.

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 \$2,393,267.40 based upon the formula described above. The Fair Pro Rata Share of the Project Cost allocated to the Assessed Property is \$650,041.23. 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. . The parties acknowledge that on "Exhibit D" certain tax parcels, which were subdivided from former tax parcel number 0222303002, have been aggregated under the names of the two (2) current or former owners of such tax parcels which the Owner expects to pay the Fair Pro Rata Share on behalf of all current owners of such tax parcels, but that "Exhibit D" may in the future be amended to identify as the owners of such tax parcels the current (and not the former) owners of such tax parcels.

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:	Owner:
City of Gig Harbor	OPG Properties LLC
Attn: City Engineer	Attn: President
3510 Grandview Street	19245 Tenth Avenue N.E.
Gig Harbor, WA 98335	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.

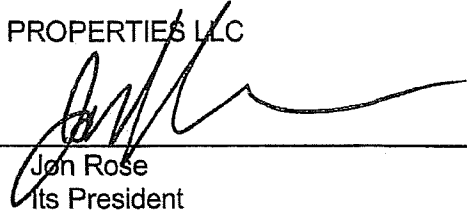
Q. This Agreement, including its exhibits and all documents referenced herein, constitutes the entire agreement between the City and the Owner, and supersedes all proposals, oral or written, between the parties on the subject.

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

CITY OF GIG HARBOR

OPG PROPERTIES LLC

By: _____
Its Mayor

By: 
Jon Rose
Its President

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY

By: _____

EXHIBITS:

- A - Description of Improvements
- B - Project Cost Detail
- C - Legal Description of Assessed Property
- D - Fair Pro Rata Share Project Cost Allocation

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ 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: _____

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: 3/11/09



Sarah Steffen
NOTARY
PUBLIC, State of Washington
Print Name: SARAH J. STEFFEN
Residing at: PULLISBO, WA
My Commission expires: 12/15/2010

**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.

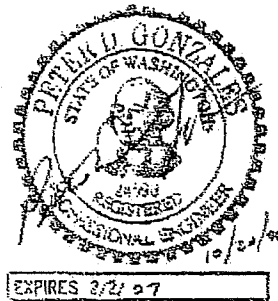
**EXHIBIT B
PROJECT COST DETAIL**

Water System Development Cost Summary

<u>Paid To:</u>	<u>Description:</u>	<u>Amount:</u>
Apex Engineering	Stake Tank Foundation	962.00
City of Gig Harbor	Tank Permit Fees	19,426.65
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	10,655.00
DEA	Water Tank Siting Assistance	8,442.50
HDR	Water Tank Design	84,232.61
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	Lafcomers 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
Total		3,043,308.63

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. 4 - Parcel No. 0222303002

United Western Development Inc. and Quadrant Corp.

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

**Quadrant Corporation portion includes lots 32, 35, 37-38, 40-44, 67-70, 81, 89, 100, 105, 114-116, and 120 of the subsequently recorded plat of The Ridge at Gig Harbor.

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 $87^{\circ} 24' 49''$ 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. 36 - 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. 37 - 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. 38 - 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. 39 - Parcel No. 0222316001

Loretta Laramore

Lot 1 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

No. 40 - Parcel No. 0222316002

Loretta Laramore

Lot 2 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

No. 41 - Parcel No. 0222316003

Loretta Laramore

Lot 3 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

No. 42 - Parcel No. 0222316004

Loretta Laramore

Lot 4 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

No. 43 - 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. 48 - 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. 49 - 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 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. 50 - 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.

No. 52 - Parcel No. 0222313008

McCormick Creek LLC

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWESTERLY QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 02 EAST LYING EASTERLY OF THE GIG HARBOR - LONGBRANCH HIGHWAY AND WESTERLY OF THE CITY OF TACOMA TRANSMISSION LINE RIGHT OF WAY.

No. 53 - Parcel No. 0222313069

Cobean-Burnham Drive LLC

PARCEL "A" OF BOUNDARY LINE ADJUSTMENT 2006-12-07-5006 DESCRIBED AS

FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF GOVERNMENT LOT 3 THENCE ALONG THE EAST LINE OF SAID LOT 833.20 FEET, THENCE N 88° 36' 08" W 371.29 FEET TO THE EASTERLY RIGHT OF WAY OF THE TACOMA CITY LIGHT TRANSMISSION LINE RIGHT OF WAY, THENCE S 13° 41'08" E ALONG SAID RIGHT OF WAY LINE 789.90 FEET TO THE NORTHERLY LINE OF GIG HARBOR-LONGBRANCH HIGHWAY AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 686.20 FEET WHOSE RADIUS CENTER BEARS N 44°11'30" E, THENCE SOUTHEASTERLY ALONG THE SAID NORTHERLY LINE AND COUNTERCLOCKWISE ALONG SAID CURVE 113.92 FEET THROUGH A CENTRAL ANGLE OF 9°29'42" TO THE SOUTH LINE OF SAID GOVERNMENT LOT 3 THENCE EASTERLY ALONG SAID SOUTH LINE 83.30 FEET TO THE POINT OF BEGINNING; TOGETHER WITH THAT PORTION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWESTERLY 1/4 AND EASTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT THE SOUTHWEST CORNER OF SAID WEST 1/2 THENCE NORTH 63.70 FEET, THENCE EAST 84 FEET, THENCE NORTH 207.92 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 227 FEET, THENCE CLOCKWISE ALONG SAID CURVE 185.31 FEET THROUGH A CENTRAL ANGLE OF 46° 46' 25", THENCE NORTH 47° 41' 21" E 41.26 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 173 FEET THENCE COUNTERCLOCKWISE ALONG SAID CURVE 146.55 FEET THROUGH A CENTRAL ANGLE OF 48° 32' 04" TO THE NORTH LINE OF THE SOUTH 600 FEET OF SAID WEST 1/2 & THE TERMINUS OF THE LINE DESCRIBED IN THE EASEMENT OF RECORD OUT OF 3-035 & 3-059 SEG 2007-0584 JU 1/18/07JU.

No. 54 - Parcel No. 0222313070

Kotel Point LLC

PARCEL "B" OF BOUNDARY LINE ADJUSTMENT 2006-12-07-5006 FURTHER DESCRIBED AS THE SOUTH 600 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4, EXCEPT THAT PORTION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE; BEGINNING AT THE SOUTHWEST CORNER OF SAID WEST 1/2, THENCE N 63.70 FEET, THENCE E 84 FEET, THENCE N 207.92 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 227 FEET, THENCE CLOCKWISE ALONG SAID CURVE 185.31 FEET THROUGH A CENTRAL ANGLE OF 46°46'25" THENCE N47°41'21"E 41.26 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 173 FEET, THENCE COUNTERCLOCKWISE ALONG SAID CURVE 146.55 FEET THROUGH A CENTRAL ANGLE OF 48°32'04" TO THE NORTH LINE OF THE SOUTH 600 FEET OF SAID WEST 1/2 AND THE TERMINUS OF THE LINE.

No. 55 - Parcel No. 0222313024

Northwest Commons Group LLC

THAT PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 02 EAST LYING NORTH OF THE STATE HIGHWAY.

No. 56 - Parcel No. 0222313012

Cobean-Burnham Drive LLC

A PORTION OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 02 EAST LYING EASTERLY OF OLD STATE HIGHWAY # 14.

No. 57 - Parcel No. 0222313020

Metzdorf Burnham LLC

THAT PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 31 TOWNSHIP 22 NORTH, RANGE 02 EAST LYING WESTERLY OF THE GIG HARBOR LONGBRANCH COUNTY ROAD AND EASTERLY OF THE RIGHT OF WAY OF THE TACOMA TRANSMISSION LINE EXCEPT THE SOUTH 508.55 FEET THEREOF ACCORDING TO EASEMENTS AND RESERVATIONS OF RECORD; ALSO THAT PORTION OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 31 TOWNSHIP 22 NORTH, RANGE 02 EAST LYING BETWEEN THE WESTERLY LINE OF THE GIG HARBOR - LONGBRANCH COUNTY ROAD AND THE EASTERLY LINE OF THE RIGHT OF WAY OF THE TACOMA TRANSMISSION LINE.

No. 58 - Parcel No. 0222313027

Ashdan Blake Investments LLC

THE NORTHERLY 100 FEET OF THE FOLLOWING DESCRIBED AREA, COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 02 EAST, THENCE WEST 956.97 FEET TO THE EASTERLY LINE OF THE TACOMA CITY LIGHT POWER LINE RIGHT OF WAY, THENCE ALONG SAID RIGHT OF WAY N 21° 42' W 332.63 FEET TO THE POINT OF BEGINNING; THENCE S 89° 46' E 426.69 FEET TO THE WEST LINE OF GIG HARBOR - LONGBRANCH HIGHWAY, THENCE NORTHERLY ALONG SAID WEST LINE TO THE INTERSECTION OF A LINE PARALLEL WITH THE SOUTH LINE OF THE SECTION AND DRAWN THROUGH A POINT 200 FEET NORTH OF THE POINT OF BEGINNING AS MEASURED AT RIGHT ANGLE OF SECTION LINE, THENCE WEST ALONG SAID LINE TO THE EAST LINE OF THE TACOMA CITY LIGHT POWER LINE RIGHT OF WAY, THENCE SOUTHERLY ALONG SAID RIGHT OF WAY TO THE POINT OF BEGINNING.

No. 59 - Parcel No. 0222313018

Dumpman Construction Inc.

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF SECTION

31, TOWNSHIP 22 NORTH, RANGE 02 EAST, THENCE ALONG THE SECTION LINE N 89° 36' W 956.97 FEET TO THE EASTERLY LINE OF THE TACOMA CITY LIGHT POWER LINE RIGHT OF WAY, THENCE ALONG SAID RIGHT OF WAY N 21° 42' W 332.63 FEET TO THE POINT OF BEGINNING; THENCE S 89° 46' E 426.69 FEET TO THE WEST LINE OF GIG HARBOR – LONGBRANCH ROAD, THENCE NORTHERLY ALONG SAID WEST LINE TO AN INTERSECTION OF A LINE PARALLEL WITH THE SOUTH LINE OF THE SECTION AND DRAWN THROUGH A POINT 200 FEET NORTH AS MEASURED AT RIGHT ANGLES OF THE SECTION LINE OF THE POINT OF BEGINNING, THENCE WEST ALONG SAID LINE TO THE EAST LINE OF THE TACOMA CITY LIGHT POWER LINE RIGHT OF WAY THENCE SOUTHERLY ALONG SAID RIGHT OF WAY TO THE POINT OF BEGINNING, EXCEPT THE NORTHERLY 100 FEET THEREOF.

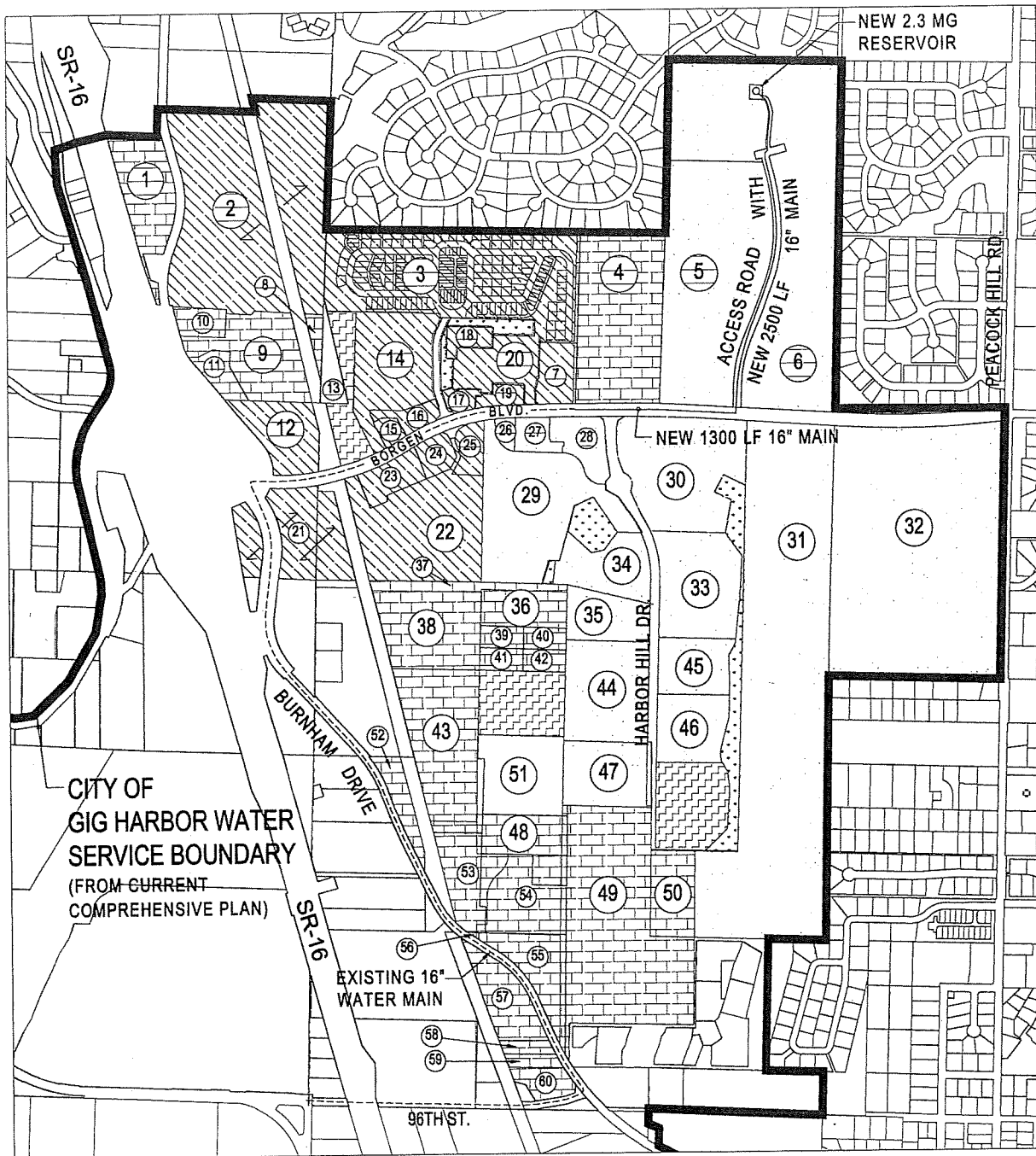
No. 60 - Parcel No. 0222313063

Richard Golden

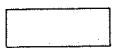
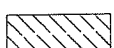
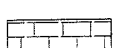
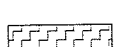
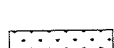
COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST SECTION OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 02 EAST; THENCE N 89° 46' W 964.54 FEET TO THE EASTERLY LINE OF THE TACOMA LAKE CUSHMAN TRANSMISSION LINE RIGHT OF WAY; THENCE N 21° 42' W ALONG SAID RIGHT OF WAY 332.63 FEET TO THE POINT OF BEGINNING; THENCE S 21° 42' E 118.34 FEET, THENCE S 81° 40' E 100 FEET, THENCE S 35° 32' 19" E 150 FEET TO THE NORTH LINE OF 96TH STREET NW, THENCE EASTERLY ALONG SAID NORTH LINE 268 FT, THENCE N 66° E 40 FEET ALONG SAID NORTH LINE, THENCE NORTH ALONG THE NORTH LINE OF 96TH STREET NW TO THE INTERSECTION WITH THE GIG HARBOR - LONGBRANCH COUNTY ROAD, THENCE NORTHWESTERLY ALONG SAID COUNTY ROAD TO THE INTERSECTION OF A LINE S 89° 46' E FROM THE POINT OF BEGINNING, THENCE N 89° 46' W 426.69 FEET TO THE POINT OF BEGINNING.

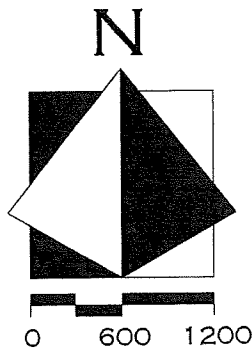
EACH PARCEL LEGALLY DESCRIBED ON EXHIBIT C IS GRAPHICALLY DEPICTED ON THE FOLLOWING DRAWING AND BEARS THE SAME NUMBER ON BOTH. FOR EXAMPLE, THE GRAPHICAL DEPICTION BELOW OF PARCEL "NO. 1" ON EXHIBIT C BEARS THE NUMBER "1" WITHIN A CIRCLE BELOW. NOTWITHSTANDING, NO WARRANTY IS MADE AS TO THE ACCURACY OF THIS DRAWING AND IT SHALL NOT ALTER OR MODIFY THE OTHER TERMS OF THE AGREEMENT.

[See attached page.]



LEGEND

-  OWNED BY HARBOR HILL
-  ASSESSMENT PAID BY HARBOR HILL UNDER PRIOR AGREEMENT
-  PARCELS
-  REGIONAL DRAINAGE CONTROL FACILITIES
-  WETLAND/OPEN SPACE TRACTS



**LATECOMERS
COVERAGE AREA**

03/11/09

**EXHIBIT D
FAIR PRO RATA SHARES**

[See attached page.]

**EXHIBIT D
GIG HARBOR NORTH WATER RESERVOIR
LATECOMER AGREEMENT ASSESSMENT COMPUTATION**

PARCEL	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
1	0122254090	Swede Hill LLC	B-2	7.60	3.60	N/A	30.00	25.00	2,700	\$ 21,010.62	N/A	\$ 21,010.62
2	0122254083	Franciscan Health System West	Hospital	37.73	N/A	80.00	N/A	400.00	32,000	\$ 249,014.76	\$ 249,014.76	N/A
3	0222303010	Little Boat North Inc. (subdivided)	RMD	29.28	23.00	8.00	1.94	70.00	24,987	\$ 194,443.17	\$ 194,443.17	N/A
4	0222303002 (pin)	United Western Development Inc	RMD	15.58	12.38	8.00	1.94	70.00	13,444	\$ 104,618.88	N/A	\$ 104,618.88
4	0222303002 (pin)	Quadrant Corp.	RMD	3.3	2.63	8.00	1.94	70.00	2,852	\$ 22,191.88	N/A	\$ 22,191.88
5	0222304000	OPG Properties LLC (North RMD)	RMD	29.42	29.42	8.00	1.94	70.00	31,962	\$ 248,718.18	\$ 248,718.18	N/A
6	0222304000	OPG Properties LLC (North RLD)	RLD	49.04	49.04	4.00	2.40	70.00	32,955	\$ 256,445.36	\$ 256,445.36	N/A
7	0222303011	SHDP Assoc LLC & Capital Management Group Inc.	BP	2.54	2.04	N/A	30.00	25.00	1,526	\$ 11,878.47	\$ 11,878.47	N/A
8	0122254074	Gig Harbor North Annex LLC	RB-2	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	\$ 2,743.05	N/A	\$ 2,743.05
10	0122254051	Gig Harbor North Annex LLC	RB-2	1.68	0.65	N/A	30.00	25.00	488	\$ 3,793.58	N/A	\$ 3,793.58
11	0122254072	Gig Harbor North Annex LLC	RB-2	2.00	0.15	N/A	30.00	25.00	113	\$ 875.44	N/A	\$ 875.44
12	0122361075	SHDP Assoc LLC & Capital Management Group Inc.	BP	5.95	2.98	N/A	30.00	25.00	2,231	\$ 17,362.94	\$ 17,362.94	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	\$ 22,769.29	\$ 22,769.29	N/A
15	4002060060	Gig Harbor North LLC (Washington Mutual)	C	0.80		Avg Daily Use over peak 2 month period			772	\$ 6,007.48	\$ 6,007.48	N/A
16	4002060050	Gig Harbor North LLC (Retail Bldg "C")	C	1.51		Avg Daily Use over peak 2 month period			2,281	\$ 17,750.08	\$ 17,750.08	N/A
17	4002060070	Gig Harbor North LLC (Key Bank)	C	0.91		Avg Daily Use over peak 2 month period			49	\$ 381.30	\$ 381.30	N/A
18	4002060030	Gig Harbor North LLC (Retail Bldg "A")	C	1.42		Avg Daily Use over peak 2 month period			6,082	\$ 47,328.37	\$ 47,328.37	N/A
19	4002060040	Gig Harbor North LLC (Retail Bldg "B")	C	1.11		Avg Daily Use over peak 2 month period			1,937	\$ 15,073.17	\$ 15,073.17	N/A
20	4002060020	New Albertsons, Inc	C	5.43		Avg Daily Use over peak 2 month period			5,735	\$ 44,628.11	\$ 44,628.11	N/A
21	0122361073	City of Gig Harbor	BP	10.49	0.00	N/A	N/A	N/A	0	\$ -	\$ -	N/A
22	4002070041	HD Development of Maryland, Inc. (Home Depot)	C	16.00		Avg Daily Use over peak 2 month period			5,107	\$ 39,741.20	\$ 39,741.20	N/A
23	4002070010	Gig Harbor South LLC (Office Depot & Petco)	C	2.70		Avg Daily Use over peak 2 month period			1,312	\$ 10,209.61	\$ 10,209.61	N/A
24	4002070020	Gig Harbor South LLC (Pier 1 Imports)	C	1.66		Avg Daily Use over peak 2 month period			197	\$ 1,533.00	\$ 1,533.00	N/A
25	4002070030	Gig Harbor South LLC (McDonald Corporation)	C	1.81		Avg Daily Use over peak 2 month period			2,934	\$ 22,831.54	\$ 22,831.54	N/A
26	4002520010	Northwest Capital Investors LLC	C	0.72	0.58	N/A	30.00	25.00	432	\$ 3,361.70	\$ 3,361.70	N/A
27	4002520020	Northwest Capital Investors LLC	C	1.77	1.42	N/A	30.00	25.00	1,062	\$ 8,264.18	\$ 8,264.18	N/A
28	4002520030	Northwest Capital Investors LLC	C	3.46	2.77	N/A	30.00	25.00	2,076	\$ 16,154.83	\$ 16,154.83	N/A
29	4002520040	Costco Wholesale Corporation	C	17.49	13.99	N/A	30.00	25.00	10,494	\$ 81,661.28	\$ 81,661.28	N/A
30	4002470060	Harbor Hill LLC - Lot 6	BP	16.06	12.86	N/A	30.00	25.00	9,636	\$ 74,984.57	\$ 74,984.57	N/A
31	0222311009	OPG Properties	RLD	65.67	65.67	4.00	2.40	70.00	44,130	\$ 343,408.76	\$ 343,408.76	N/A
32	0222311000	OPG Properties	RLD	55.88	55.88	4.00	2.40	70.00	37,551	\$ 292,213.84	\$ 292,213.84	N/A
33	4002470051	Harbor Hill LLC - Lot 5	BP	11.30	9.04	N/A	30.00	25.00	6,780	\$ 52,760.00	\$ 52,760.00	N/A
34	4002470011	Harbor Hill LLC - Lot 1A	BP	6.41	5.13	N/A	30.00	25.00	3,846	\$ 29,928.46	\$ 29,928.46	N/A
35	4002470012	Harbor Hill LLC - Lot 1B	BP	5.07	4.06	N/A	30.00	25.00	3,042	\$ 23,671.97	\$ 23,671.97	N/A
36	0222312029	McCormick Creek LLC	R-1(MUD)	4.00	3.73	4.00	2.40	70.00	2,507	\$ 19,505.33	N/A	\$ 19,505.33
37	0222312027	McCormick Creek LLC	R-1(MUD)	2.48	2.31	4.00	2.40	70.00	1,552	\$ 12,079.71	N/A	\$ 12,079.71
38	0222312028	McCormick Creek LLC	R-1(MUD)	10.45	9.73	4.00	2.40	70.00	6,539	\$ 50,881.19	N/A	\$ 50,881.19

EXHIBIT D
GIG HARBOR NORTH WATER RESERVOIR
LATECOMER AGREEMENT ASSESSMENT COMPUTATION

PARCEL	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
39	0222316001	Loreita Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 5,882.97	N/A	\$ 5,882.97
40	0222316002	Loreita Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 5,882.97	N/A	\$ 5,882.97
41	0222316003	Loreita Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 5,882.97	N/A	\$ 5,882.97
42	0222316004	Loreita Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 5,882.97	N/A	\$ 5,882.97
43	0222312023	McCommick Creek LLC	R-1/MUD	15.30	14.25	4.00	2.40	70.00	9,576	\$ 74,517.67	N/A	\$ 74,517.67
44	4002470020	YMCA of Tacoma-Pierce County Harbor Hill LLC - Lot 4B	BP	11.00		Avg Daily Use over peak 2 month period			22,353	\$ 173,944.59	\$ 173,944.59	N/A
45	4002470041	Harbor Hill LLC - Lot 4B	BP	5.34	4.27	N/A	30.00	25.00	3,204	\$ 24,932.60	\$ 24,932.60	N/A
46	4002470042	Intl. Church Foursquare Gospel	BP	6.18	4.94	N/A	30.00	25.00	3,708	\$ 28,854.58	\$ 28,854.58	N/A
47	4002470030	Harbor Hill LLC - Lot 3	BP	7.07	5.66	N/A	30.00	25.00	4,242	\$ 33,010.02	\$ 33,010.02	N/A
48	0222313023	McCommick Creek LLC	R-1/MUD	4.55	4.24	4.00	2.40	70.00	2,849	\$ 22,172.27	N/A	\$ 22,172.27
49	0222313044	Gig Harbor Sportsman's Club	R-1/MUD	30.36	27.92	4.00	2.40	70.00	18,362	\$ 142,865.66	N/A	\$ 142,865.66
50	0222314016	Gig Harbor Sportsman's Club	R-1/MUD	5.00	4.50	4.00	2.40	70.00	3,024	\$ 23,531.89	N/A	\$ 23,531.89
51	0222312013	Gig Harbor Little League Assoc.	PI	9.11	0.00	N/A	N/A	N/A	N/A	\$ -	N/A	N/A
52	0222313008	McCommick Creek LLC	R-1/MUD	2.40	0.00	4.00	2.40	70.00	0	\$ -	N/A	\$ -
53	0222313069	Cobean-Burnham Drive LLC	R-1/MUD	6.57	4.95	4.00	2.40	70.00	3,326	\$ 25,885.08	N/A	\$ 25,885.08
54	0222313070	Kotel Point LLC	R-1/MUD	7.56	7.04	4.00	2.40	70.00	4,731	\$ 36,814.34	N/A	\$ 36,814.34
55	0222313024	Northwest Commons Group LLC	R-1/MUD	5.17	4.65	4.00	2.40	70.00	3,127	\$ 24,331.98	N/A	\$ 24,331.98
56	0222313012	Cobean-Burnham Drive LLC	R-1/MUD	0.02	0.00	4.00	2.40	70.00	0	\$ -	N/A	\$ -
57	0222313020	Meizdorf Burnham LLC	R-2/MUD	5.44	2.85	6.00	2.40	70.00	2,873	\$ 22,355.30	N/A	\$ 22,355.30
58	0222313027	Ashdan Blake Investments LLC	R-2/MUD	0.92	0.43	6.00	2.40	70.00	433	\$ 3,372.90	N/A	\$ 3,372.90
59	0222313018	Dumphan Construction Inc.	R-2/MUD	0.92	0.30	6.00	2.40	70.00	302	\$ 2,353.19	N/A	\$ 2,353.19
60	0222313063	Golden, Richard	R-2/MUD	2.14	1.35	6.00	2.40	70.00	1,361	\$ 10,569.35	N/A	\$ 10,569.35
	TOTAL	Based on updated information		580.38					391,065	\$ 3,043,308.63	2,393,267.40	650,041.23

Notes

- Gross Areas from Assessor-Treasurer information unless otherwise provided.
- Net areas are Gross Area minus areas prohibited from development.
- Units, People per Acre, and gpcd are from Tank Sizing Calculations by HDR, and based on DOH Guidelines
- The Fair Share Factor is the Project Cost (\$3,043,308.63) divided by the estimated total Gallons Per Day (391,065) used by all of the Assessed Property upon completion of development.
- OPG Properties LLC and Harbor Hill LLC are affiliated companies. OPG is the 'Owner' under the Latecomer Agreement.
- Assumes connection of all affected parcels.
- GPCD = Gallons Per Capita Per Day
- As to Parcel 4, the Quadrant Corporation portion (as subsequently created) are lots 32, 35, 37-38, 40-44, 67-70, 81, 89, 100, 105, 114-116, 120.



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



UNITED
WESTERN
DEVELOPMENT
INC.

Old Business - 1

RECEIVED

FEB 09 2009

CITY OF GIG HARBOR
ENGINEERING

February 6, 2009

City of Gig Harbor
Community Development Department
Willy Hendrickson
3510 Grandview St
Gig Harbor, WA 98335

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

MAR 24 2009
CITY OF GIG HARBOR
ENGINEERING

McCormick Creek, LLC
PO Box 1800
Orting, Washington 98360
253 381-0101
sturgeon.t@comcast.net

March 23, 2009

Mr. Hendrickson
Engineering Technician
Community Development Department
City of Gig Harbor

Re: Latecomers Agreement

Dear Mr. Hendrickson,

I am in receipt of the updated Gig Harbor North Water Reservoir and Transmission Main Latecomers Agreement.

I can not attend to provide testimony on that date but would like to submit this letter on my behalf to the Council for their consideration.

Since my last briefing with Mr. David Stubchaer, Public Works Director I am a little confused.

Mr. Stubchaer indicated that the project referred to as North Creek would be exempt from the latecomers because it was residential, thus not requiring any fire flow for commercial use. This would allow them not to be part of any latecomers. Mr. Stubchaer went on to say that my project McCormick Creek has an underlying zoning of MUD which triggers commercial fire flow requirements and this would make my property be required to pay the pro-rated share per the charts in Exhibit "D".

The chart has all my properties showing the wrong net usable acreage. The wrong fair share calculations. McCormick Creek has several parcels and also several Limited Liability Companies who hold ownership of adjoining properties. They are Cobean-Burnham Drive, LLC, Kotel-Point, LLC and McCormick Creek, LLC. All of the listed companies represent McCormick Creek Residential Preliminary Plat which was approved last December 2008 except for the Church which will not be part of my ownership when the plat is final. These figures are all incorrect. Furthermore, I believe OPG used county records and maps to establish the acreage.

Page 2
McCormick Creek, LLC
Re: Latecomers Agreement

These maps are incorrect and I have new surveys showing all net useable acreage, wetlands and easements the City Public Works Department has them.

Secondly, my properties were approved as an R-1 Zoning and I was not allowed the MUD zoning benefits when I made application. So I get a little confused when now I am being classified as Commercial Zoning.

Please consider these comments and have the record corrected using correct calculations.

Furthermore, these costs are outrageous. I would like to know if the developer followed all the RCW's to be allowed the Latecomers. Construction Bids, etc. For the request submitted I could erect a water tower storage on my property to get fire flow as needed and at a much lower cost.

I would request the City retract my letter dated January 8, 2009 and I would like to be on record that all my properties in this Latecomers application be denied as submitted.

Thank you for this opportunity and if you have any questions you can contact me at 253 381-0101

Sincerely,



Thomas R. Sturgeon
McCormick Creek, LLC
Cobean-Burnham Drive, LLC
Kotel Point, LLC

Cc William Lynn, Attorney at Law



Subject: Second reading of an Ordinance adding a new Chapter 3.31 to the Gig Harbor Municipal Code creating a Federal Drug Investigation Fund.

Proposed Council Action: Adopt the Ordinance at second reading

Dept. Origin: Police Department

Prepared by: Chief Mike Davis

For Agenda of: April 13, 2009

Exhibits:

Concurred by Mayor: Pro Tem
Approved by City Administrator: ROK 3/25/09
Approved as to form by City Atty: via email
Approved by Finance Director:
Approved by Department Head: D#1

Initial & Date

Handwritten initials and dates for Mayor, City Administrator, and Department Head.

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and values: \$0, \$0, 0.

INFORMATION/BACKGROUND

Currently our Federal and State drug seizure monies are co-mingled in a fund called the Drug Investigation Fund. According to the Federal Asset Forfeiture Office in Washington DC, we need to separate these two funds and not co-mingle the money.

In our budget, we have two revenue line items called State Seizures and Federal seizures. It appears this money is then deposited into one fund called the Drug Investigation Fund.

This ordinance will create a second fund called the Federal Drug Investigation Fund.

FISCAL IMPACTS

There are no costs associated with this proposed ordinance

RECOMMENDATION

Move to adopt the Ordinance creating a fund called Federal Drug Investigation Fund.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON; RELATING TO DRUG ENFORCEMENT PROCEEDS; ADDING A NEW CHAPTER 3.31 TO THE GIG HARBOR MUNICIPAL CODE IN ORDER TO CREATE A SEPARATE DRUG ENFORCEMENT FUND FOR THE PROCEEDS OF FEDERALLY FORFEITED PROPERTY; AMENDING SECTION 3.30.010 OF THE GIG HARBOR MUNICIPAL CODE.; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, 21 U.S.C. § 881(e)(3) authorizes the United States Attorney General to share the proceeds of federally forfeited property with participating state and local law enforcement agencies; and

WHEREAS, state and local law enforcement agencies may equitably share in the proceeds of federally forfeited property when participating and cooperating in federal investigations to enforce federal criminal laws or when requesting a federal agency to adopt seized property and proceed with a federal forfeiture; and

WHEREAS, participating state and local law enforcement agencies must implement standard accounting procedures and internal controls to track equitably shared moneys and tangible property according to Appendix C of the *Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies* published by the United States Department of Justice (the "Guide");

WHEREAS, Appendix C of the Guide requires the establishment of a separate revenue account for the proceeds of federally forfeited property, which must receive any interest income generated by the fund; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. A new chapter 3.31 is hereby added to of the Gig Harbor Municipal Code to read as follows:

3.31.010 Fund Created.

There is created and established a special fund to be known as the "federal drug investigation fund" into which all moneys and proceeds from the sale of federally forfeited property seized during joint investigations with federal agencies or from federal forfeiture proceedings shall be deposited.

3.31.020 Purposes - Expenditures.

This fund has been established for the purpose of separately accounting for proceeds from federally forfeited property in accordance with the *Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, published by the United States Department of Justice. Moneys in this fund shall be expended only for permissible purposes identified in said Guide, as now existing or as later may be amended.

3.31.030 Unexpended funds.

Any unexpended funds remaining in the federal drug investigation fund at the end of any budget year shall not be transferred to the general fund or otherwise lapse. Such unexpended funds shall be carried forward from year to year until expended for the purposes set forth in GHMC 3.31.020.

Section 2. Section 3.30.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

3.30.010 Fund Created.

There is created and established a special fund to be known as the “drug enforcement fund” into which all moneys and proceeds from the sale of property seized during drug investigations and forfeited pursuant to RCW 69.50.505 and all other applicable state ~~and federal~~ laws shall be deposited after amounts are dedicated in accordance with state ~~and federal~~ laws.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this _____ day of _____, 2009.

CITY OF GIG HARBOR

Charles L. Hunter, Mayor

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Angela S. Belbeck

FILED WITH THE CITY CLERK: 03/18/09
PASSED BY THE CITY COUNCIL: 04/13/09
PUBLISHED: 4/22/09
EFFECTIVE DATE: 4/27/09
ORDINANCE NO: