

# **Gig Harbor City Council Meeting**

**June 8, 2009  
5:30 p.m.**



**AGENDA FOR  
GIG HARBOR CITY COUNCIL MEETING  
Monday, June 8, 2009 – 5:30 p.m.  
(note earlier starting time)**

**CALL TO ORDER:**

**CONSENT AGENDA:**

1. Approval of the Minutes of City Council Meeting of May 24, 2009.
2. Receive and File: Boards and Candidate Review Committee Minutes May 26, 2009.
3. Correspondence / Proclamations: "We The People" Gig Harbor High School State Champions.
4. Appointment to the Design Review Board.
5. Appointment to the Planning Commission.
6. Liquor License Application: Gateway to India.
7. Eddon Boat Environmental Restrictive Covenant Agreement with Department of Ecology.
8. Federal Lobbyist Contract Extension.
9. Resolution for Public Hearing & Approval of Easements – Bacchus Street Vacation.
10. Resolution - Section 125 Employee Flexible Spending Account Plan Document.
11. BB16 Mitigation Improvements Project – Consultant Services Contract for Construction Survey and Professional Technical Support Services.
12. Approval of Payment of Bills for June 8, 2009: Checks #61091 through #61190 in the amount of \$1,428,333.45.
13. Approval of Payment of Payroll for the month of May: Checks #5439 through #5461 and direct deposit transactions in the total amount of \$338,261.62.

**PRESENTATIONS:**

1. We The People – Ken Brown, Gig Harbor High School.
2. Pierce Stream Team – Jami Pleasants.

**OLD BUSINESS:**

1. Second Reading of Ordinance – Sehmel Drive Area-Wide Rezone.
2. Second Reading of Ordinance – Amending Special Events Permit.

**NEW BUSINESS:**

1. Public Hearing and First Reading of Ordinance – Development Agreement Processing Amendment.
2. ~~Public Hearing and First Reading of Ordinance – Mixed Use District Overlay (MUD) Amendments and Area-Wide Rezone (ZONE 07-0006)-~~ CONTINUED To June 22<sup>nd</sup>.

**STAFF REPORT:**

1. New Websites Presentation: Lita Dawn Stanton and Lauren Lund.

2. Permit Extentions.

**PUBLIC COMMENT:**

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

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. Finance / Safety Committee: Mon. Jun 15<sup>th</sup> at 4:00 p.m.
2. City Council Budget Update / Budget Forecast Worksession: Mon. Jun 15<sup>th</sup> at 5:30 p.m.
3. Operations Committee: Thu. Jun 18<sup>th</sup> at 3:00 p.m.
4. Boards and Commissions Candidate Review Committee: Mon. Jun 22<sup>nd</sup> at 4:30 p.m.

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

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

**CALL TO ORDER:** 6:00 p.m.

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

1. Approval of the Minutes: a) City Council Meeting May 11, 2009; b) Special City Council Meeting May 18, 2009.
2. Receive and File: a) Parks Commission Minutes April 1, 2009; b) Operations & Public Project Committee Minutes April 16, 2009.
3. Liquor License Renewals: Target; Puerto Vallarta Restaurant; Round Table Pizza; and Julep Nail Parlor.
4. Resolution – Surplus Furniture at Skansie Brothers Park House.
5. Resolution – Processing Eleven and Rejecting One 2009 Comprehensive Plan Amendment Application.
6. 2009 Traffic Model Update – AM Model – Consultant Services Contract Amendment No. 1 / PTV America, Inc.
7. 2009 Traffic Model Update – AM Peak Hour Data Collection – Consultant Services Contract / All Traffic Data, Inc.
8. Boys and Girls Club – Sanitary Sewer and Stormwater Facilities Easement and Maintenance Agreements.
9. Pierce County Historic Property Survey Grant Agreement.
10. Probation Services Contract.
11. Comprehensive Plan Amendment, Transportation Improvement Plan(s), Traffic Impact Fees – Consultant Services Contract Amendment #2 / HDR Engineering, Inc.
12. WSDOT/City Interlocal Agreement for Construction Administration Services for BB16 Mitigation Improvements Project.
13. Approval of Payment of Bills for May 26, 2009: Checks #60983 through #61090 in the amount of \$1,201,984.82.

**MOTION:** Move to adopt the Consent Agenda as presented.  
**Young / Malich** - unanimously approved.

**OLD BUSINESS:**

1. Second Reading of Ordinance – Establishing a Process for the Allocation of Limited Sewer Capacity. Public Works Director David Stubchaer presented the background on this ordinance to allocate a limited number of sewer capacity reservation certificates.

**MOTION:** Move to adopt the Ordinance No. 1159 as presented.  
**Kadzik / Conan** - unanimously approved.

2. Second Reading of Ordinance – PCD/BP/ED Zoning Changes. Planning Director Tom Dolan gave a brief overview of the background information for this ordinance to ensure that the intent and uses in these zones are consistent with each other.

Councilmember Franich said this is a major change to the original intent of these zones and he hopes that as the economy improves that we haven't made a mistake.

**MOTION:** Move to adopt the Ordinance No. 1160 as presented.  
**Ekberg / Young** - unanimously approved.

3. Second Reading of Ordinance – Sewer Exception Code Revision. Senior Engineer Jeff Langhelm presented information on two versions of an ordinance amending the exceptions section for sewer hook-up requirements. He explained that in 2006 Council amended the requirements for sewer hook-ups; at that time, staff believes an exception for the 200' distance requirement was inadvertently omitted. He further explained that the city is compelled by RCW to have adjacent parcels connect to city sewer and requested that Council adopt one of these ordinances to establish exceptions to what new development would be required to connect. He then described each option.

Councilmember Franich said that he takes exception with the idea that the 200' distance requirement was inadvertently omitted. He said that in 2006 this issue was discussed at length and Council clearly decided to strike that section of the code because they felt that no one should be forced to hook up to the sewer system unless there is a public health hazard. He said that the effort by past Council on this subject should be recognized as this is a major change in policy; not just a housekeeping item. He recommended Option A as it more clearly reflects the intent of the past Council's discussion.

**MOTION:** Move to adopt Option 'B' as Ordinance No. 1161.  
**Ekberg / Young** – five voted in favor. Councilmember Franich and Malich voted no.

4. Second Reading of Ordinance – Nuisance. City Administrator Rob Karlinsey described the amendments to this proposed nuisance ordinance as a result of the direction from Council. He described additional changes that refer to ponds in public parks, pilings, docks and netsheds along the shoreline, yard waste and screening from view. He explained that the section on screening was changed from "neighboring" to "adjacent public" property to avoid neighborhood squabbles.

Councilmember Kadzik voiced concern that the reference to ponds is still too broad and would encompass wetlands. Mr. Karlinsey suggested deleting all reference to ponds in paragraph 'A'. He then responded to discussion on how to address public docks in disrepair. He explained that this would be enforced under the Building Code.

Councilmember Franich said that although he appreciates the changes made, he will be voting no against the ordinance as he believes the city should only be involved if something affects public health and safety.

Councilmember Malich responded that this ordinance does address public health and safety; it is a start to protecting the community from hazards.

**MOTION:** Move to adopt Ordinance No. 1162 with amendments as discussed.  
**Young / Kadzik** – six voted in favor. Councilmember Franich voted no.

5. Second Reading of Ordinance – Amending City Council Meeting Time. City Clerk Molly Towslee presented this ordinance changing the meeting time from 6:00 p.m. to 5:30 p.m. She said that no negative comments regarding the change have been received.

Councilmember Young voiced concern that 5:30 p.m. may be too early and preclude someone from running for Council in the future.

**MOTION:** Move to adopt Ordinance No. 1163 as presented.  
**Kadzik / Ekberg** – six voted in favor. Councilmember Young voted no.

**NEW BUSINESS:**

1. Public Hearing and First Reading of Ordinance – Sehmel Drive Area-Wide Rezone. Tom Dolan presented the background for this ordinance to address inconsistencies between the land use designation and zoning for this recently annexed area.

Mayor Hunter opened the public hearing at 6:30 p.m.

Paul Garrison – 8306 131<sup>st</sup> St. NW. Mr. Garrison, property owner of property in this area, spoke in favor of the rezone. He said that there is a need for more zoning designations that will allow industrial uses.

There were no further public comments and the hearing closed at 6:34 p.m. This will return at the next meeting for a second reading.

2. First Reading of Ordinance – Special Events Permits. Molly Towslee presented this draft ordinance that came about at the request of the Finance Committee to update the insurance requirements for special events. In addition, staff proposed several other amendments to bring the code up to date. She addressed Council's questions and said that this would return for a second reading at the next meeting.

**STAFF REPORT:**

Marketing Director Lauren Lund said that for the past five years the Lodging Tax Budget has set aside funds for the rehabilitation of the Skansie House; in 2009 that

amount was \$30,000. She explained that due to the deterioration of the economy there is a need to attract additional business to the local hotels. She proposed that no more than \$20,000 of the set-aside funds be reallocated for additional marketing efforts to help the hotels survive this economic downturn. Laureen clarified that the Lodging Tax Committee still feels strongly about supporting the rehabilitation of the Skansie House for Tourism related uses, and \$90,000 would remain in the set-aside fund after reallocation of this request. She said that the Lodging Tax Committee has been polled and they support this reallocation. She introduced Sue Braaten from the Best Western Wesley Inn to answer questions.

Councilmember Ekberg asked if a formal proposal would be brought back for consideration at the next meeting and said he doesn't favor acting on something not on the agenda. Councilmember Young added that he thought this would require a budget amendment.

Rob Karlinsey responded that an amendment isn't required because the budget is approved at the fund level and this is a policy change. He said the hoteliers approached staff late last week and this is an effort to act expediently to get "heads in beds." He requested action on the request tonight.

Ms. Lund passed out information for a tentative marketing plan to promote Mid-Week Specials. She explained that the hotels are reporting a 12% decline county-wide.

Councilmember Payne said he would like to see hard numbers, but in the absence of that he asked Laureen to walk through her proposal. Ms. Lund responded with an overview of her marketing plan to use radio and web presence. She said the ads could be ready to run by the end of the week.

Councilmember Ekberg again stressed that he dislikes acting on items not on the agenda, adding that some of this information could have been distributed to Council before tonight. He then said he understands the critical nature of the situation and if Laureen feels this is the best way to utilize the funds he would support the proposal.

Councilmember Franich said that acting on the budget in one-night's notice is unprecedented and he doesn't agree with the ability to switch money around; this action should come in the form of a budget amendment.

Councilmember Young asked Angela Belbeck for clarification on whether this is an appropriate action without a budget amendment. She responded that it would be difficult to meet the public noticing requirement for a budget amendment at the next meeting. She explained that in other cities they sometimes do a quarterly budget amendment that incorporates all actions within that time frame.

Mr. Karlinsey said that because no funds are being moved in or out of the Lodging Tax Fund and this action was initiated by the Lodging Tax Committee an amendment is not

necessary. Councilmember Young suggested that to protect the allocation of this fund this may need to be clarified in future budget processes.

Sue Braaten – 8802 Randall Drive. Ms. Braaten, owner of the Wesley Inn presented the following statistics: February, down 12%; March – down 20%; April – down 30%; and May – 30%. She said it isn't getting better adding that she just lost a track team because of the bridge toll which is becoming an issue during these hard economic times. She stressed the urgent need for additional help.

Councilmember Kadzik agreed with the comments by Councilmember Ekberg about getting the information ahead of time, but said he recognized this is an economic problem that needs to be addressed.

**MOTION:** Move to direct staff to reprogram the Lodging Tax Budget allocated for the Skansie House up to \$20,000 for marketing.  
Young / Kadzik -

Councilmember Ekberg agreed with comments made by Councilmember Franich about the process. He said that because this is coming from the Lodging Tax Fund with Laureen's support and the obvious demonstration of the problems the hotels face, he will support this.

Councilmember Malich said he doesn't believe advertising can make a difference and so he won't be supporting this. He said that he doesn't want to see the money moved away from the Skansie House as it's important and he would like to see it used as a visitor's center, perhaps next year.

Sue Braaten responded to Councilmember Payne's questions by saying she spends roughly it runs \$50,000 - \$100,000 on marketing; this includes being part of the Best Western Hotel Chain. She said that with their limited funds they utilize the internet, e-mail, their own web-site and cold-calls. She said that their goal is to bring people to Gig Harbor as there is a lot going on here.

Laureen Lund added that the reason to market packages is the ability to track the effectiveness. She stressed that she has the numbers over a ten year period that prove how effective advertising campaigns have been. The increase in lodging is a direct result of these marketing strategies; it is the economic downturn that is causing this latest decrease. She responded that the radio stations chosen for this latest ad campaign are the top "women's" radio programs as they are who makes the travel decisions.

Councilmember Payne also said it would have been nice to have some information before this meeting, but he would be reluctantly vote in support.

Councilmember Young noted that although setting aside Lodging Tax Funds for Capital Projects for tenant improvements to the Skansie House for a visitor's center remains a



top priority, the purpose of the fund by statute is advertising to put heads in beds. He agreed the process of bringing this to Council could have been handled better, but they ran out of time part due to the holiday.

Councilmember Malich defended his comment about advertising, saying there could be alternative solutions such as word of mouth. Laureen offered to meet with him to discuss this, adding that word of mouth *is* a big part of advertising efforts.

**MOTION:** Move to direct staff to reprogram the Lodging Tax Budget allocated for the Skansie House up to \$20,000 for marketing.  
Young / Kadzik – five voted in favor. Councilmember Franich and Malich voted no.

Mr. Karlinsey apologized for not forwarding this to Council on Friday when he received it recognizing that it's important for Council to have information ahead of time. He then said he is contemplating no Council meetings in August to save staff and attorney costs. He said that he would come back with a recommendation at the next meeting.

Councilmember Franich warned that this would add burden to the fall schedule with the upcoming Comp Plan Amendments and Budget discussions. Councilmember Young suggested July rather than August and Councilmember Ekberg suggested polling the Councilmembers. Mr. Karlinsey responded that because he values predictability for the public, he doesn't take cancelling meetings lightly; he offered to share the agenda planning schedule with Council before any recommendations are made.

Mr. Karlinsey then transitioned to voluntary staff furloughs. He said he would be taking a draft policy to the Finance Committee in June and then to Council for consideration. He then referenced the innovative solution to jail costs adopted under the Consent Agenda, encouraging Councilmembers to view the video handed out by Court Administrator Paul Nelson.

**PUBLIC COMMENT:**

Randy Boss – (no address given). Mr. Boss said that he submitted a text amendment on March 18<sup>th</sup> and a staff report was provided to Council on April 27<sup>th</sup> at which time no action was taken. Since that meeting he has addressed concerns raised at that meeting about additional workload for the Planning Commission. He said that he met with the Planning Commission at their last meeting, and they agreed that if this was a viable project they would take on however many meetings necessary to review the text amendment. He explained that he is here tonight to explore his options and to find out how to move this forward; if staff needs to bring back a report for Council to make a decision to forward this to the Planning Commission then he hopes Council will see the wisdom of having this happen. Mr. Boss continued to say that staff voiced concerned about the additional staff time this would require. He said that the developer has agreed to pay any overtime or hire additional staff members if that is what is required in order to augment the Planning Commission meetings. He asked that the city do what they can in

order to allow the Planning Commission to move this text amendment through the normal process and to have it come back to Council for final recommendation. He offered to answer questions.

Councilmember Malich asked for clarification on the size of the proposed project. Mr. Boss responded that the text amendment is for 165,000 square feet but the tenant, Fred Meyer Corporation, has agreed that they could live with 150,000. He stressed that this only applies to the C-1 zoned area along Point Fosdick; nowhere else in the city.

Councilmember Ekberg explained that staff recommended that this amendment go to the Planning Commission in 2010. By Council not taking action at the last meeting they were basically agreeing with that recommendation. He said that he doesn't think there is a process problem and that he is concerned with the Planning Commission's ability to prioritize their workload rather than just have additional items being thrown at them. He said he hasn't seen a recommendation from the Planning Commission and doesn't know if a report was generated or not.

Councilmember Conan asked for clarification on the oldest text amendment on the work plan for the Planning Commission. Tom Dolan responded that it's three or four years old. Councilmember Young added that if Council wants to ask them to do extra work it could be on that backlog.

Mr. Boss said that the Planning Commission doesn't have anything on their agenda for the next meeting or the following meeting. Tom Dolan responded that the city attorney is scheduled to come and talk about the Planning Commission's role in the Comprehensive Plan process at the next meeting. He then explained that text amendments submitted during the year are typically brought to the Planning and Building Committee in the fall. They then make a recommendation to the entire City Council who votes on the upcoming year's Planning Commission's Work Program at the end of December or beginning of January.

Mr. Boss responded that the Planning and Building Committee's recommendation on this text amendment was to send it to the full Council to decide; it came to the City Council where he was hoping to get a decision, which he didn't get.

Councilmember Young said he apologizes for being blunt, but when Council doesn't make a motion to do something, it means they don't want to take any action. He said that Council doesn't want to add more meetings to the Planning Commission's calendar as they have a lot on their plate; this text amendment is so far from the current code that it should go through the normal process which begins this fall.

Councilmember Franich asked staff to speak to the Planning Commission's discussion with Mr. Boss at their last meeting.

Mr. Dolan explained that he wasn't at the meeting but he spoke with the staff members who did attend. He said that to his understanding there were two Planning Commission members who felt the text amendment was important enough to look at as soon as possible but the majority thought it wasn't the most pressing issue. If Council wants them to undertake special meetings there are other text amendments that might be more appropriate.

Councilmember Young said he spoke with the Chair of the Planning Commission who relayed much of the same information and also said that they would be happy to hold extra meetings if it is important to Council; but it didn't seem that this was the recommendation that they wanted to forward. Councilmember Young noted that the Planning Commission has held special meetings on emerging issues in the past; it's nice to have the ability to address something that has to be taken care of quickly.

Councilmember Franich said that it's no secret that he's not a big fan of big buildings, but he has been thinking of what could be constructed there are several 65,000 square foot buildings with 20 foot separations, and so this needs to go through the normal public process. He said that 20 feet doesn't give much distinction and so you end up with something that may not be any better than a 165,000 square foot building. He said that the 20 foot separation may be something important to discuss in the future.

Mr. Boss responded that 4700 Building is 166,000 square feet and the new Multicare Building on Pt. Fosdick is over 90,000 square feet and so it's not an issue of mass and scale. He continued to say that the critical issue is from an economic outlook; if the process is moving forward so is the project; if the process stops then the project stops. He said as a member of the community the economic issues as well as the development issues are important to him; he has a vested interest to see this move forward. He explained that they are confident enough with the outcome to continue the designing and the construction of the roads and other development processes that need to take place, adding that the tenant will ride along as long as the process moves forward; if there is no forward movement then the project dies and they have to find another tenant which will be a difficult process in these economic times. He said that it is an economic issue for the city; 30 million dollars in construction cost for the one building alone; 200 employees; and the ongoing sales tax. Mr. Boss said that he hopes that the City Council will take this into consideration when deliberating.

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

Councilmember Young gave an update on the Pierce County Regional Council meeting last week regarding Affordable Housing. He said that there was concern that it allocated the number of units that the city would have as a directive, not just a prescriptive policy. That was changed to become a policy statement saying that you "may" adopt affordable housing standards.

Councilmember Franich commented on the Consultant Services Contract Amendment with HDR Engineering that was adopted on the Consent Agenda. He said that 2010 will

be a tight budget and cited the proposed \$197 an hour for a Lead Transportation Modeler, \$298 an hour for a Lead Planner, and support staff at \$98 an hour. He stressed that staff needs to work with other cities or open the small works roster process to find lower cost consultants because if we can't afford to resurface a road, we can't afford to pay \$15,000 for consultants. He then addressed the Lodging Tax Advisory Committee by saying he wished the state would give back money to other businesses to advertize and increase profits; hotels and car rentals are the only ones that get that kind of break, and it's not right.

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. Planning/Building Committee – Mon. Jun 1<sup>st</sup> at 5:15 p.m.
2. City Council / Parks Commission Joint Meeting – Mon. Jun. 1<sup>st</sup> at 6:00 p.m.
3. Intergovernmental Affairs Committee – Mon. Jun 8<sup>th</sup> at 4:30 p.m.
4. Finance/Safety Committee – Mon. Jun 15<sup>th</sup> at 4:00 p.m.
5. City Council Worksession – Budget Update – Mon. Jun 15<sup>th</sup> at 5:30 p.m.

**EXECUTIVE SESSION:** To discuss potential litigation per RCW 42.10.110 (1)(i).

**MOTION:** Move to adjourn to Executive Session at 7:42 p.m. for approximately 15 minutes for the purpose of discussing potential litigation per RCW 42.10.110(1)(i).

**Franich / Payne** – unanimously approved.

**MOTION:** Move to return to regular session at 7:53 p.m.

**Young / Kadzik** – unanimously approved.

**MOTION:** Move to authorize Legal Counsel to file an appeal to the Washington State Supreme Court in the case of the City of Gig Harbor verses North Pacific Design.

**Young / Malich** – roll call vote taken:

Ekberg – yes; Young – yes; Franich – yes; Conan – no; Malich – yes; Payne - no; Kadzik – yes. The motion carried five to two.

**ADJOURN:**

**MOTION:** Move to adjourn at 7:54 p.m.

**Conan / Kadzik** – unanimously approved.

CD recorder utilized:  
Tracks 1001 –

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Charles L. Hunter, Mayor

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Molly Towslee, City Clerk

## OUTLINE MINUTES

### Boards and Commissions Candidate Review Committee

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

Members Present: Councilmembers Kadzik, Malich, and Ekberg

Others Present: Rick Gagliano, Design Review Board      John Hodge, Applicant for Planning Commission

Topic	Recommendation/Action	Follow-up (if needed)
Review Candidate Applications for Design Review Board.	<p>Jane Roth Williams submitted a letter of resignation for her position on the Design Review Board. This position fulfills the Certified Local Government requirement and serves until June, 2011. The city received one application from Warren Balfany.</p> <p>The Committee members and Rick Gagliano discussed Mr. Balfany's qualifications. It was determined that he does not live in city limits and Clerk Towslee was directed to make sure that his appointment would comply with the code regulations before a recommendation goes to the full Council.</p>	Forward a recommendation to the Mayor and City Council to approve the appointment of Warren Balfany to the vacant position on the Design Review Board if residency is not required.
Review Candidate Application for one opening on the Planning Commission	Jill Guernsey was appointed to serve the remainder of a vacant term on the Planning Commission in 2005. This term expires in June.	

Topic	Recommendation/Action	Follow-up ( <i>if needed</i> )
	<p>The Mayor received a letter from Ms. Guernsey asking to be reappointed, and two other applicants submitted letters of interest: Steven Lynn and John Hodge.</p> <p>Mr. Hodge was asked to come in for a brief interview with the Committee. Mr. Lynn interviewed several weeks ago.</p> <p>The group discussed all three applicants' background and experience.</p> <p>Councilmember Ekberg and Kadzik said that Ms. Guernsey had done a good job of representing the city and recommended that she continue to serve a second term.</p> <p>Councilmember Malich said that he would like to recommend Mr. Hodge be appointed in an effort for him to be introduced to the city process.</p>	<p>Forward a recommendation to the Mayor and City Council to approve the re-appointment of Jill Guernsey to the Gig Harbor Planning Commission.</p> <p>Both recommendations will be in the June 8th Consent Agenda.</p>

**PROCLAMATION OF THE MAYOR  
OF THE CITY OF GIG HARBOR**

**WHEREAS**, in December of 2008 Gig Harbor High School's Senior Advanced Placement US Government and Politics class, under the direction of teacher Ken Brown, competed in the State's We The People competition in Olympia; and

**WHEREAS**, the students in Ken Brown's Advanced Placement US Government and Politics class competed against students from nine other high schools across the State and won first place in the competition; and

**WHEREAS**, these same Gig Harbor High School Students went on to represent the Washington State in the national We The People competition in Washington, D.C; and

**WHEREAS**, the Center for Civic Education has developed the We The People program to promote civic competence and responsibility among the nation's elementary and secondary school students; and

**WHEREAS**, the culminating activity of the We The People program is the simulated congressional hearing in which students "testify" before a panel of judges and demonstrate their knowledge and understanding of constitutional principles; and

**WHEREAS**, since the inception of the We The People program in 1987, more than 28 million students and 90 thousand educators have participated in this impressive and rigorous course of study; and

**WHEREAS**, the program enjoys the active participation of members of Congress, as well as support from various organizations as well as local volunteers; and

**WHEREAS**, the City of Gig Harbor places a high value on civic education and engagement; and

**WHEREAS**, the City of Gig Harbor applauds the efforts of the We The People program and congratulates Mr. Brown and his students on winning the State Championship and representing our State at the national competition in Washington, D.C.;

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Gig Harbor, does hereby proclaim Gig Harbor High School as the

**"We The People State Champions"**

and urges all students and community members to follow the example of these fine scholars in improving their civic education and engagement by studying the principles and concepts of the founding of this great nation.

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**Mayor, City of Gig Harbor**

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**Date**



**Subject: Appointment to the Design Review Board**

**Proposed Council Action:**

A motion to appoint Warren Balfany to serve the remaining two years of a vacant four-year term on the Design Review Board ending June, 2011.

**Dept. Origin:** Administration

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

**For Agenda of:** June 8, 2009

**Exhibits:** Application

Initial & Date

**Concurred by Mayor:**

*CLH May 28/09*

**Approved by City Administrator:**

*RJK*

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

\_\_\_\_\_

**Approved by Finance Director:**

*CP 5/09*

**Approved by Department Head:**

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

Jane Roth Williams, one of two Historic Preservation Advocate representatives on the Design Review Board has submitted her letter of resignation. A call for interested citizens was placed and we received one application.

**FISCAL CONSIDERATION**

N/A

**BOARD OR COMMITTEE RECOMMENDATION**

Because Mr. Balfany was the only applicant and met the necessary qualification for the Historical Preservation Advocate position, he was not called for an interview. Rick Gagliano, Design Review Board Member attended the Boards and Candidate Review Committee meeting to offer support. The following recommendation came from the Board and Commission Candidate Review Committee.

**RECOMMENDATION / MOTION**

**Move to:** A motion to appoint Warren Balfany to serve the remaining two years of a vacant four-year term on the Design Review Board ending June, 2011.



7809 Hidden Lane NW  
Gig Harbor, WA 98335

March 30, 2009

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

**RECEIVED**  
**APR - 1 2009**  
CITY OF GIG HARBOR

RE: Design Review Board Resignation


Dear Mr. Hunter,

Please accept this letter as my resignation from the Design Review Board, effective May 1<sup>st</sup>.

My family is in the process of relocating to our family farm in Ohio. My husband has been commuting, back east, for employment, for the past two years. Due to the economic conditions museum related jobs are scarce in Ohio. I have accepted a one year contract position, beginning May 1<sup>st</sup>, with the South Dakota Historical Society as Associate Curator of Outreach. The nature of the work will allow me to telecommute part of the time.

I appreciate your appointing me to the Design Review Board. It has been a pleasure serving with such a dedicated and professional group of individuals.

Sincerely,



Jane Roth Williams

e-copy: Darin Filand



**ADMINISTRATION**

## **CITY OF GIG HARBOR DESIGN REVIEW BOARD OPENING**

The City currently has an opening on the DRB for an Historic Preservation Position. Applicants must be able to read and interpret site plans and elevation drawings and have a background in historic preservation or a record of avocational involvement in historic preservation studies or activities. Persons interested in serving must submit a completed application to the Mayor, City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335. Application may be obtained online at [www.cityofgigharbor.net](http://www.cityofgigharbor.net), at the Civic Center, or by calling 851-6170. This a volunteer position not subject to compensation. Application must be submitted by Thur. May 21<sup>st</sup>.

## Gig Harbor Design Review Board Membership

The City of Gig Harbor Design Review Board has been reviewing applications since 1996 when the City adopted design review regulations. The DRB was significantly revised in 2005 to include two additional members. Minimum standards for members were also adopted at that time. These changes were made so that the DRB could additionally act as the City's local historic review board. There are six categories that members may fall into including;

1. A licensed architect or professional building designer with demonstrated experience in urban or historic building design. (At least one member shall be selected from this category);
2. A city resident with demonstrated interest and knowledge of urban design (no more than one member shall be selected from this category);
3. A member from the Gig Harbor planning commission. (No more than one member shall be selected from this category);
4. A member with a professional background relating to urban design, (e.g., a professional artist, civil engineer, planner, building contractor or professional designer) as determined by the city council;
5. A member with demonstrated interest and knowledge of landscaping, horticulture, arboriculture or forestry;
6. An individual with a background in identifying, evaluating and protecting historic resources, selected from among the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation or landscape architecture, or related disciplines. (At least two members should be selected from this category) Members in this categories may participate in all applications reviewed by the DRB pursuant to Chapter 17.99 GHMC (Design Manual), but shall participate in applications received pursuant to Chapter 17.97 GHMC (Historic Preservation).

The code requires that members come from at least four of the six categories above. The board is currently comprised of the following members:

Kae Paterson, Category 6 (historic preservation advocate - CLG)

John Jernejcic, Category 2 (lay member)

Jim Pasin, Category 3 (lay member)

David Fisher, Category 4 (lay member)

Vacant, Category 6 (historic preservation advocate —CLG)

Darrin Filand, Category 1 (professional member—architect)

Rick Gagliano, Vice-Chair Category 1 (professional member—architect)



- Application for Appointment -  
City of Gig Harbor  
Design Review Board

Name: WARREN S. BALFANY

Address: 1004 34<sup>th</sup> ST CT NW City: GIG HARBOR State: WA

Telephone: Home: 253-853-1881 HOME  
Other: 612-790-6651 CELL

Please attach a cover letter describing (a) your interest in serving on the Design Review Board (DRB), (b) your background and (c) the skills you wish to share in this capacity.

Under which of the following categories do you wish to be considered?  
(check appropriate box(s))

- A licensed architect or professional building designer with demonstrated experience in urban or historic building design.
- A city resident with demonstrated interest and knowledge of urban design (there are currently no openings in this category);
- A member from the Gig Harbor planning commission.
- A member with a professional background relating to urban design, (e.g., a professional artist, civil engineer, planner, building contractor or professional designer) as determined by the city council;
- A member with demonstrated interest and knowledge of landscaping, horticulture, arboriculture or forestry;

**XX** An individual with a background in identifying, evaluating and protecting historic resources, selected from among the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation or landscape architecture, or related disciplines.

Please describe your background in the categories you have selected above. (You may expand upon this in your cover letter if you need more room to write).

NOT MUCH FORMAL BACKGROUND - I HAVE ALWAYS  
LIKED OLDER HISTORICALLY SIGNIFICANT STRUCTURES  
AND HAVE A SENSE OF THEIR SITUATION AND  
SURROUNDINGS

Please describe any background or skills you have in reading and interpreting site plans, elevation drawings, landscape plans, architectural details and other design details and specifications as may be depicted on plans. (You may expand upon this in your cover letter if need more room to write).

HAVE SPENT A LITTLE TIME VIEWING  
ENGINEERING DRAWINGS OF STRUCTURES

Signature: Warren S Balfany Date: 5/18/09

WHEN I RETIRED I KNEW I WOULD HAVE TO BE INVOLVED IN SOME ACTIVITY. MOST OF MY LIFE I HAVE ENJOYED BEING AROUND AND WORKING WITH "OLD STUFF." MOST OF THE "STUFF" HAS BEEN MECHANICAL SUCH AS TRACTORS, ENGINES, CARS, BOATS, MOTORCYCLES AND AIRCRAFT. I HAVE OWNED AND RESTORED HISTORICALLY SIGNIFICANT EXAMPLES OF ALL OF THE ABOVE. NATURALLY AS A RESULT OF MY INTEREST I MET MANY PEOPLE AND BECAME A MEMBER OF A NUMBER OF CLUBS AND ASSOCIATIONS. THESE CLUBS AND ASSOCIATIONS GOT ME INVOLVED IN THE BROADER SCOPE OF COMMUNITY WHICH I BECAME ACTIVE IN UPON RETIREMENT.

WE MOVED TO GIG HARBOR 3 1/2 YEARS AGO FROM RELATIVELY SMALL TOWN OF NORTHFIELD MINNESOTA WHERE I HAD SERVED ON COMMITTEES OF THE NORTHFIELD DOWNTOWN DEVELOPMENT COUNCIL. THE TOWN HAS MANY HISTORICALLY SIGNIFICANT STRUCTURES AND PRESERVING THOSE AND THE DOWNTOWN AS A WHOLE WAS AN ONGOING VENTURE. SO MY INTEREST STARTED CHANGING FROM MACHINERY TO STRUCTURES AND COMMUNITY.

I WANT TO BRING THAT INTEREST AND SOME EXPERIENCE TO GIG HARBOR.

I HAVE LONG VOCATIONAL EXPERIENCE THROUGH MY ENGINEERING VENTURES OF USING

ENGINEERED DRAWINGS OF BUILDING, HOUSES  
AND SITE PLANS THAT I THINK CAN BE USEFUL  
TO THE BOARD.

I DON'T CLAIM TO BE AN EXPERT BUT  
I DO BRING AN INTEREST TO BEING INVOLVED  
IN OUR ABSOLUTELY WONDERFUL CITY OF GIG  
HARBOR. I WOULD LIKE TO CONTRIBUTE TO  
AND MAKE A DIFFERENCE IN "OUR TOWN".



Application for City of Gig Harbor Commissions, Boards or Committees

(Additional information and/or a resume may be submitted with this application)

Name WARREN S. BALFANY
Physical Address 1004 34th STCT NW Phone 253-853-1881
Mailing Address SAME
City GIG HARBOR State WA Zip Code 98335

How long have you resided in Gig Harbor? 3 1/2 YRS
Are you a resident of the City Limits? Yes X No o How long? 3 1/2 YRS

What is your interest/objective in serving on this Board or Commission? UNDERSTANDING HOW THE BOARDS/COMMISSIONS WORK - BECOMING MORE A PART OF THE CITY - MAKING A CONTRIBUTION

What is your educational background? B.S. ENGINEERING, ECONOMICS, PSYCHOLOGY

Do you have other civic obligations and/or memberships in professional organizations (please list office held, duties, and term of office)? HARBOR HISTORY MUSEUM VOLUNTEER COORDINATOR MARITIME PROJECTS (SHENANDOAH PROJECT) SKANSIR NRTSHED, WILKINSON BARN

What previous experience do you have serving on a board, committee or commission? HIST. WATERFRONT COM. BOARD OF DIRECTORS COASTAL HERITAGE ALLIANCE NORTFIELD MINNESOTA DOWNTOWN DEVELOPMENT COUNCIL

Where are you currently employed (job title, employer, dates, supervisor, phone)? RETIRED

- Boards, Committees and Commissions Interest
Please indicate which Boards, Committees or Commissions you would be interested in serving on.
o Arts Commission
o Building Code Advisory Board
X Design Review Board
o Lodging Tax Advisory Board
o Parks Commission
o Planning Commission
o Volunteer

Please return completed application to:
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Applicant Signature Warren S. Balfany Date 5/18/09
(Over)







Subject: Appointment to the Planning Commission

Proposed Council Action:

A motion for the re-appointment of Jill Guernsey to serve a six-year term on the Planning Commission ending June, 2015.

Dept. Origin: Administration

Prepared by: Molly Towslee, City Clerk

For Agenda of: June 8, 2009

Exhibits: Application Packages Initial & Date

Concurred by Mayor: [Signature] May 28/09

Approved by City Administrator: [Signature] 5/28

Approved as to form by City Atty: [Signature]

Approved by Finance Director: [Signature] 5/09

Approved by Department Head: [Signature]

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and dollar amounts (\$0).

INFORMATION / BACKGROUND

Jill Guernsey has served on the Planning Commission since 2005; her term expires June 30th. From the call for interested applicants, the city received a letter from Ms. Guernsey asking to be re-appointed and two other applications from Steven Lynn and John Hodge.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

The Boards and Candidates Review Committee asked Mr. Hodge to come in for a brief interview. They met with Mr. Lynn in February.

Councilmember Ekberg and Councilmember Kadzik voiced a preference to re-appoint Jill Guernsey. The Mayor submitted his recommendation to the Committee for re-appointment of Jill Guernsey. Councilmember Malich suggested the appointment of John Hodge.

RECOMMENDATION / MOTION

Move to: A motion for the re-appointment of Jill Guernsey to serve a six-year term on the Planning Commission ending June, 2015.



**ADMINISTRATION**

**GIG HARBOR  
PLANNING COMMISSION**

The City is issuing a call for citizens interested in serving on the Gig Harbor Planning Commission. Applicants should be living within the Urban Growth Area of the City of Gig Harbor.

The Planning Commission provides guidance and recommendations to the City Council on comprehensive land-use planning matters. Meetings of the Planning Commission are conducted on the first and third Thursday of each month at 5:00 p.m. The term for Planning Commission members is six-years.

Interested persons should submit a letter of interest and completed application to the Mayor by Thu. May 21<sup>st</sup>. The position is strictly volunteer and is not subject to compensation.

Towslee, Molly

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**From:** Hunter, Chuck  
**Sent:** Thursday, May 21, 2009 9:25 AM  
**To:** Towslee, Molly  
**Subject:** FW: Planning Commission Application  
**Attachments:** Planning Commission Letter.doc

Molly

My recommendation is for Jill to continue, she is too valuable to lose.

Chuck

---

**From:** Steve Lynn [mailto:splynn@att.net]  
**Sent:** Wednesday, May 20, 2009 2:15 PM  
**To:** Hunter, Chuck  
**Cc:** Towslee, Molly  
**Subject:** Planning Commission Application

Hi Chuck,

I am submitting this letter to complete the application for a position on the Planning Commission. I am sending this by email since I am currently out of the state on vacation.

I would appreciate your consideration. Molly has a copy of my completed application.

Thanks

Steve

*Jill Guernsey*  
*Attorney at Law*  
*3224 Shyleen Street*  
*Gig Harbor, WA 98335*  
*253.219.7886*

[jillguernsey@comcast.net](mailto:jillguernsey@comcast.net)

March 5, 2009

Re: Planning Commission Appointment

Dear Mayor Hunter:

My first term on the Gig Harbor Planning Commission will expire this spring. I have enjoyed being on the Commission these past four years and ask that I be appointed to serve a second term.

I would also like to take this opportunity to tell you what a tremendous job the City staff is doing. Both Tom Dolan and Jennifer Kester consistently provide the Commission with thorough and timely staff reports which allow the Commission to do its job in a responsible manner. In addition, Diane Gagnon and Cindy Andrews provide vital support to the Commission.

Lastly, although we mourn the loss of Theresa Malich both personally and as Chair of the Commission, we are thankful and appreciative of the job Harris Atkins is doing as our Chair.

Being a part of this group is a wonderful experience and I thank you in advance for your consideration of my request to serve a second term.

Sincerely,

  
Jill Guernsey

Cc: Rob Karlinsey  
Harris Atkins

May 20, 2009

Honorable Mayor Chuck Hunter  
City of Gig Harbor  
3510 Grandview Ave  
Gig harbor, WA 98335

RE: Application for City Planning Commission

Dear Mayor Hunter,

I am submitting my application for the open position on the City Planning Commission.

To me the quality of life for my family and business is significantly affected by how we plan for growth of our community. I enjoy and treasure the historic nature of our waterfront district and realize the necessity of keeping the entire Gig Harbor area vibrant through our parks, businesses, and residential communities. I feel it is important in making good decisions that we understand, weigh, and balance the diverse ambitious opportunities for the future of our town with the concerns of our community members. I feel I can contribute as a member of the Planning Commission not only as a waterfront business owner perspective, but also from being engaged as an active member of our community.

I would appreciate your consideration for this position. Molly Towslee has a copy of my completed application.

Sincerely,

Steven Lynn

Business  
Water to Wine 9014 Peacock Hill Ave Suite 103A  
Gig Harbor, WA 98332

Home  
4821 105<sup>th</sup> Ave NW  
Gig Harbor, WA 98335

cc: Molly Towslee



Application for City of Gig Harbor Commissions, Boards or Committees

(Additional information and/or a resume may be submitted with this application)

Name Steven Lynn
Physical Address 4821 105th Ave NW Phone 253-265-2071
Mailing Address 4821 105th Ave NW
City Gig Harbor State WA Zip Code 98335

How long have you resided in Gig Harbor? 15 years
Are you a resident of the City Limits? Yes o No X How long?

What is your interest/objective in serving on this Board or Commission? Please see attached sheet

What is your educational background? Please see attached sheet

Do you have other civic obligations and/or memberships in professional organizations (please list office held, duties, and term of office)? Please see attached sheet

What previous experience do you have serving on a board, committee or commission? Please see attached sheet

Where are you currently employed (job title, employer, dates, supervisor, phone)? Please see attached sheet

- Boards, Committees and Commissions Interest
Please indicate which Boards, Committees or Commissions you would be interested in serving on.
o Arts Commission
o Building Code Advisory Board
o Design Review Board
o Lodging Tax Advisory Board
o Parks Commission
o Planning Commission
o Volunteer

Please return completed application to:

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

Applicant Signature [Handwritten Signature]

Date January 22, 2009

(Over)



Steven Lynn

Application for Planning Commission

**What is your interest/objective in serving on this Board or Commission?**

To me the quality of life for my family and business is significantly affected by how we plan for growth of our community. I enjoy and treasure the historic nature of our waterfront district and realize the necessity of keeping the entire Gig Harbor area vibrant through our parks, businesses, and residential communities. I feel it is important in making good decisions that we understand, weigh, and balance the diverse ambitious opportunities for the future of our town with the concerns of our community members. I feel I can contribute as a member of the Planning Commission not only as a waterfront business owner perspective, but also from being engaged as an active member of our community.

**What is your educational background?**

I graduated from Fenton High School in Bensenville, IL and received my BS, MS and PhD in Microbiology from the University of Illinois in Urbana-Champaign, IL. I did my post-doctoral training at Harvard Medical School in the Department of Microbiology and Molecular Genetics.

**Do you have other civic obligations and/or memberships in professional organizations (please list office held, duties and term of office)?** Yes.

Gig Harbor Historic Waterfront Association  
President Inception through 2009  
Gig Harbor/Peninsula Chamber of Commerce  
Co-Chairperson Economic Development 2007 - current  
Washington State Liquor Control Board Business Advisory Council  
Member 2008 – current  
Pierce County Library 2030 Community Leader Advisory Group for Gig Harbor/Key Peninsula

**What previous experience do you have serving on a board, committee or commission?**

I have served in numerous groups and non-profit organizations at the local and state level.

Gig Harbor Historic Waterfront Association  
President Inception through 2009  
Gig Harbor/Peninsula Chamber of Commerce  
Co-Chairperson Economic Development 2007 – current  
Member Bylaws Committee - current  
Washington State Liquor Control Board Business Advisory Council  
Member 2008 – current  
Gig Harbor Waterfront Retail & Restaurant Association  
Chairperson 5 Year Strategic Planning Committee  
Chairperson Bylaws Committee  
Washington State Liquor Control Board – Member Three Tier Task Force  
Washington State Liquor Control Board – Member Business Advisory Council  
Pierce County Library 2030 Community Leader Advisory Group for Gig Harbor/Key Peninsula

**Where are you currently employed (job title, employer, dates, supervisor, phone)?**

Water to Wine 9014 Peacock Hill Ave Suite 103A Gig Harbor, WA 98332. Co-Owner since 2005 and sole owner beginning 2009. 253-853-9463



Steven Lynn

Application for Planning Commission

**References**

Paul Kadzik	3518 Harborview Dr Gig Harbor, WA 98335	Dentist Councilmember	253-851-6579
Michael Fisher	2823 Harborview Dr Gig Harbor, WA 98335	Independent Business Consultant	253-851-2496
John Hogan	4423 Point Fosdick Suite 100-2 Gig Harbor, WA 98335	Gateway Capital Uptown Developer	253-851-4557



# Application for City of Gig Harbor Commissions, Boards or Committees

(Additional information and/or a resume may be submitted with this application)

Name JOHN HODGE  
Physical Address SAME Phone 253-225-5353  
Mailing Address 11210 66th Ave NW  
City Gig Harbor State WA Zip Code 98332

How long have you resided in Gig Harbor? 18 YEARS IN USA  
Are you a resident of the City Limits? Yes  No  How long? SINCE ANNEXATION

What is your interest/objective in serving on this Board or Commission? TO PROVIDE MY EXPERTISE IN ENGINEERING AND PLAN REVIEW TO GIG HARBOR. TO BALANCE GROWTH AND THE HISTORY/FEEL OF GH

What is your educational background? BS CIVIL ENGINEERING WSU 1988

Do you have other civic obligations and/or memberships in professional organizations (please list office held, duties, and term of office)?  
MEMBER MASTER BUILDERS ASSOCIATION - NO OBLIGATIONS

What previous experience do you have serving on a board, committee or commission?  
VP HOME OWNERS ASSOCIATION WELINGTON RIDGE - 2 YEARS  
PRESIDENT AMERICAN SOCIETY CIVIL ENGINEERS STUDENT CHAPTER WSU

Where are you currently employed (job title, employer, dates, supervisor, phone)?  
OWNER/PRINCIPAL ENGINEER HODGE ENGINEERING  
857-7055

**Boards, Committees and Commissions Interest**

Please indicate which Boards, Committees or Commissions you would be interested in serving on.

- Arts Commission
- Building Code Advisory Board
- Design Review Board
- Lodging Tax Advisory Board
- Parks Commission
- Planning Commission
- Volunteer \_\_\_\_\_

Please return completed application to:

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

Applicant Signature John Hodge Date 5-20-09

(Over)

REFERENCES (Please list a minimum of three (3) references).

Name	Address	Business	Phone Number
DR. BBS BUSKIRK	1198 Queens Dr. <sup>FF.</sup>	RETIRED DDS	549-7389
DR BYRON DODGE	7818 WARREN DR	RETIRED MD	265-3615
JIM BOZICH	3214 50 <sup>th</sup> ST NW	UNITED PACIFIC STRUCTURES	853-3997
MEL HEIDI	2607 JAWW AVE NW	GATEWAY POINT BUSINESS PARK	425-518-1848

If more space is needed to answer one of the previous questions, please restate the question below then complete your response.

BBS BUSKIRK - DENTIST IN GIG HARBOR 30 YEARS  
 BYRON DODGE - 40 YEAR GIG HARBOR RESIDENT  
 JIM BOZICH - BUILDING CODE ADVISORY BOARD GIG HARBOR  
 MEL HEIDI - GIG HARBOR LANDLORD WHERE MY BUSINESS HAS BEEN SINCE 2004.

5.20.09

Gig Harbor Planning Commission  
Letter of Interest

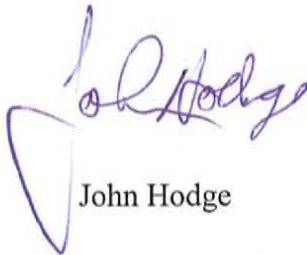
I am interested in a position on the board of the Gig Harbor Planning Commission because I am deeply tied to the community and would like to have an input on the future direction of the city. I have not been involved in volunteer positions with the city up till now because of the age of my sons and the work load of my engineering business. With my sons getting older and more free time available I would like to volunteer my expertise in the planning and building process. I am a licensed civil engineer in Washington, Oregon, and Idaho.

I have lived in Gig Harbor with my wife, Shelley Hodge, for 18 years. We purchased our first home 17 years ago on Peacock Hill, our second in Wellington Ridge on 144<sup>th</sup>, our third and current home in Horizon West (just annexed to Gig Harbor), and our "summer home" a 1924 treasure on Sunrise Beach. My wife Shelley has been employed as a dental hygienist in Gig Harbor for the last 15 years. My oldest son is a 7<sup>th</sup> grader at Harbor Ridge and my youngest is a 4<sup>th</sup> grader at Purdy Elementary. My sons are involved in PYF Football, basketball, and Little League Baseball.

My engineering business specializes in residential and light commercial structures. I moved my business from Lakewood to Gig Harbor in 2004 to allow me more opportunity to participate in my son's school and sports. About half of my work is in Pierce and Kitsap counties. The other half is spread statewide and into Oregon and Idaho. At the height of the building boom Hodge Engineering had fourteen on the payroll. Currently we have seven which is a more manageable number.

I have witnessed Gig Harbor go through profound changes over the 18 years my wife and I have lived here. Some changes for the better and many for the worse. Growth needs to be planned and balanced to keep Gig Harbor from becoming another Tacoma. We have treasures that must be preserved and growth that must be directed. I would like to help in the process.

Sincerely,



John Hodge

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

TO: MOLLY TOWSLEE, CITY CLERK
RE: NEW APPLICATION

DATE: 5/20/09

CORRECTED

UBI: 601-896-786-001-0002

License: 081255 - 1U County: 27
Tradename: GATEWAY TO INDIA
Loc Addr: 6565 KIMBALL DR STE 102
GIG HARBOR WA 98335-1269
Mail Addr: 2603 6TH AVE
TACOMA WA 98406-7004

APPLICANTS:
SINGH, SURINDER PAL 1971-01-22
SINGH, SYLVIA (Spouse) 1964-05-13

Phone No.: 253-552-5022 SURINDER SINGH

Privileges Applied For:
SPIRITS/BR/WN REST SERVICE BAR

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

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

DATE SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



**Subject:** Eddon Boat Environmental Restrictive Covenant Agreement with Department of Ecology.

**Proposed Council Action:** Approval of the Environmental Restrictive Covenant Agreement as presented.

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

**Prepared by:** Willy Hendrickson  
Engineering Technician

**For Agenda of:** June 8, 2009

**Exhibits:** Environmental Covenant Agreement

Initial & Date

**Concurred by Mayor:** CLH 6/1  
**Approved by City Administrator:** POK 6/1  
**Approved as to form by City Atty:** VIA EMAIL  
**Approved by Finance Director:** N/A  
**Approved by Department Head:** [Signature]

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

The Department of Ecology Institutional Control Plan associated with remediation of the Eddon Boatyard Site requires that the City execute and record an Environmental Covenant on the Cleanup Action Plan areas of the site identified as SMU 3 and AG-9. See attached figure for locations. The Environmental Covenant was required because remedial action resulted in some areas that did not meet the cleanup requirements. The covenant requires that certain actions (those that may result in the release or exposure to the environment of hazardous substances) are prohibited without the prior written approval of the Department of Ecology. Among other requirements, the covenant authorizes the Department of Ecology to inspect the remedial actions at the property.

**FISCAL CONSIDERATION**

No funds will be expended for the acquisition of the described agreements.

**RECOMMENDATION / MOTION**

**Move to:** Approve the Environmental Covenant Agreement as presented.

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

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

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

Environmental Covenant

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

City of Gig Harbor

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

State of Washington, Department of Ecology

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

Section 05, Township 21, Range 02, Quarter 33

**Assessor's Property Tax Parcel or Account Number:** 0221053074 and 0221053050

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

## Environmental Covenant

Grantor: City of Gig Harbor  
Grantee: State of Washington, Department of Ecology  
Legal: Section 05 Township 21 Range 02 Quarter 33  
Tax Parcel Nos.: 022105-3074 and 022105-3050

Grantor, City of Gig Harbor, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this \_\_\_\_ day of \_\_\_\_\_, 2009 in favor of the State of Washington Department of Ecology (hereafter "Ecology"). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, Revised Code of Washington (hereafter "RCW") 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Washington Laws chapter 104, section 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and Washington Administrative Code (hereafter "WAC") 173-340-440 by City of Gig Harbor, its successors and assigns, and Ecology, its successors and assigns.

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

- Agreed Order (hereafter "AO") DE 5597, August 2008.
- Cleanup Action Plan (hereafter "CAP") for the Eddon Boatyard Site (Exhibit B of the AO), June 2008.

These documents are on file at Ecology's Southwest Regional Office.



This Covenant is required because the Remedial Action resulted in some areas with residual concentrations of mercury in bulk sediment and tributyltin in porewater, which exceed the CAP (Section 3) cleanup requirements for sediment (and porewater) established under WAC 173-340-440. In addition, there is an area with potential carcinogenic polychlorinated aromatic hydrocarbons (hereafter "cPAHs") left at depth.

The undersigned, City of Gig Harbor, is the fee owner of real property (hereafter "Property") in the County of Pierce, State of Washington, that is subject to this Covenant. The Property is legally described in Exhibit A of this Covenant and made a part hereof by reference. However, only specific areas within this Property (identified in Section 1) are restricted by this Covenant.

The City of Gig Harbor makes the following declaration as to limitations, restrictions, and uses to which specific areas within the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

### **Section 1**

In August 2008, the City of Gig Harbor and Ecology entered into an AO for the Eddon Boatyard Site. The CAP is Exhibit B to the AO and describes the Remedial Action performed by the City of Gig Harbor for the cleanup of upland and sediment contamination. Two components of the Remedial Action were to cap area SMU3 and determine the appropriate excavation alternative during regrading of area AG-9 (see Exhibit B for a map of these locations). Area SMU3 now has an engineered cap over contaminated sediments (mercury

and tributyltin). AG-9 is the upland area behind the former bulkheads that was graded into a gradual sloped shoreline.

*AG-9* – Initial investigations of area AG-9 contained some elevated cPAH concentrations found at +14.5 to +15.5 feet mean lower low water (hereafter “MLLW”). Because no defined charred wood layer or other potential source of cPAHs was encountered at any elevation during excavation, no further remedial action was needed in area AG-9, and the area was regraded to meet designed stabilization elevations. However, the coring locations and elevations where the cPAHs samples were found are included in this Covenant because of the potential that cPAHs may exist in the undisturbed soils left at depth in that location. The area is now approximately 7 feet below the existing grade, and soil-disturbing activities in that area should not exceed a cut of more than 4 feet or an elevation of +18 feet MLLW at that precise location. However, if during the park development digging more than 4 feet were necessary, the Public Works Superintendent would be notified and the following conditions would be met: 1) follow regulatory health and safety protocols, 2) follow regulatory characterization and disposal protocols, and 3) return the area functionally to what is required in the CAP.

*SMU3 Cap* – Any activity, other than approved long-term monitoring and institutional control implementation (sign placement), on the Property that may result in the release or exposure to the environment of the contaminated sediment that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology. Some examples of activities that are prohibited in the capped area (SMU3) include drilling, digging, anchoring, piercing the surface with a spike or similar item, or dredging.

**Section 2**

Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

**Section 3**

Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

**Section 4**

The Owner of the Property must give a 30-day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

**Section 5**

The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

**Section 6**

The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

**Section 7**

The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action, to take samples, to inspect remedial actions conducted at the Property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

**Section 8**

The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

City of Gig Harbor

\_\_\_\_\_  
[Name of Signatory]

[Title]

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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

\_\_\_\_\_  
[Name of Person Acknowledging Receipt]

[Title]

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

[REPRESENTATIVE ACKNOWLEDGEMENT]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument, and acknowledged it as the \_\_\_\_\_ [type of authority] of \_\_\_\_\_ [name of party being represented] to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument, and acknowledged it as the \_\_\_\_\_ [type of authority] of \_\_\_\_\_ [name of party being represented] to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

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

**EXHIBIT A  
LEGAL DESCRIPTION**

022105-3074

Section 05 Township 21 Range 02 Quarter 33 : COM AT MC AT NW COR LOT 7 TH S 41 DEG 03 MIN E 75.21 FT ALG ML TH S 26 DEG 03 MIN E 200 FT TO TRUE POB TH CONT S 26 DEG 03 MIN E 125.5 FT TH S 19 DEG 49 MIN W 79 FT TH S 50 DEG 55 MIN W 162.65 FT TO HWY TH NLY ALG ELY LI HWY TO PT S 54 DEG 48 MIN W FROM POB TH N 54 DEG 48 MIN E 145 FT TO POB TOG/W TDLDS ABUTT

022105-3050

Section 05 Township 21 Range 02 Quarter 33 : COM NW COR GOVT LOT 7 TH S 01 DEG 13 MIN W 572.82 FT N 50 DEG 55 MIN E 58 FT TO INTER ELY LI OF B H CO RD & POB TH CONT N 50 DEG 55 MIN E 162.55 FT N 19 DEG 49 MIN E 79 FT TO INTER ML OF GIG HARBOR TH S 25 DEG 00 MIN E 90.96 FT N 63 DEG 57 MIN E 55 FT M/L TO A PT THAT IS 287.37 FT E OF & AT R/A TO W LI SEC TH S 01 DEG 13 MIN W 163 FT M/L TO INTER NLY LI SD B H CO RD TH WLY & SLY 272 FT ALG NLY LI SD RD TO BEG TO /W TDLDS ABUTT

### EXHIBIT B RESTRICTED AREAS MAP

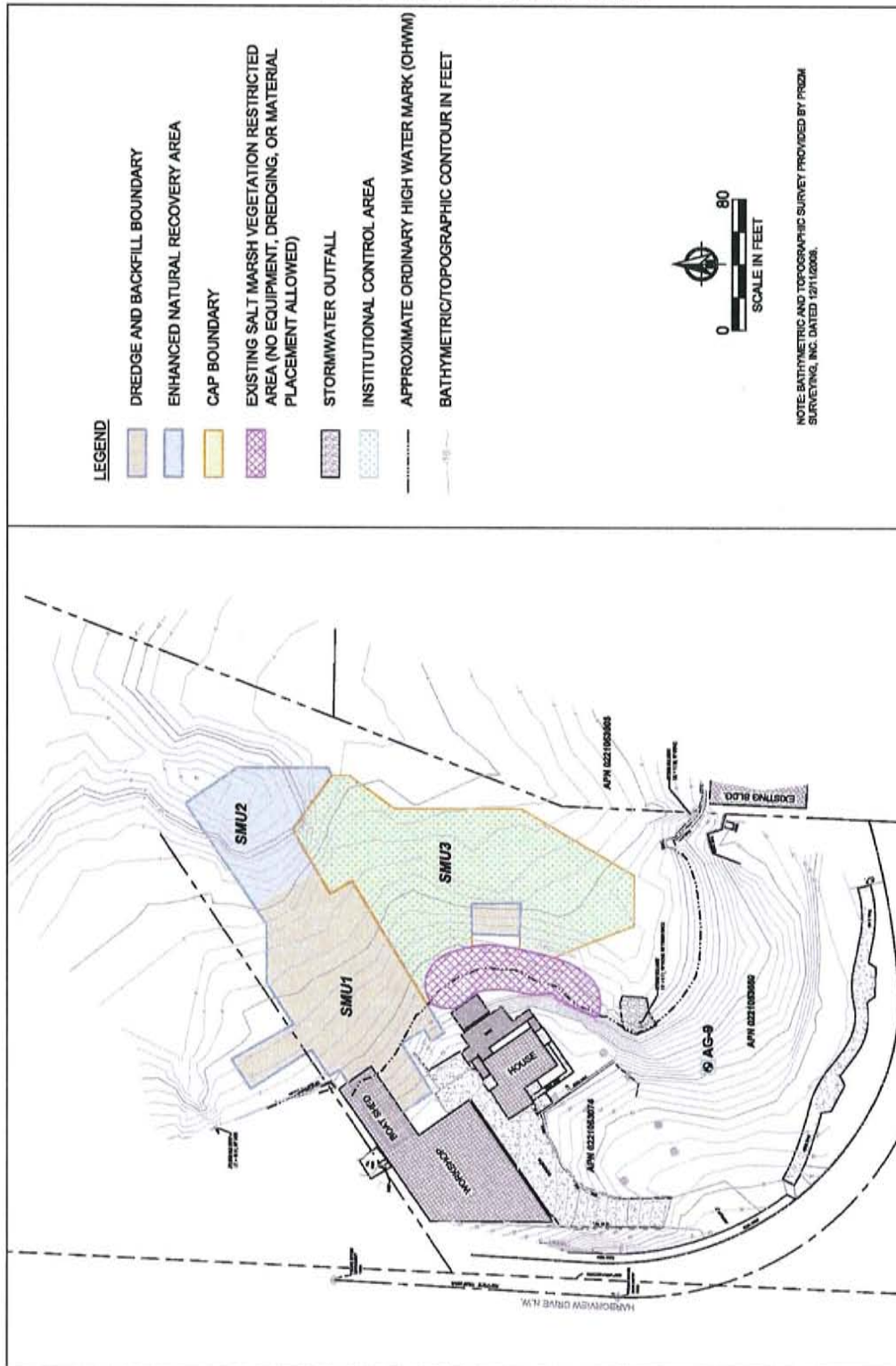


Figure 1  
Restricted Areas  
Environmental Covenant  
Eddon Boatyard





**Subject: Extension of 2009 Contract for Federal Lobbying Services**

**Proposed Council Action:**

Authorize the Mayor to execute an extension of the federal contract for lobbying services with Gordon, Thomas Honeywell through December 31, 2009.

**Dept. Origin:** Administration

**Prepared by:** Rob Karlinsey

**For Agenda of:** June 8, 2009

**Exhibits:** Lobbying Contract *EXTENSION*  
Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** *CLK 6/1/09*

**Approved as to form by City Atty:** *RJK 5/29/09*  
*OK'd via email 6/1*

**Approved by Finance Director:** *CP 5/09*

**Approved by Department Head:** *RJK*

Additional Expenditure Required (2009)	\$37,500	Amount Budgeted	\$0	Appropriation Required:	\$0 – See Fiscal Consideration Below
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**INFORMATION / BACKGROUND**

The current contract for federal lobbying services with Gordon Thomas Honeywell (GTH) runs through June 30, 2009. The City Administrator is recommending that the City Council authorize the Mayor to extend this contract through the end of the year for the following reasons:

- The Federal Surface Transportation Reauthorization process, through which the City is requesting \$10 million for the BB16 project, has just recently began. The process for this particular source of funding will last at least through the end of the year, and most likely into 2010. We will continue to need the resources of GTH's federal lobbying office in Washington, D.C. to continue to advocate for and work this request through the selection and approval process.
- The efforts of the federal government to stimulate the economy are varied and phased. We need the knowledge and expertise of GTH's federal lobbyists to monitor, navigate, and bring to our attention any federal stimulus opportunities that may arise. For example, through GTH we are learning of a multi-billion dollar transportation package that the federal government will begin to process in the fall.
- We will continue to need the expertise and resources of GTH to shepherd the City's other federal appropriations requests (TCSP funds for Donkey Creek and HUD-EDI funds for the Boys & Girls Clubs) to approval.



**FISCAL CONSIDERATION**

The current contract is for \$6,250 per month for six months (January through June), or a total of \$37,500. Extending the contract through the end of the year would increase the federal lobbying contract by another \$37,500, bringing it to a total of \$75,000. (The State lobbying contract is separate and in addition. It currently runs for the full year, January through December, and its contract amount is \$30,000.)

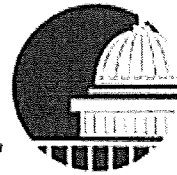
The federal lobbying contract was budgeted through June 30, 2009. However, as demonstrated at the City Council budget study session as well as the Finance Committee meeting in April, staff identified savings and reductions in the General Fund to pay for the proposed contract extension as well as to compensate for reduced revenue projections (see attached Summary of Proposed Additional Budget Cuts 2009).

**BOARD OR COMMITTEE RECOMMENDATION**

This proposal to extend the GTH lobbying contract was discussed at the 4/20 City Council retreat, the 4/27 City Council budget study session, and the 4/20 Finance & Safety Committee meeting.

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor to execute an extension of the federal contract for lobbying services with Gordon, Thomas Honeywell through December 31, 2009.



June 8th, 2009

Mayor Charles L. Hunter  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

Re: Federal Contract Extension

Dear Mayor Hunter,

This letter is to confirm the extension of the federal lobbying consulting agreement between Gordon Thomas Honeywell Governmental Affairs and the City of Gig Harbor entered into on December 12<sup>th</sup>, 2008. The contract will be extended from July 1<sup>st</sup>, 2009 through December 31<sup>st</sup>, 2009, at the rate of Six Thousand Two Hundred Fifty Dollars (\$6,250) per month.

Please sign the letter below to acknowledge the extension of the federal lobbying contract to the consulting agreement and return one original in the enclosed self addressed envelope.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Schellberg', written over a horizontal line.

Tim Schellberg  
President – Gordon Thomas Honeywell Governmental Affairs

---

Charles L. Hunter  
Mayor – City of Gig Harbor

**Karlinsey, Rob**

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**From:** Angela S. Belbeck [abelbeck@omwlaw.com]  
**Sent:** Monday, June 01, 2009 1:33 PM  
**To:** Karlinsey, Rob  
**Subject:** RE: GTH Council Bill and Contract Extension

Hi Rob. Looks great.  
--Angela

---

**From:** Karlinsey, Rob [mailto:karlinseyr@cityofgigharbor.net]  
**Sent:** Monday, June 01, 2009 12:01 PM  
**To:** Angela S. Belbeck  
**Subject:** GTH Council Bill and Contract Extension

Angela –

Could you please give this one more look and tell me if you approve? See attached. Thanks.

--Rob

# Summary of Proposed Additional Budget Cuts *Consent Agenda - 8*

## 2009

PRESENTED TO CITY  
COUNCIL 4/20 + 4/27

**General Fund: Projected Revenue Shortfall: \$400,000 (i.e. Additional Budget Cut Goal)**


	2009 Additional Cuts
General Gov't - City Store	4,000
Court	16,600
Administration	29,750
Legal	9,000
Finance	18,913
Police	115,188
Planning	22,500
Building & Fire Safety	48,000
Parks	46,100
City Buildings	17,250
<b>Subtotal General Fund Operations</b>	<b>\$327,301</b>

Cut the Following General Fund Transfers to Parks Capital:

Skate Park Benches	2,000	
KLM Restrooms & Shelter	90,000	Fund from 2008 Bond Proceeds Instead
Eddon Boat Building	39,000	Not needed due to low bid
<b>GF Parks Transfers Subtotal</b>	<b>\$131,000</b>	

**Subtotal General Fund Savings \$458,301**

### Less Potential Unbudgeted Expenditures in 2009

Extend Federal Lobbying Contract End Date from June 30 to December 31?	(37,500)	
Eddon Boat Cleanup: Institutional Control Plan and Long-Term Monitoring	(20,000)	
<b>Subtotal Unbudgeted Expenditures</b>	<b>(57,500)</b>	

**Net General Fund Savings 400,801**

**Park Impact Fee Trust Fund** (assume zero park impact fees in 2009):

Cut Transfer to Eddon Boat Building	\$50,000	Not needed due to low bid
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**Street Operating Fund: Projected Revenue Shortfall: TBD - Still Evaluating**

Street Operating Reductions	TBD
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**Total 2009 Additional Budget Savings \$450,801**

**FEDERAL GOVERNMENTAL AFFAIRS  
CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
GORDON THOMAS HONEYWELL GOVERNMENTAL AFFAIRS**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Gordon Thomas Honeywell Governmental Affairs, a limited liability corporation organized under the laws of the State of Washington located at 1201 Pacific Ave, Suite 2100 Tacoma, WA 98401 (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City desires to obtain lobbying services; and

WHEREAS, the City desires that the Consultant perform services necessary to provide the lobbying services described herein; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein; and

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

**TERMS**

**I. Description of Work**

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

**II. Payment**

A. The City shall pay the Consultant fees in amount not to exceed Thirty-Seven Thousand Five Hundred Dollars and No Cents (\$37,500), or Six Thousand Two Hundred and Fifty Dollars and Zero Cents (\$6,250.00) per month, beginning January 1, 2009, for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the

hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

### III. Relationship of Parties

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

### IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** beginning on January 1, 2009. The parties agree that the work described in **Exhibit A** shall be completed by June 30, 2009.

### V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the

amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

## **VI. Discrimination**

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

## **VII. Indemnification**

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

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

**IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.**

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

## VIII. Insurance

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

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

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

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

D. 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.

E. 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.

F. 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.

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

## IX. Exchange of Information



The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

#### **X. Ownership and Use of Records and Documents**

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

#### **XI. City's Right of Inspection**

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

#### **XII. Consultant to Maintain Records to Support Independent Contractor Status**

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

#### **XIII. Work Performed at the Consultant's Risk**

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or

damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

**XIV. Non-Waiver of Breach**

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

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

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

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Administrator's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

**XVI. Written Notice**

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

**CONSULTANT:**

Tim Schellberg  
Gordon Thomas Honeywell Gov. Affairs  
1201 Pacific Ave., Suite 2100  
Tacoma, WA 98401  
(253) 620-6500

City Administrator  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170

**XVII. Assignment**

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

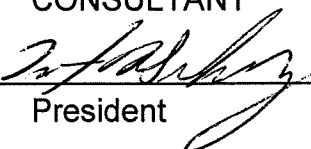
**XVIII. Modification**

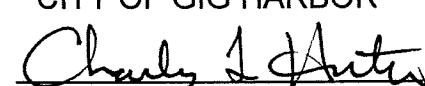
No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

**XIX. Entire Agreement**

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this 9 day of December, 2008.

CONSULTANT  
By:   
President

CITY OF GIG HARBOR  
By:   
Mayor

Notices to be sent to:  
Tim Schellberg  
Gordon Thomas Honeywell Gov. Affairs  
1201 Pacific Ave., Suite 2100  
Tacoma, WA 98401  
(253) 620-6500

City Administrator  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335  
(253) 851-6170

APPROVED AS TO FORM:

[Signature]  
City Attorney

ATTEST:  
[Signature]  
City Clerk

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KITZAP )

I certify that I know or have satisfactory evidence that Tim Schellberg is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Consultant Services Contract of Governmental Affairs to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/12/08

Patricia M. McCallion

Patricia M. McCallion  
(print or type name)

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

Kitzap County

My Commission expires: 1-22-2009



STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF PIERCE         )

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

Dated: 12/19/08



Molly M Towslee

Molly Towslee  
(print or type name)

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

Gig Harbor

My Commission expires: 12/2/2011

**Exhibit A Scope of Work – Federal Governmental Affairs Services**

The Consultant shall provide the City of Gig Harbor with the following Federal Government governmental affair services:

- Identify and track all congressional legislation and budgets relevant to the City of Gig Harbor, and lobby the City of Gig Harbor's position to Congress;
- Identify and track all federal grants that are available to the City of Gig Harbor
- Lobby the Washington State Congressional delegation to pursue one or more congressionally directed transportation and/or utility funding requests in the FY2010 Congressional Budget, or in the anticipated reauthorization or stimulus package bills for a road project related to the Gig Harbor North Development.
- Lobby the Washington State Congressional delegation to pursue a congressionally directed funding request in the FY2009 or FY2010 Congressional Budget for improvements related to Donkey Creek.
- Organize for City of Gig Harbor officials, local community leaders and business leaders to support the congressional transportation requests.
- Provide the City with frequent reports and updates;
- Organize events and meetings to promote the City of Harbor to relevant members of the Washington State Congressional delegation.

**Exhibit B Billing Rates**

As described in Section II of this agreement, a monthly service fee of Six Thousand Two Hundred and Fifty Dollars and Zero Cents (\$6,250.00) per month shall be charged to provide the services described in this agreement. This fee will cover all work performed by Dale Learn and three additional Consultant employees may be providing services on this project. They include: Tim Schellberg, who will provide additional congressional governmental affairs support; Nate Potter who will serve in an assistant governmental affairs role in the Washington DC office, and Hallee Sanders will provide an administrative assistant role from the Pierce County office.

**Subject:** Resolution for Public Hearing & Approval of Easement Agreements – Bacchus Street Vacation (EN-08-0135)

**Proposed Council Action:** Recommend that Council approve the two Utility Easement Agreements and pass the resolution setting Monday, July 13, 2009 at 5:30 P.M. as the date for the public hearing on the proposed street vacation for a portion of Prentice Avenue and Benson Street.

**Dept. Origin:** Public Works Department

**Prepared by:** Willy Hendrickson  
Engineering Technician *WH*

**For Agenda of:** June 08, 2009

**Exhibits:** Letter of Request, Resolution, Legal Description, Site Map, Aerial Map, Vicinity Map, Street Vacation Checklist, and two Utility Easement Agreements

Initial & Date

**Concurred by Mayor:** *CLH 6/4*

**Approved by City Administrator:** *POK*

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

**Approved by Finance Director:** NA

**Approved by Department Head:** *AM*

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

The city received a Letter of Request from Thornton Land Surveying representing Ladd Bacchus petitioning the city to vacate a portion of Prentice Avenue and Benson Street abutting 9314 and 9304 Peacock Hill Avenue in accordance with GHMC 12.14.002.

Specifically, the request is for the vacation of the West thirty-three (33) feet of Prentice Avenue and the North thirty-two (32) feet of Benson Street Right-of-Way's currently held by the city and abutting Lots 1,2 &3, Block 3 of the Woodworth Addition to Gig Harbor (parcel numbers 9815000070 and 9815000080).

City staff from the Planning, Building and Public Works Departments have reviewed and approved this request with comments from Public Works. City Utility Easements will be required for this request for an 8 inch sewer line running along Prentice and an abandoned 4 inch water main running along Benson Street.

As defined in 12.14 GHMC a resolution must be passed by the City Council setting a time and date for a public hearing on the proposed street vacation.

**POLICY CONSIDERATIONS**

Any policy considerations will be provided at the public hearing.



**FISCAL CONSIDERATIONS**

The \$150.00 processing fee has been paid in accordance with GHMC 12.14.004.

**RECOMMENDATIONS**

Recommend that Council authorize the two Utility Easement Agreements and pass the resolution setting Monday, July 13, 2009 at 5:30 P.M. as the date for the public hearing on the proposed street vacation for a portion of Prentice Avenue and Benson Street.



**VACATION OF STREETS AND ALLEYS**

**GIG HARBOR MUNICIPAL CODE CHAPTER 12.14**

Name: Ladd C. Baccus Date: 7/15/08

Site address: 9304 Peacock Hill Ave Gig Harbor WA 98332

Phone Number: \_\_\_\_\_ Parcel Number: 9815000070 & 9815000080

**OWNER REQUIREMENTS**

- The petition or resolution shall be filed with the city clerk, and the petition shall be signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated. [GHMC § 12.14.002 (c)].
- Nonrefundable payment to the City of a pre-hearing fee of \$150.00, to defray the administrative cost incurred in processing such vacation petitions [GHMC § 12.14.004 (a)].
- Legal description prepared by a Licensed Surveyor of area to be vacated [GHMC § 12.14.002 (b)].
- Location map showing surrounding street network, existing utilities, and adjacent properties labeled with ownership, site addresses, and parcel numbers.
- Site map prepared by a Licensed Surveyor showing the existing property and street vacation areas with dimensions (using bearings and distances), calculated square footage, two-foot contours, existing easements, wetlands and trails or other relevant information.
- At the time the City Council recommends granting a vacation petition, the petitioner shall deposit a \$500.00 appraisal fee with the Public Works Director [GHMC § 12.14.004 (b)]. Appraisal fee not required if qualified under the Non-user Statute [GHMC § 12.14.018 (c)].
- Compensation to the City for vacation if applicable [GHMC § 12.14.018]. Compensation not required if qualified under the Non-user Statute [GHMC § 12.14.018 (c)].

**CITY REVIEW**

- Determine Non-user Statute application. YES WOODWORTH ADDITION 1890
- Verify all information provided in the petition, legal description, location map, and site map.
- Describe topography and vegetation (forested, cleared, etc.) using GIS aerial and digital camera photos of site.
- Verify existing utilities or call One Call Locate to determine what utilities are on the property.
- Determine proposed vacation's consistency with City of Gig Harbor Comprehensive Plan (i.e. transportation element).
- Determine current extent of public use of area proposed to be vacated as a Prescriptive Easement.
- Determine possible retention for future public uses: Roadway, water, sewer, storm drainage, parking facilities, parks, view areas, and access to waterfront. EASEMENTS REQUIRED

- Develop history of area proposed to be vacated including when area was purchased, dedicated, or otherwise acquired. N/A
- Determine compensation for vacation as described in GHMC § 12.14.018 if applicable. N/A
- Verify payment of pre-hearing \$150 fee and \$500 appraisal fee.
- Prepare aerial vicinity map.
- Prepare Council Resolution.
- Post notices of Public Hearing.
- Determine hearing date. JUNE 8 2009
- Legal Review APPROVED BY ANGELA

*The map features are approximate and are intended only to provide an indication of said features. Additional lines that have not been mapped may be present. The County makes no warranty of fitness for a particular purpose. All rights are expressly provided as is, and without fault. The County assumes no liability for variations ascertained by actual survey. Orthophotos and other data have not been updated.*



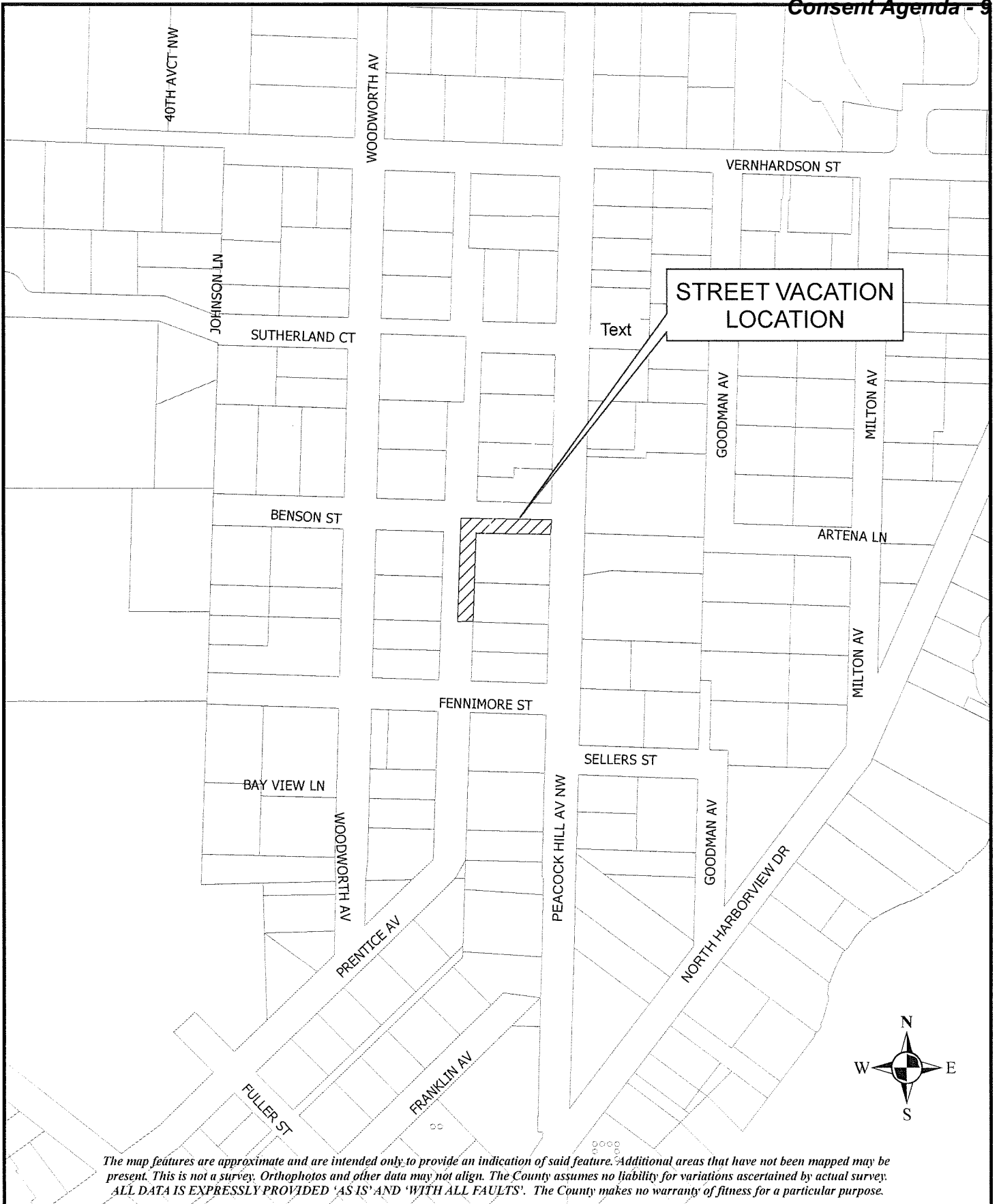
FENNIMORE ST

PRENTICE AV

WOODWORTH AV

PEACOCK HILL AV NW





BACCHUS STREET VACATION - PRENTICE AVE. AND BENSON ST.  
VICINITY MAP



**Consent Agenda - 9**  
8803 State Highway 16  
PO Box 249  
Gig Harbor, WA 98335  
T 253 858 8106  
F 253 858 7466  
thorntonls.com

14 July 2008

Mr. Willie Hendrickson  
Engineering Technician  
3510 Grandview Street  
Gig Harbor, WA 98335

RE: Vacation of portions of Prentice Avenue (Chester Street) & Benson (Norton) Street right-of-way

Dear Mr. Hendrickson,

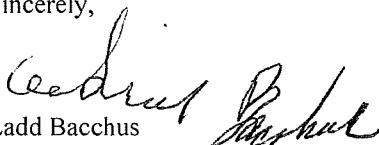
This letter serves as an official request to vacate a 32-foot wide strip of Benson Street right-of-way and a 33-foot wide strip of Prentice Avenue abutting my properties at 9314 & 9304 Peacock Hill Avenue NW in the City of Gig Harbor. This right-of-way along with my properties were created from the plat called "Woodworth's addition to gig harbor" in book 5 of plats at page 66 in Pierce County, Washington. These portions of Prentice Avenue & Benson Street abutting my property at parcel numbers 9815000070 & 9815000080 have never been used as street, nor has it been constructed.

Under the City of Gig Harbor's Municipal Code 12.14.018.C, which sites the "vacations of streets and alleys subject to 1889-90 Laws of Washington, Chapter 19, Section 32 (Non-user statute)", that portion of Prentice Avenue & Benson Street right-of-way's abutting my parcels has adversely, by operation of law, become mine legally since these right-of-way's were never opened nor used for their original purpose.

In light of this information, I wish to request those portions of the Prentice Avenue & Benson Street abutting my properties be vacated. See attached drawings depicting the original location of the subject portion of Prentice Avenue & Benson Street right-of-way's in relation to my parcels.

Thank you for your assistance.

Sincerely,

  
Ladd Bacchus

RESOLUTION NO. XXX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, TO INITIATE THE PROCEDURE FOR THE VACATION OF A PORTION OF WOODWORTH AVENUE.**

---

WHEREAS, Ladd C. and Oe Sun Bacchus desire to initiate the procedure for the vacation of a portion of Prentice Avenue and Benson Street, a portion of the original plat of the Woodworth's Addition to Gig Harbor.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Gig Harbor, Washington:

Section 1. A public hearing upon said street vacation shall be held in the council chambers of Gig Harbor Civic Center on Monday, July 13, 2008 at 6:00 p.m., at which hearing all persons interested in said street vacation are invited to appear.

Section 2. The City Clerk is directed to post notices of the hearing in three public places and on the street to be vacated and to mail notices to all owners of any property abutting the portion of street to be vacated, pursuant to RCW 35.79.020.

PASSED this Eighth day of June, 2009.

\_\_\_\_\_  
Charles L. Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Molly M. Towslee, City Clerk

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
RESOLUTION NO. XXX



**Consent Agenda - 9**  
8803 State Highway 16  
PO Box 249  
Gig Harbor, WA 98335  
T 253 858 8106  
F 253 858 7466  
thomtonls.com

PROPOSED  
LEGAL DESCRIPTION

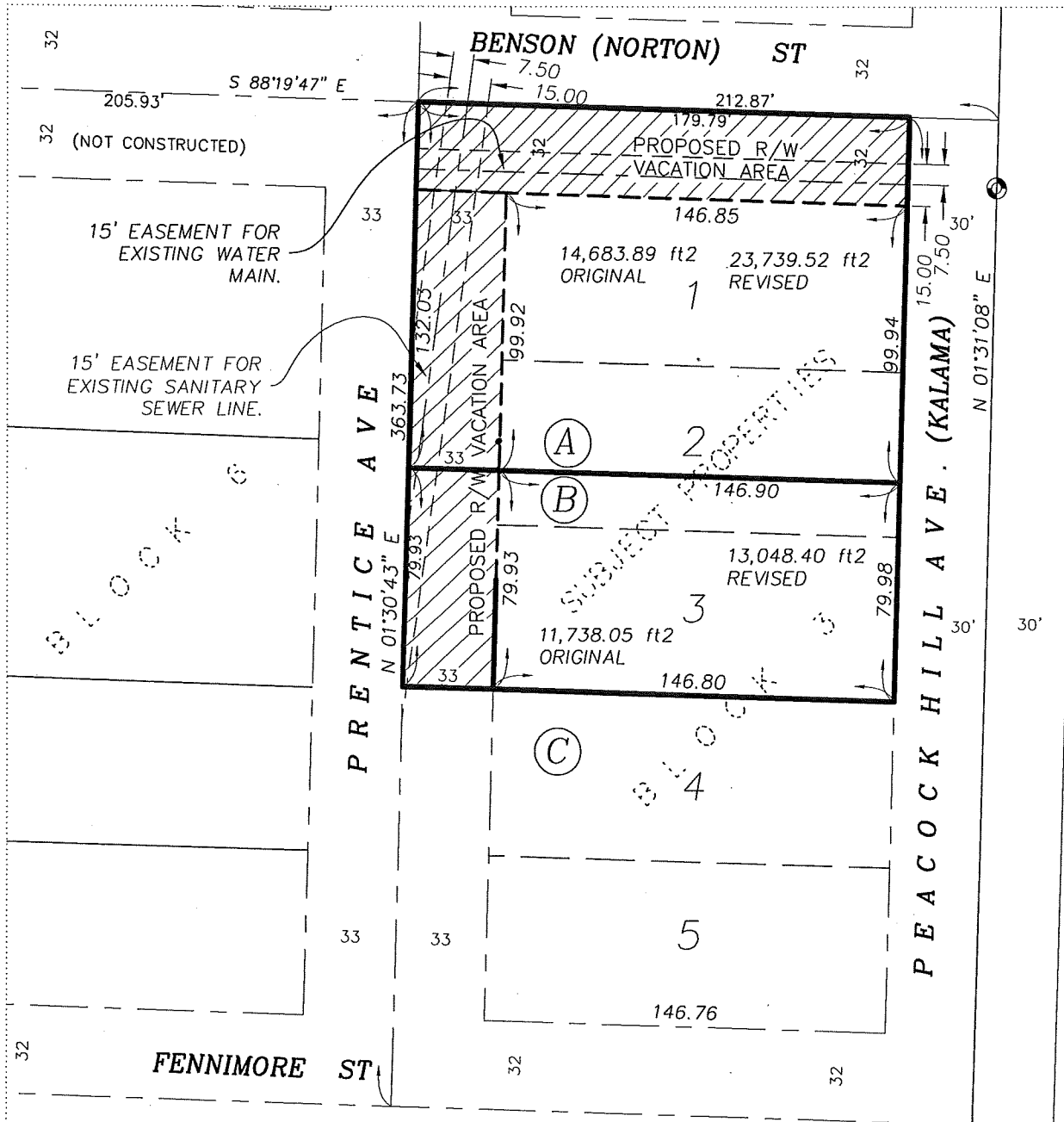
RIGHT-OF-WAY THAT WILL ATTACH BY OPERATION OF LAW TO BACCHUS ADJOINER FOLLOWING VACATION OF A PORTION OF PRENTICE AVENUE, AND A PORTION OF NORTON STREET, GIG HARBOR, WASHINGTON, BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTH HALF OF BENSON STREET (FORMERLY NORTON STREET) PER THE PLAT OF WOODWORTHS ADDITION TO GIG HARBOR, RECORDED IN VOLUME 5 OF PLATS AT PAGE 66, UNDER AUDITOR'S FILE NUMBER 38968, RECORDS OF PIERCE COUNTY, WASHINGTON, ADJACENT TO AND ABUTTING LOT 1, BLOCK 3 OF SAID PLAT, EXTENDING TO THE CENTERLINE INTERSECTION OF BENSON STREET AND PRENTICE AVENUE PER SAID PLAT;

AND THAT PORTION OF THE EAST HALF OF PRENTICE AVENUE (FORMERLY CHESTER STREET) PER SAID PLAT, LYING BETWEEN THE WESTERN EXTENSION OF THE SOUTH LINE OF LOT 3, BLOCK 3 OF SAID PLAT AND THE SOUTH MARGIN OF BENSON STREET PER SAID PLAT.







**PARCEL/LOT INFORMATION:**

<u>LOT</u>	<u>TAX PARCEL NO.</u>	<u>ADDRESS</u>	<u>OWNER</u>
A	9815000070	9314 PEACOCK HILL AVE	BACCHUS
B	9815000080	9304 PEACOCK HILL AVE	BACCHUS
C	9815000090	9226 PEACOCK HILL AVE	WILLIAMSON

**AREA OF STREET VACATION**

5,747.70 ft <sup>2</sup>	4,624.48 ft <sup>2</sup>
BENSON ST	PRENTICE AVE

SCALE: 1"=60 FEET



AFTER RECORDING RETURN TO:

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

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

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

Utility Easement

---

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

Ladd C. Bacchus Trust

---

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

City of Gig Harbor

---

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

Section 06, Township 21, Range 02, Quarter 11

---

**Assessor's Property Tax Parcel or Account Number:** 9815000070

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

**UTILITY EASEMENT**

THIS UTILITY EASEMENT, is made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between Ladd C. Bacchus Trust ("Grantors"), and the CITY OF GIG HARBOR, a Washington municipal corporation ("Grantee").

**WITNESSETH:**

WHEREAS, Grantor owns a fee simple interest in the following real property, commonly known as 9314 Peacock Hill Avenue, Gig Harbor, Washington, 98332, Tax Parcel No. 9815000070 (the "Property"); and

WHEREAS, Grantor desires to grant to the City of Gig Harbor (the "City") an easement to be utilized for utility purposes, more specifically an eight inch sewer line running along Prentice Avenue and an abandoned four inch water line running along Benson Street;

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged,

GRANTOR HEREBY GRANTS AND CONVEYS to the City, a perpetual, nonexclusive easement, to erect, construct, install, lay and thereafter use, operate, inspect, repair, maintain, improve, replace and remove utilities under, over, on, through and across that portion of the Property as described in **Exhibit A** attached hereto and incorporated herein (the "Easement"), together with the right of ingress and egress upon the Easement area and Grantors' Property adjacent to the Easement area, limited to that which is necessary to construct, install, improve, repair and maintain said underground utility system. The location of the Easement is shown on the Easement Location Map attached hereto as **Exhibit B** and incorporated herein.

Grantee shall exercise its rights under this Easement so as to minimize and avoid if reasonably possible, interference with Grantor's use of Grantor's Property. Grantee shall, at all times, conduct its activities on Grantor's Property so as to not interfere with, obstruct and endanger Grantor's operations or facilities. Grantee agrees to restore Grantor's Property in at least as good as condition as it currently exists, and Grantee shall remove all debris and restore the surface of the Grantor's Property as nearly as possible, to the condition in which it was at the commencement of such work.

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

IN WITNESS WHEREOF, the Grantor has caused this Easement to be executed  
this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.


ACCEPTED:

GRANTOR:

CITY OF GIG HARBOR

LADD C. BACCHUS TRUST

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

By:   
Its: Trustee  
Print Name: Ladd C. Bacchus, Trustee

ATTEST:

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

APPROVED AS TO FORM:

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

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Pierce )

I certify that I know or have satisfactory evidence that Ladd C. Bacchus is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Trustee of Ladd C Bacchus Trust, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 5/20/2009



Patricia M. McGallian  
Printed: Patricia M. McGallian  
Notary Public in and for Washington,  
Residing at Pitsap County  
My appointment expires: 1-22-2013

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that CHARLES L. HUNTER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of THE CITY OF GIG HARBOR, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

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

**EXHIBIT A  
LEGAL DESCRIPTION OF EASEMENTS**

**EASEMENT FOR EXISTING WATER LINE:**

A PORTION OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTH 15 FEET OF BENSON STREET (FORMERLY NORTON STREET) PER THE PLAT OF WOODWORTHS ADDITION TO GIG HARBOR, RECORDED IN VOLUME 5 OF PLATS AT PAGE 66, UNDER AUDITOR'S FILE NUMBER 38968, RECORDS OF PIERCE COUNTY, WASHINGTON, ADJACENT TO AND ABUTTING LOT 1, BLOCK 3 OF SAID PLAT, EXTENDING TO THE CENTERLINE INTERSECTION OF BENSON STREET AND PRENTICE AVENUE PER SAID PLAT;

**EASEMENT FOR EXISTING SEWER LINE:**

A PORTION OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

A 15 FOOT WIDE TRACT BEING A PORTION OF THE SOUTH HALF OF BENSON STREET (FORMERLY NORTON STREET) PER THE PLAT OF WOODWORTHS ADDITION TO GIG HARBOR, RECORDED IN VOLUME 5 OF PLATS AT PAGE 66, UNDER AUDITOR'S FILE NUMBER 38968, RECORDS OF PIERCE COUNTY, WASHINGTON, ADJACENT TO AND ABUTTING LOT 1, BLOCK 3 OF SAID PLAT, EXTENDING TO THE CENTERLINE INTERSECTION OF BENSON STREET AND PRENTICE AVENUE (FORMERLY CHESTER STREET) PER SAID PLAT;

AND THAT PORTION OF THE EAST HALF OF SAID PRENTICE AVENUE, LYING BETWEEN THE WESTERN EXTENSION OF THE SOUTH LINE OF LOT 3, BLOCK 3 OF SAID PLAT AND THE SOUTH MARGIN OF BENSON STREET PER SAID PLAT, HAVING 7.50 FEET OF SUCH WIDTH ON EACH SIDE OF A CENTERLINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF AFORESAID BENSON STREET AND PRENTICE AVENUE; THENCE ALONG THE CENTERLINE OF SAID BENSON STREET SOUTH 88°19'47" EAST 17.92 FEET TO IT'S INTERSECTION WITH THE CENTERLINE OF AN EXISTING SANITARY SEWER LINE AND THE POINT OF BEGINNING; THENCE ALONG THE CENTERLINE OF SAID SWERE LINE SOUTH 7°56'44" WEST 213.26 FEET TO THE WESTERN EXTENSION OF THE SOUTH LINE OF LOT 3, BLOCK 3 OF SAID PLAT AND THE TERMINUS.

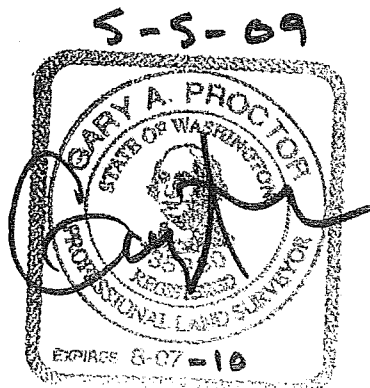
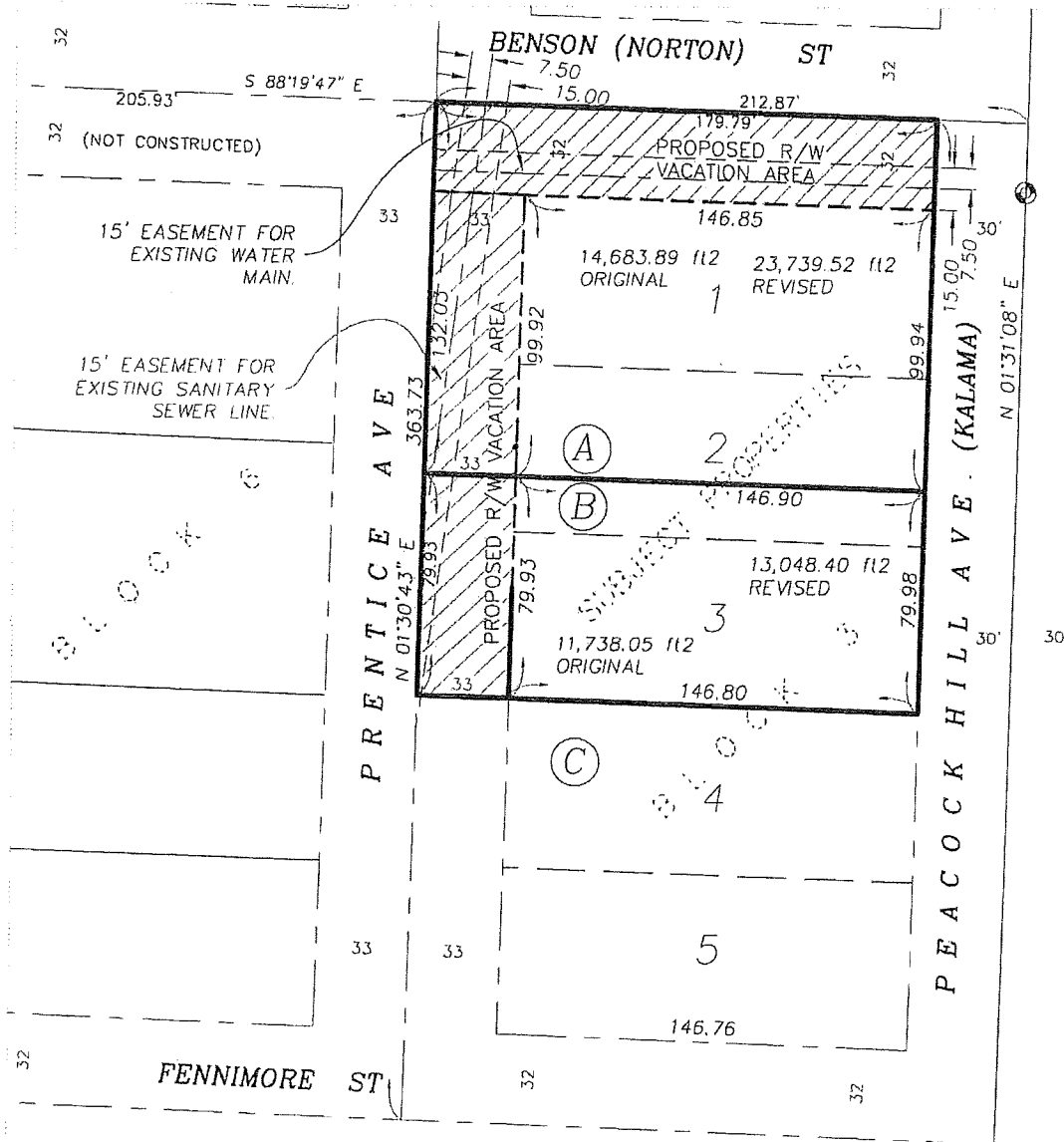


EXHIBIT B  
MAP OF UTILITY EASEMENT

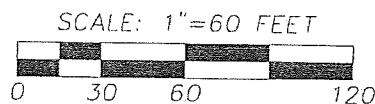


PARCEL/LOT INFORMATION:

LOT	TAX	PARCEL NO.	ADDRESS	OWNER
A	9815000070		9314 PEACOCK HILL AVE	BACCHUS
B	9815000080		9304 PEACOCK HILL AVE	BACCHUS
C	9815000090		9226 PEACOCK HILL AVE	WILLIAMSON

AREA OF STREET VACATION

5,747.70 (12)	4,624.48 (12)
BENSON ST	PRENTICE AVE



AFTER RECORDING RETURN TO:

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

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

Ladd C. Bacchus and Oe Sun Bacchus

---

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

City of Gig Harbor

---

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

Section 06, Township 21, Range 02, Quarter 11

---

**Assessor's Property Tax Parcel or Account Number:** 9815000080

---

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



**UTILITY EASEMENT**

THIS UTILITY EASEMENT, is made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_, by and between Ladd C. Bacchus and Oe Sun Bacchus, husband and wife ("Grantors"), and the CITY OF GIG HARBOR, a Washington municipal corporation ("Grantee").

**WITNESSETH:**

WHEREAS, Grantor owns a fee simple interest in the following real property, commonly known as 9304 Peacock Hill Avenue, Gig Harbor, Washington, 98332, Tax Parcel No. 9815000080 (the "Property"); and

WHEREAS, Grantor desires to grant to the City of Gig Harbor (the "City") an easement to be utilized for utility purposes, more specifically an eight inch sewer line running along Prentice Avenue and an abandoned four inch water line running along Benson Street;

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged,

GRANTOR HEREBY GRANTS AND CONVEYS to the City, a perpetual, nonexclusive easement, to erect, construct, install, lay and thereafter use, operate, inspect, repair, maintain, improve, replace and remove utilities under, over, on, through and across that portion of the Property as described in **Exhibit A** attached hereto and incorporated herein (the "Easement"), together with the right of ingress and egress upon the Easement area and Grantors' Property adjacent to the Easement area, limited to that which is necessary to construct, install, improve, repair and maintain said underground utility system. The location of the Easement is shown on the Easement Location Map attached hereto as **Exhibit B** and incorporated herein.

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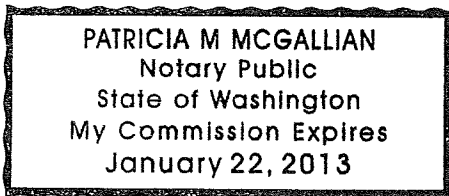
This Easement shall be recorded in the records of the Pierce County Auditor Grantor and shall constitute a covenant running with the land for the benefit of the City, its successors and assigns.



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Pierce )

I certify that I know or have satisfactory evidence that Oe Sun Bacchus is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Owner of \_\_\_\_\_, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 5/26/09



Patricia M. McGallian  
Printed: Patricia M. McGallian  
Notary Public in and for Washington,  
Residing at Kitsap County  
My appointment expires: 1-22-2013

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that CHARLES L. HUNTER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of THE CITY OF GIG HARBOR, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

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

**EXHIBIT A  
LEGAL DESCRIPTION OF EASEMENTS**

**EASEMENT FOR EXSISTING WATER LINE:**

A PORTION OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTH 15 FEET OF BENSON STREET (FORMERLY NORTON STREET) PER THE PLAT OF WOODWORTHS ADDITION TO GIG HARBOR, RECORDED IN VOLUME 5 OF PLATS AT PAGE 66, UNDER AUDITOR'S FILE NUMBER 38968, RECORDS OF PIERCE COUNTY, WASHINGTON, ADJACENT TO AND ABUTTING LOT 1, BLOCK 3 OF SAID PLAT, EXTENDING TO THE CENTERLINE INTERSECTION OF BENSON STREET AND PRENTICE AVENUE PER SAID PLAT;

**EASEMENT FOR EXSISTING SEWER LINE:**

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A 15 FOOT WIDE TRACT BEING A PORTION OF THE SOUTH HALF OF BENSON STREET (FORMERLY NORTON STREET) PER THE PLAT OF WOODWORTHS ADDITION TO GIG HARBOR, RECORDED IN VOLUME 5 OF PLATS AT PAGE 66, UNDER AUDITOR'S FILE NUMBER 38968, RECORDS OF PIERCE COUNTY, WASHINGTON, ADJACENT TO AND ABUTTING LOT 1, BLOCK 3 OF SAID PLAT, EXTENDING TO THE CENTERLINE INTERSECTION OF BENSON STREET AND PRENTICE AVENUE (FORMERLY CHESTER STREET) PER SAID PLAT;

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COMMENCING AT THE CENTERLINE INTERSECTION OF AFORESAID BENSON STREET AND PRENTICE AVENUE; THENCE ALONG THE CENTERLINE OF SAID BENSON STREET SOUTH 88°19'47" EAST 17.92 FEET TO IT'S INTERSECTION WITH THE CENTERLINE OF AN EXISTING SANITARY SEWER LINE AND THE POINT OF BEGINNING; THENCE ALONG THE CENTERLINE OF SAID SWERE LINE SOUTH 7°56'44" WEST 213.26 FEET TO THE WESTERN EXTENSION OF THE SOUTH LINE OF LOT 3, BLOCK 3 OF SAID PLAT AND THE TERMINUS.

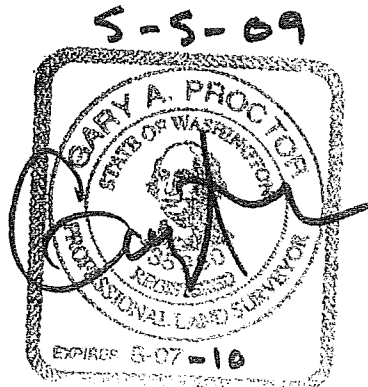
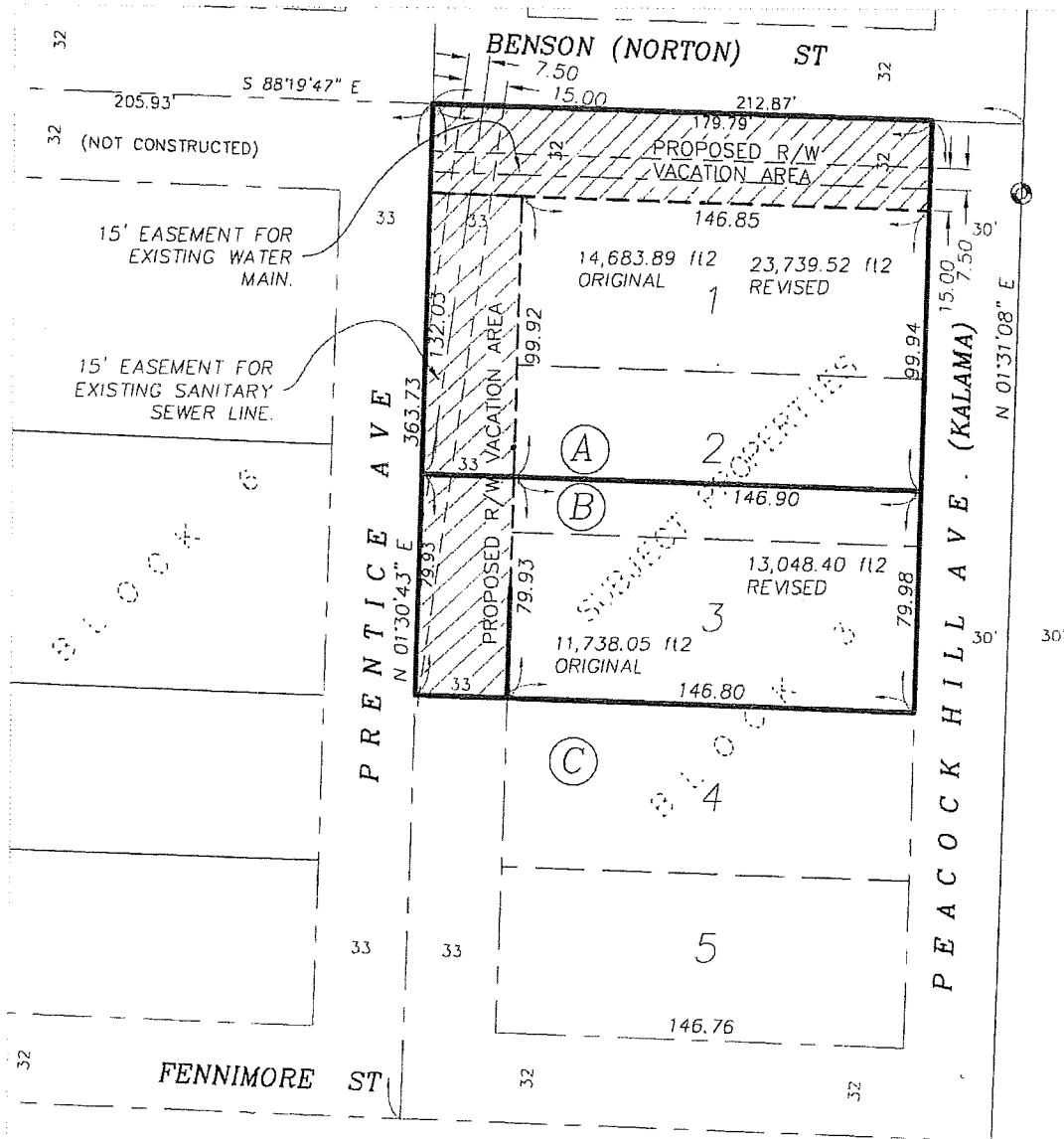


EXHIBIT B  
MAP OF UTILITY EASEMENT

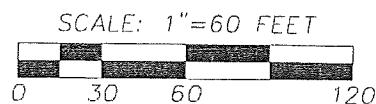


PARCEL/LOT INFORMATION:

LOT	TAX	PARCEL NO.	ADDRESS	OWNER
A	9815000070		9314 PEACOCK HILL AVE	BACCHUS
B	9815000080		9304 PEACOCK HILL AVE	BACCHUS
C	9815000090		9226 PEACOCK HILL AVE	WILLIAMSON

AREA OF STREET VACATION

5,747.70 ft <sup>2</sup>	4,624.48 ft <sup>2</sup>
BENSON ST	PRENTICE AVE





**Subject:** Section 125 Flexible Spending Plan Document

**Dept. Origin:** Administration

**Prepared by:** Rob Karlinsey, City Administrator

**Proposed Council Action:**

**For Agenda of:** June 8, 2009

Adopt Resolution No. 792 Adopting a Section 125 Cafeteria Plan for Flexible Spending Accounts.

**Exhibits:** Resolution & Exhibits Initial & Date

**Concurred by Mayor:** CLH 6/2/09

**Approved by City Administrator:** RJK 6/2/09

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

**Approved by Finance Director:** DP 6/2/09

**Approved by Department Head:** RJK

Expenditure Required	Amount Budgeted	Appropriation Required
See fiscal consideration below		

**INFORMATION / BACKGROUND**

The employee and supervisor guild contracts that went into effect this year (2009) provide for pre-tax flexible spending accounts for health and dependent care expenses, as well as the ability for employees who enroll no dependents on the City's medical plan to receive \$125/mo. cash back. The guild contracts also require employees to contribute to dependent medical premiums.

At its May 11, 2009 meeting, the City Council approved the agreement with Flex-Plan Services to set up and administer the Section 125 Flexible Spending Account plan that will implement the above mentioned changes in the guild contracts.

Flex-Plan Services has subsequently drafted the attached Plan Document and Summary Plan Description for the City's Flexible Spending Account program.

Legal Review. Staff received written confirmation from Flex-Plan Services that the plan document complies with IRS regulations and Federal law. The document is created using a plan document software service through a company, SunGard Relius, which specializes in creating plan documents for pension and cafeteria plans. The documents are created by attorneys and are vetted again by Flex-Plan Services' in-house counsel to make sure that the language is in accordance with the regulations

**FISCAL CONSIDERATION**

Flex Plan Services fees for services are included in the agreement with Flex-Plan Services that the City Council approved on May 11, 2009. There is no initiation or plan set up fee. The annual employer fee is \$600 plus \$6 per plan participant. In addition, there is a monthly processing fee of \$5 per participating employee. Flex Plan Services charges \$1.10 per check or statement mailed; however, the City can require employees to use the convenient "Benny Card" which will avoid these costs. Flex Plan Services provides on-site, annual enrollment and "Benefits Fair" meetings at no charge, but the company will charge for additional meetings requested by the City.

Funding for these services will come several sources: 1) Savings from the City's avoidance of paying 1.45% FICA-Med on the FSA deductions of participating employees; 2) Health premium savings from employees who take advantage of the incentive to un-enroll their dependents; and 3) Health premium savings when the City switches to a less expensive health insurance plan in 2010.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Adopt Resolution No. 792 Adopting a Section 125 Cafeteria Plan for Flexible Spending Accounts.

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING A SECTION 125 CAFETERIA PLAN FOR FLEXIBLE SPENDING ACCOUNTS**

---

**WHEREAS**, the City Council recently approved the implementation of flexible spending accounts in the employee and supervisor guild contracts; and

**WHEREAS**, the Health Care Flexible Spending Account (FSA) is an employer sponsored benefit that enables employees to set aside pre-tax dollars out of their paycheck to pay for eligible health care expenses. Monies put into the plan avoid both Federal Income Tax and FICA; and

**WHEREAS**, dependent care flexible spending accounts follow the same pre-tax arrangement as health FSAs and are for expenses paid toward dependent care; and

**WHEREAS**, the City Council approved a cash incentive for employees who elect not to insure their dependents on the City's medical insurance plan; and

**WHEREAS**, upon implementation of the Section 125 plan, employees will be required to contribute a percentage toward dependent care premiums; and

**WHEREAS**, adoption of a Section 125 plan provides the mechanism for the changes in benefits described above; now, therefore,

**THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

Section 1. The form of Cafeteria Plan including a Day Care Flexible Spending Arrangement and Health Flexible Spending Arrangement effective June 1, 2009, is hereby approved and adopted and that the duly authorized agents of the Employer are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

Section 2. The Administrator shall be instructed to take such actions that are deemed necessary and proper in order to implement the Plan, and to set up adequate accounting and administrative procedures to provide benefits under the Plan.

Section 3. The duly authorized agents of the Employer shall act as soon as possible to notify the employees of the Employer of the adoption of the Cafeteria Plan by delivering to each employee a copy of the summary description of the Plan in the form of the Summary Plan Description presented to this meeting, which form is hereby



approved. Exhibits A and B, respectively attached to this resolution, are true copies of City of Gig Harbor Flexible Benefits Plan and the Summary Plan Description approved and adopted in this resolution.

RESOLVED by the City Council this 8<sup>th</sup> day of June, 2009.

APPROVED:

---

Charles L. Hunter Mayor

ATTEST/AUTHENTICATED:

---

Molly M. Towslee, City Clerk

Filed with the City Clerk:  
Passed by the City Council:  
Resolution No.

**Exhibit A**

**City of Gig Harbor**

**Flexible Benefits Plan Document**

**CITY OF GIG HARBOR FLEXIBLE BENEFITS PLAN**  
AND ALL SUPPORTING FORMS HAVE BEEN PRODUCED FOR  
CITY OF GIG HARBOR

**CITY OF GIG HARBOR FLEXIBLE BENEFITS PLAN**

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CITY OF GIG HARBOR FLEXIBLE BENEFITS PLAN

INTRODUCTION

The Employer has adopted this Plan effective June 1, 2009, to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing benefits for those Employees who shall qualify hereunder and their Dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs. The Plan shall be known as City of Gig Harbor Flexible Benefits Plan (the "Plan").

The intention of the Employer is that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

ARTICLE I  
DEFINITIONS

1.1 **"Administrator"** means the individual(s) or corporation appointed by the Employer to carry out the administration of the Plan. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan. In the event the Administrator has not been appointed, or resigns from a prior appointment, the Employer shall be deemed to be the Administrator.

1.2 **"Affiliated Employer"** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 **"Benefit" or "Benefit Options"** means any of the optional benefit choices available to a Participant as outlined in Section 4.1.

1.4 **"Cafeteria Plan Benefit Dollars"** means the amount available to Participants to purchase Benefit Options as provided under Section 4.1. Each dollar contributed to this Plan shall be converted into one Cafeteria Plan Benefit Dollar.

1.5 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 **"Compensation"** means the amounts received by the Participant from the Employer during a Plan Year.

1.7 **"Dependent"** means any individual who qualifies as a dependent under an Insurance Contract for purposes of that Contract or under Code Section 152 (as modified by Code Section 105(b)).

1.8 **"Effective Date"** means June 1, 2009.



1.9 **"Election Period"** means the period immediately preceding the beginning of each Plan Year established by the Administrator, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.10 **"Eligible Employee"** means any Employee who has satisfied the provisions of Section 2.1.

An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

1.11 **"Employee"** means any person who is employed by the Employer. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.12 **"Employer"** means City of Gig Harbor and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating, Affiliated or Adopting Employer.

1.13 **"Employer Contribution"** means the contributions made by the Employer pursuant to Section 3.1 to enable a Participant to purchase Benefits. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V and as set forth in Section 3.1.

1.14 **"Grace Period"** means, with respect to any Plan Year, the time period ending on the fifteenth day of the third calendar month after the end of such Plan Year, during which Medical Expenses and Employment-Related Day Care Expenses incurred by a Participant will be deemed to have been incurred during such Plan Year.

1.15 **"Insurance Contract"** means any contract issued by an Insurer underwriting a Benefit.

1.16 **"Insurance Premium Payment Plan"** means the plan of benefits contained in Section 4.1 of this Plan, which provides for the payment of Premium Expenses.

1.17 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan.

1.18 **"Key Employee"** means an Employee described in Code Section 416(i)(1) and the Treasury regulations thereunder.

1.19 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.20 **"Plan"** means this instrument, including all amendments thereto.

1.21 **"Plan Year"** means the 12-month period beginning January 1 and ending December 31, except that the first Plan Year shall be a short Plan Year beginning June 1. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.22 **"Premium Expenses" or "Premiums"** mean the Participant's cost for the Benefits described in Section 4.1.

1.23 **"Premium Expense Reimbursement Benefit"** means the benefit established for a Participant pursuant to this Plan to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Premiums of the Participant shall be paid or reimbursed. If more than one type of insured Benefit is elected, sub-accounts shall be established for each type of insured Benefit.

1.24 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.2. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

1.25 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into benefit) and, subsequently does not become currently available to the Participant.

1.26 **"Spouse"** means "spouse" as defined in an Insurance Contract for purposes of that Contract or the legally married husband or wife of a Participant, unless legally separated by court decree.

## **ARTICLE II PARTICIPATION**

### **2.1 ELIGIBILITY**

Any Eligible Employee shall be eligible to participate hereunder as of the date he satisfies the eligibility conditions for the Employer's group medical plan, the provisions of which are specifically incorporated herein by reference.

### **2.2 EFFECTIVE DATE OF PARTICIPATION**

An Eligible Employee shall become a Participant effective as of the first day of the month coinciding with or next following the date on which he met the eligibility requirements of Section 2.1.

### 2.3 APPLICATION TO PARTICIPATE

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, complete an application to participate and election of benefits form which the Administrator shall furnish to the Employee. The election made on such form shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

An Eligible Employee shall also be required to execute a Salary Redirection Agreement during the Election Period for the Plan Year during which he wishes to participate in this Plan. Any such Salary Redirection Agreement shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to Section 2.2.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured Benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

### 2.4 TERMINATION OF PARTICIPATION

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.5;
- (b) **Death.** The Participant's death, subject to the provisions of Section 2.6; or
- (c) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 10.2.

### 2.5 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Benefit Options provided under Section 4.1 shall be governed in accordance with the following:

- (a) **Insurance Benefit.** With regard to Benefits which are insured, the Participant's participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which premiums have already been paid.
- (b) **Day Care FSA.** With regard to the Day Care Flexible Spending Arrangement, the Participant's participation in the Plan shall cease and no further Salary Redirection contributions shall be made. However, such Participant may submit claims for employment related Day Care Expense reimbursements for claims incurred through the remainder of the Plan Year in which such termination occurs and submitted within 90 days after the end of the Plan Year, based on the level of the Participant's Day Care Flexible Spending Arrangement as of the date of termination.
- (c) **COBRA applicability.** With regard to the Health Flexible Spending Arrangement, the Participant may submit claims for expenses that

were incurred during the portion of the Plan Year before the end of the period for which payments to the Health Flexible Spending Arrangement have already been made. Thereafter, the health benefits under this Plan including the Health Flexible Spending Arrangement shall be applied and administered consistent with such further rights a Participant and his Dependents may be entitled to pursuant to Code Section 4980B and Section 11.14 of the Plan.

**2.6 DEATH**

If a Participant dies, his participation in the Plan shall cease. However, such Participant's spouse or Dependents may submit claims for expenses or benefits for the remainder of the Plan Year or until the Cafeteria Plan Benefit Dollars allocated to each specific benefit are exhausted. In no event may reimbursements be paid to someone who is not a spouse or Dependent. If the Plan is subject to the provisions of Code Section 4980B, then those provisions and related regulations shall apply for purposes of the Health Flexible Spending Arrangement.

**ARTICLE III  
CONTRIBUTIONS TO THE PLAN**

**3.1 EMPLOYER CONTRIBUTION**

The Employer shall make available to each Participant an Employer Contribution to be used in the Participant's Health Flexible Spending Arrangement equal to \$1,500 per Participant each Plan Year. The Employer contribution is available only to those Participants who do not cover their dependants on the Employer sponsored medical plan. Each Participant's Employer Contribution shall be converted to Cafeteria Plan Benefit Dollars and be available to purchase Benefits as set forth above. The Employer's Contribution shall be made on a pro rata basis for each pay period of the Participant.

**3.2 SALARY REDIRECTION**

If a Participant's Employer Contribution is not sufficient to cover the cost of Benefits or Premium Expenses he elects pursuant to Section 4.1, his Compensation will be reduced in an amount equal to the difference between the cost of Benefits he elected and the amount of Employer Contribution available to him. Such reduction shall be his Salary Redirection, which the Employer will use on his behalf, together with his Employer Contribution, to pay for the Benefits he elected. The amount of such Salary Redirection shall be specified in the Salary Redirection Agreement and shall be applicable for a Plan Year. Notwithstanding the above, for new Participants, the Salary Redirection Agreement shall only be applicable from the first day of the pay period following the Employee's entry date up to and including the last day of the Plan Year. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V and as set forth in Section 3.1.

Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial elections pursuant to Section 5.1) and prior to the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit election or a Salary Redirection Agreement after the Plan Year has commenced and make a new election with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in status and such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the Department of the Treasury. Salary Redirection amounts shall be contributed on a

pro rata basis for each pay period during the Plan Year. All individual Salary Redirection Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

**3.3 APPLICATION OF CONTRIBUTIONS**

As soon as reasonably practical after each payroll period, the Employer shall apply the Employer Contribution and Salary Redirection to provide the Benefits elected by the affected Participants. Any contribution made or withheld for the Health Flexible Spending Arrangement or Day Care Flexible Spending Arrangement shall be credited to such fund or benefit. Amounts designated for the Participant's Premium Expense Reimbursement Benefit shall likewise be credited to such benefit for the purpose of paying Premium Expenses.

**3.4 PERIODIC CONTRIBUTIONS**

Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Redirections be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Employer and Administrator may implement a procedure in which Salary Redirections are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period. However, with regard to the Health Flexible Spending Arrangement, the payment schedule for the required contributions may not be based on the rate or amount of reimbursements during the Plan Year.

**ARTICLE IV  
BENEFITS**

**4.1 BENEFIT OPTIONS**

Each Participant may elect any one or more of the following optional Benefits:

- (1) Health Flexible Spending Arrangement
- (2) Day Care Flexible Spending Arrangement
- (3) Cash Benefit

In addition, each Participant shall have a sufficient portion of his Employer Contributions and Salary Redirections applied to the following Benefits unless the Participant elects not to receive such Benefits:

- (4) Health Insurance Benefit
- (5) Cancer Insurance Benefit
- (6) Cash Benefit

**4.2 HEALTH FLEXIBLE SPENDING ARRANGEMENT BENEFIT**

Each Participant may elect to participate in the Health Flexible Spending Arrangement option, in which case Article VI shall apply.

**4.3 DAY CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT**

Each Participant may elect to participate in the Day Care Flexible Spending Arrangement option, in which case Article VII shall apply.

**4.4 HEALTH INSURANCE BENEFIT**

(a) **Coverage for Participant and Dependents.** Each Participant may elect to be covered under a health Insurance Contract for the Participant, his or her Spouse, and his or her Dependents.

(b) **Employer selects contracts.** The Employer may select suitable health Insurance Contracts for use in providing this health insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such health Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

**4.5 CANCER INSURANCE BENEFIT**

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's cancer Insurance Contract. In addition, the Participant may elect either individual or family coverage.

(b) **Employer selects contracts.** The Employer may select suitable cancer Insurance Contracts for use in providing this cancer insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such cancer Insurance Contract shall be determined therefrom, and such cancer Insurance Contract shall be incorporated herein by reference.

**4.6 CASH BENEFIT**

If a Participant elects not to participate in the Plan, such Participant shall be deemed to have chosen the Cash Benefit as his sole Benefit option.

**4.7 NONDISCRIMINATION REQUIREMENTS**

(a) **Intent to be nondiscriminatory.** It is the intent of this Plan to provide benefits to a classification of employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) **25% concentration test.** It is the intent of this Plan not to provide qualified benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of

Code Section 125, it may, but shall not be required to, reduce contributions or non-taxable Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reduce contributions or non-taxable Benefits, it shall be done in the following manner. First, the non-taxable Benefits of the affected Participant (either an employee who is highly compensated or a Key Employee, whichever is applicable) who has the highest amount of non-taxable Benefits for the Plan Year shall have his non-taxable Benefits reduced until the discrimination tests set forth in this Section are satisfied or until the amount of his non-taxable Benefits equals the non-taxable Benefits of the affected Participant who has the second highest amount of non-taxable Benefits. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among Health Flexible Spending Arrangement Benefits and Day Care Flexible Spending Arrangement Benefits, and once all these Benefits are expended, proportionately among insured Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the benefit plan surplus.

**ARTICLE V  
PARTICIPANT ELECTIONS**

**5.1 INITIAL ELECTIONS**

An Employee who meets the eligibility requirements of Section 2.1 on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he elects to do so on or before his effective date of participation pursuant to Section 2.2.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

**5.2 SUBSEQUENT ANNUAL ELECTIONS**

During the Election Period prior to each subsequent Plan Year, each Participant shall be given the opportunity to elect, on an election of benefits form to be provided by the Administrator, which Spending Arrangement Benefit options he wishes to select. Any such election shall be effective for any Benefit expenses incurred during the Plan Year which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

- (a) A Participant or Employee who failed to initially elect to participate may elect different or new Benefits under the Plan during the Election Period;
- (b) A Participant may terminate his participation in the Plan by notifying the Administrator in writing during the Election Period that he does not want to participate in the Plan for the next Plan Year;

(c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan, except as provided for in Section 5.4.

### **5.3 FAILURE TO ELECT**

With regard to Benefits available under the Plan for which no Premium Expenses apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have elected not to participate in the Plan for the upcoming Plan Year. No further Salary Redirections shall therefore be authorized or made for the subsequent Plan Year for such Benefits.

With regard to Benefits available under the Plan for which Premium Expenses apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have made the same Benefit elections as are then in effect for the current Plan Year. The Participant shall also be deemed to have elected Salary Redirection in an amount necessary to purchase such Benefit options.

### **5.4 CHANGE IN STATUS**

(a) **Change in status defined.** Any Participant may change a Benefit election after the Plan Year (to which such election relates) has commenced and make new elections with respect to the remainder of such Plan Year if, under the facts and circumstances, the changes are necessitated by and are consistent with a change in status which is acceptable under rules and regulations adopted by the Department of the Treasury, the provisions of which are incorporated by reference. Notwithstanding anything herein to the contrary, if the rules and regulations conflict, then such rules and regulations shall control.

In general, a change in election is not consistent if the change in status is the Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, and the Participant's election under the Plan is to cancel accident or health insurance coverage for any individual other than the one involved in such event. In addition, if the Participant, Spouse or Dependent gains or loses eligibility for coverage, then a Participant's election under the Plan to cease or decrease coverage for that individual under the Plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan.

Regardless of the consistency requirement, if the individual, the individual's Spouse, or Dependent becomes eligible for continuation coverage under the Employer's group health plan as provided in Code Section 4980B or any similar state law, then the individual may elect to increase payments under this Plan in order to pay for the continuation coverage. However, this does not apply for COBRA eligibility due to divorce, annulment or legal separation.



Any new election shall be effective at such time as the Administrator shall prescribe, but not earlier than the first pay period beginning after the election form is completed and returned to the Administrator. For the purposes of this subsection, a change in status shall only include the following events or other events permitted by Treasury regulations:

- (1) **Legal Marital Status:** events that change a Participant's legal marital status, including marriage, divorce, death of a Spouse, legal separation or annulment;
- (2) **Number of Dependents:** Events that change a Participant's number of Dependents, including birth, adoption, placement for adoption, or death of a Dependent;
- (3) **Employment Status:** Any of the following events that change the employment status of the Participant, Spouse, or Dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, or a change in worksite. In addition, if the eligibility conditions of this Plan or other employee benefit plan of the Employer of the Participant, Spouse, or Dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this subsection;
- (4) **Dependent satisfies or ceases to satisfy the eligibility requirements:** An event that causes the Participant's Dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance; and
- (5) **Residency:** A change in the place of residence of the Participant, Spouse or Dependent, that would lead to a change in status (such as a loss of HMO coverage).

For the Day Care Flexible Spending Arrangement, a Dependent becoming or ceasing to be a "Qualifying Dependent" as defined under Code Section 21(b) shall also qualify as a change in status.

(b) **Special enrollment rights.** Notwithstanding subsection (a), the Participants may change an election for accident or health coverage during a Plan Year and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f). Such change shall take place on a prospective basis, unless otherwise required by Code Section 9801(f) to be retroactive.

(c) **Qualified Medical Support Order.** Notwithstanding subsection (a), in the event of a judgment, decree, or order (including approval of a property settlement) ("order") resulting from a divorce, legal separation, annulment, or change in legal custody which requires accident or health coverage for a Participant's child (including a foster child who is a Dependent of the Participant):

- (1) The Plan may change an election to provide coverage for the child if the order requires coverage under the Participant's plan; or

(2) The Participant shall be permitted to change an election to cancel coverage for the child if the order requires the former Spouse to provide coverage for such child, under that individual's plan and such coverage is actually provided.

(d) **Medicare or Medicaid.** Notwithstanding subsection (a), a Participant may change elections to cancel accident or health coverage for the Participant or the Participant's Spouse or Dependent if the Participant or the Participant's Spouse or Dependent is enrolled in the accident or health coverage of the Employer and becomes entitled to coverage (i.e., enrolled) under Part A or Part B of the Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). If the Participant or the Participant's Spouse or Dependent who has been entitled to Medicaid or Medicare coverage loses eligibility, that individual may prospectively elect coverage under the Plan if a benefit package option under the Plan provides similar coverage.

(e) **Cost increase or decrease.** If the cost of a Benefit provided under the Plan increases or decreases during a Plan Year, then the Plan shall automatically increase or decrease, as the case may be, the Salary Redirections of all affected Participants for such Benefit. Alternatively, if the cost of a benefit package option increases significantly, the Administrator shall permit the affected Participants to either make corresponding changes in their payments or revoke their elections and, in lieu thereof, receive on a prospective basis coverage under another benefit package option with similar coverage, or drop coverage prospectively if there is no benefit package option with similar coverage.

A cost increase or decrease refers to an increase or decrease in the amount of elective contributions under the Plan, whether resulting from an action taken by the Participants or an action taken by the Employer.

(f) **Loss of coverage.** If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, affected Participants may revoke their elections of such Benefit and, in lieu thereof, elect to receive on a prospective basis coverage under another plan with similar coverage, or drop coverage prospectively if no similar coverage is offered.

(g) **Addition of a new benefit.** If, during the period of coverage, a new benefit package option or other coverage option is added, an existing benefit package option is significantly improved, or an existing benefit package option or other coverage option is eliminated, then the affected Participants may elect the newly-added option, or elect another option if an option has been eliminated prospectively and make corresponding election changes with respect to other benefit package options providing similar coverage. In addition, those Eligible Employees who are not participating in the Plan may opt to become Participants and elect the new or newly improved benefit package option.

(h) **Loss of coverage under certain other plans.** A Participant may make a prospective election change to add group health coverage for the Participant, the Participant's Spouse or Dependent if such individual loses group health coverage sponsored by a governmental or educational institution, including a state children's health insurance program under the Social Security Act, the Indian Health Service or a health program offered by an Indian tribal

government, a state health benefits risk pool, or a foreign government group health plan.

(i) **Change of coverage due to change under certain other plans.**

A Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of a Spouse's, former Spouse's or Dependent's employer if (1) the cafeteria plan or other benefits plan of the Spouse's, former Spouse's or Dependent's employer permits its participants to make a change; or (2) the cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan of a Spouse's, former Spouse's or Dependent's employer.

(j) **Change in Day Care provider.**

A Participant may make a prospective election change that is on account of and corresponds with a change by the Participant in the Day Care provider. The availability of Day Care services from a new childcare provider is similar to a new benefit package option becoming available. A cost change is allowable in the Day Care Flexible Spending Arrangement only if the cost change is imposed by a Day Care provider who is not related to the Participant, as defined in Code Section 152(a)(1) through (8).

(k) **Health FSA cannot change due to insurance change.**

A Participant shall not be permitted to change an election to the Health Flexible Spending Arrangement as a result of a cost or coverage change under any health insurance benefits.

**ARTICLE VI  
HEALTH FLEXIBLE SPENDING ARRANGEMENT**

**6.1 ESTABLISHMENT OF PLAN**

This Health Flexible Spending Arrangement is intended to qualify as a medical reimbursement plan under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder. Participants who elect to participate in this Health Flexible Spending Arrangement may submit claims for the reimbursement of Medical Expenses. All amounts reimbursed shall be periodically paid from amounts allocated to the Health Flexible Spending Arrangement. Periodic payments reimbursing Participants from the Health Flexible Spending Arrangement shall in no event occur less frequently than monthly.

**6.2 DEFINITIONS**

For the purposes of this Article and the Cafeteria Plan, the terms below have the following meaning:

(a) **"Health Flexible Spending Arrangement"** means the benefit established for Participants pursuant to this Plan to which part of their Cafeteria Plan Benefit Dollars may be allocated and from which all allowable Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents may be reimbursed.

(b) **"Highly Compensated Participant"** means, for the purposes of this Article and determining discrimination under Code Section 105(h), a participant who is:

- (1) one of the 5 highest paid officers;
- (2) a shareholder who owns (or is considered to own applying the rules of Code Section 318) more than 10 percent in value of the stock of the Employer; or
- (3) among the highest paid 25 percent of all Employees (other than exclusions permitted by Code Section 105(h)(3)(B) for those individuals who are not Participants).

(c) **"Medical Expenses"** means any expense for medical care within the meaning of the term "medical care" as defined in Code Section 213(d) and as allowed under Code Section 105 and the rulings and Treasury regulations thereunder, and not otherwise used by the Participant as a deduction in determining his tax liability under the Code. "Medical Expenses" can be incurred by the Participant, his or her Spouse and his or her Dependents. "Incurred" means, with regard to Medical Expenses, when the Participant is provided with the medical care that gives rise to the Medical Expense and not when the Participant is formally billed or charged for, or pays for, the medical care.

A Participant may not be reimbursed for the cost of other health coverage such as premiums paid under plans maintained by the employer of the Participant's Spouse or individual policies maintained by the Participant or his Spouse or Dependent.

A Participant may not be reimbursed for "qualified long-term care services" as defined in Code Section 7702B(c).

(d) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Health Flexible Spending Arrangement.

### 6.3 FORFEITURES

The amount in the Health Flexible Spending Arrangement as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 6.7 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason, subject to Section 8.2.

### 6.4 LIMITATION ON ALLOCATIONS

Notwithstanding any provision contained in this Health Flexible Spending Arrangement to the contrary, no more than \$3,000 may be allocated to the Health Flexible Spending Arrangement by a Participant in or on account of any Plan Year.

### 6.5 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Health Flexible Spending Arrangement not to discriminate in violation of the Code and the Treasury regulations thereunder.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination under this Health Flexible Spending Arrangement, it may, but shall not be required to, reject any elections or reduce contributions or Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Health Flexible Spending Arrangement by the member of the group in whose favor discrimination may not occur pursuant to Code Section 105 that elected to contribute the highest amount to the fund for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section or the Code are satisfied, or until the amount designated for the fund equals the amount designated for the fund by the next member of the group in whose favor discrimination may not occur pursuant to Code Section 105 who has elected the second highest contribution to the Health Flexible Spending Arrangement for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section or the Code are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and credited to the benefit plan surplus.

#### 6.6 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Health Flexible Spending Arrangement. The enrollment under the Cafeteria Plan shall constitute enrollment under this Health Flexible Spending Arrangement. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

#### 6.7 HEALTH FLEXIBLE SPENDING ARRANGEMENT CLAIMS

(a) **Expenses must be incurred during Plan Year.** All Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents shall be reimbursed during the Plan Year subject to Section 2.5, even though the submission of such a claim occurs after his participation hereunder ceases; but provided that the Medical Expenses were incurred during the applicable Plan Year. Medical Expenses are treated as having been incurred when the Participant is provided with the medical care that gives rise to the medical expenses, not when the Participant is formally billed or charged for, or pays for the medical care.

(b) **Reimbursement available throughout Plan Year.** The Administrator shall direct the reimbursement to each eligible Participant for all allowable Medical Expenses, up to a maximum of the amount designated by the Participant for the Health Flexible Spending Arrangement for the Plan Year. Reimbursements shall be made available to the Participant throughout the year without regard to the level of Cafeteria Plan Benefit Dollars which have been allocated to the fund at any given point in time. Furthermore, a Participant shall be entitled to reimbursements only for amounts in excess of any payments or other reimbursements under any health care plan covering the Participant and/or his Spouse or Dependents.

(c) **Payments.** Reimbursement payments under this Plan shall be made directly to the Participant. However, in the Administrator's discretion, payments may be made directly to the service provider. The application for

payment or reimbursement shall be made to the Administrator on an acceptable form within a reasonable time of incurring the debt or paying for the service. The application shall include a written statement from an independent third party stating that the Medical Expense has been incurred and the amount of such expense. Furthermore, the Participant shall provide a written statement that the Medical Expense has not been reimbursed or is not reimbursable under any other health plan coverage and, if reimbursed from the Health Flexible Spending Arrangement, such amount will not be claimed as a tax deduction. The Administrator shall retain a file of all such applications.

(d) **Grace Period.** Notwithstanding anything in this Section to the contrary, Medical Expenses incurred during the Grace Period, up to the remaining account balance, shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.

(e) **Claims for reimbursement.** Claims for the reimbursement of Medical Expenses incurred in any Plan Year shall be paid as soon after a claim has been filed as is administratively practicable; provided however, that if a Participant fails to submit a claim within 90 days after the end of the Plan Year, those Medical Expense claims shall not be considered for reimbursement by the Administrator.

## 6.8 DEBIT AND CREDIT CARDS

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the Plan for payment of Medical Expenses, subject to the following terms:

(a) **Card only for medical expenses.** Each Participant issued a card shall certify that such card shall only be used for Medical Expenses. The Participant shall also certify that any Medical Expense paid with the card has not already been reimbursed by any other plan covering health benefits and that the Participant will not seek reimbursement from any other plan covering health benefits.

(b) **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued for each Plan Year the Participant remains a Participant in the Health Flexible Spending Arrangement. Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the Health Flexible Spending Arrangement.

(c) **Maximum dollar amount available.** The dollar amount of coverage available on the card shall be the amount elected by the Participant for the Plan Year. The maximum dollar amount of coverage available shall be the maximum amount for the Plan Year as set forth in Section 6.4.

(d) **Only available for use with certain service providers.** The cards shall only be accepted by such merchants and service providers as have been approved by the Administrator.

(e) **Card use.** The cards shall only be used for Medical Expense purchases at these providers, including, but not limited to, the following:

- (1) Co-payments for doctor and other medical care;
- (2) Purchase of drugs;
- (3) Purchase of medical items such as eyeglasses, syringes, crutches, etc.

(f) **Substantiation.** Such purchases by the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(g) **Correction methods.** If such purchase is later determined by the Administrator to not qualify as a Medical Expense, the Administrator, in its discretion, shall use one of the following correction methods to make the Plan whole. Until the amount is repaid, the Administrator shall take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card.

- (1) Repayment of the improper amount by the Participant;
- (2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;
- (3) Claims substitution or offset of future claims until the amount is repaid; and
- (4) if subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

## **ARTICLE VII DAY CARE FLEXIBLE SPENDING ARRANGEMENT**

### **7.1 ESTABLISHMENT OF BENEFIT**

This Day Care Flexible Spending Arrangement is intended to qualify as a program under Code Section 129 and shall be interpreted in a manner consistent with such Code Section. Participants who elect to participate in this program may submit claims for the reimbursement of Employment-Related Day Care Expenses. All amounts reimbursed shall be paid from amounts allocated to the Participant's Day Care Flexible Spending Arrangement.

7.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan the terms below shall have the following meaning:

(a) **"Day Care Flexible Spending Arrangement"** means the benefit established for a Participant pursuant to this Article to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Employment-Related Day Care Expenses of the Participant may be reimbursed for the care of the Qualifying Dependents of Participants.

(b) **"Earned Income"** means earned income as defined under Code Section 32(c)(2), but excluding such amounts paid or incurred by the Employer for Day Care assistance to the Participant.

(c) **"Employment-Related Day Care Expenses"** means the amounts paid for expenses of a Participant for those services which if paid by the Participant would be considered employment related expenses under Code Section 21(b)(2). Generally, they shall include expenses for household services and for the care of a Qualifying Dependent, to the extent that such expenses are incurred to enable the Participant to be gainfully employed for any period for which there are one or more Qualifying Dependents with respect to such Participant. Employment-Related Day Care Expenses are treated as having been incurred when the Participant's Qualifying Dependents are provided with the Day Care that gives rise to the Employment-Related Day Care Expenses, not when the Participant is formally billed or charged for, or pays for the Day Care. The determination of whether an amount qualifies as an Employment-Related Day Care Expense shall be made subject to the following rules:

(1) If such amounts are paid for expenses incurred outside the Participant's household, they shall constitute Employment-Related Day Care Expenses only if incurred for a Qualifying Dependent as defined in Section 7.2(d)(1) (or deemed to be, as described in Section 7.2(d)(1) pursuant to Section 7.2(d)(3)), or for a Qualifying Dependent as defined in Section 7.2(d)(2) (or deemed to be, as described in Section 7.2(d)(2) pursuant to Section 7.2(d)(3)) who regularly spends at least 8 hours per day in the Participant's household;

(2) If the expense is incurred outside the Participant's home at a facility that provides care for a fee, payment, or grant for more than 6 individuals who do not regularly reside at the facility, the facility must comply with all applicable state and local laws and regulations, including licensing requirements, if any; and

(3) Employment-Related Day Care Expenses of a Participant shall not include amounts paid or incurred to a child of such Participant who is under the age of 19 or to an individual who is a Dependent of such Participant or such Participant's Spouse.

(d) **"Qualifying Dependent"** means, for Day Care Flexible Spending Arrangement purposes,

(1) a Participant's Dependent (as defined in Code Section 152(a)(1)) who has not attained age 13;



(2) a Dependent or the Spouse of a Participant who is physically or mentally incapable of caring for himself or herself and has the same principal place of abode as the Participant for more than one-half of such taxable year; or

(3) a child that is deemed to be a Qualifying Dependent described in paragraph (1) or (2) above, whichever is appropriate, pursuant to Code Section 21(e)(5).

(e) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Day Care Flexible Spending Arrangement.

### **7.3 DAY CARE FLEXIBLE SPENDING ACCOUNTS**

The Administrator shall establish a Day Care Flexible Spending Arrangement for each Participant who elects to apply Cafeteria Plan Benefit Dollars to Day Care Flexible Spending Arrangement benefits.

### **7.4 INCREASES IN DAY CARE FLEXIBLE SPENDING ACCOUNTS**

A Participant's Day Care Flexible Spending Arrangement shall be increased each pay period by the portion of Cafeteria Plan Benefit Dollars that he has elected to apply toward his Day Care Flexible Spending Arrangement pursuant to elections made under Article V hereof.

### **7.5 DECREASES IN DAY CARE FLEXIBLE SPENDING ACCOUNTS**

A Participant's Day Care Flexible Spending Arrangement shall be reduced by the amount of any Employment-Related Day Care Expense reimbursements paid or incurred on behalf of a Participant pursuant to Section 7.12 hereof.

### **7.6 ALLOWABLE DAY CARE REIMBURSEMENT**

Subject to limitations contained in Section 7.9 of this Program, and to the extent of the amount contained in the Participant's Day Care Flexible Spending Arrangement, a Participant who incurs Employment-Related Day Care Expenses shall be entitled to receive from the Employer full reimbursement for the entire amount of such expenses incurred during the Plan Year or portion thereof during which he is a Participant.

### **7.7 ANNUAL STATEMENT OF BENEFITS**

On or before January 31st of each calendar year, the Employer shall furnish to each Employee who was a Participant and received benefits under Section 7.6 during the prior calendar year, a statement of all such benefits paid to or on behalf of such Participant during the prior calendar year.

### **7.8 FORFEITURES**

The amount in a Participant's Day Care Flexible Spending Arrangement as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 7.12 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason.

## 7.9 LIMITATION ON PAYMENTS

Notwithstanding any provision contained in this Article to the contrary, amounts paid from a Participant's Day Care Flexible Spending Arrangement in or on account of any taxable year of the Participant shall not exceed the lesser of the Earned Income limitation described in Code Section 129(b) or \$5,000 (\$2,500 if a separate tax return is filed by a Participant who is married as determined under the rules of paragraphs (3) and (4) of Code Section 21(e)).

## 7.10 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Day Care Flexible Spending Arrangement that contributions or benefits not discriminate in favor of the group of employees in whose favor discrimination may not occur under Code Section 129(d).

(b) **25% test for shareholders.** It is the intent of this Day Care Flexible Spending Arrangement that not more than 25 percent of the amounts paid by the Employer for Day Care assistance during the Plan Year will be provided for the class of individuals who are shareholders or owners (or their Spouses or Dependents), each of whom (on any day of the Plan Year) owns more than 5 percent of the stock or of the capital or profits interest in the Employer.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 129 it may, but shall not be required to, reject any elections or reduce contributions or non-taxable benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Day Care Flexible Spending Arrangement by the affected Participant that elected to contribute the highest amount to such benefit for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section are satisfied, or until the amount designated for the benefit equals the amount designated for the benefit of the affected Participant who has elected the second highest contribution to the Day Care Flexible Spending Arrangement for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited.

## 7.11 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Day Care Flexible Spending Arrangement. The enrollment and termination of participation under the Cafeteria Plan shall constitute enrollment and termination of participation under this Day Care Flexible Spending Arrangement. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

**7.12 DAY CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS**

The Administrator shall direct the payment of all such Day Care claims to the Participant upon the presentation to the Administrator of documentation of such expenses in a form satisfactory to the Administrator. However, in the Administrator's discretion, payments may be made directly to the service provider. In its discretion in administering the Plan, the Administrator may utilize forms and require documentation of costs as may be necessary to verify the claims submitted. At a minimum, the form shall include a statement from an independent third party as proof that the expense has been incurred and the amount of such expense. In addition, the Administrator may require that each Participant who desires to receive reimbursement under this Program for Employment-Related Day Care Expenses submit a statement which may contain some or all of the following information:

- (a) The Dependent or Dependents for whom the services were performed;
- (b) The nature of the services performed for the Participant, the cost of which he wishes reimbursement;
- (c) The relationship, if any, of the person performing the services to the Participant;
- (d) If the services are being performed by a child of the Participant, the age of the child;
- (e) A statement as to where the services were performed;
- (f) If any of the services were performed outside the home, a statement as to whether the Dependent for whom such services were performed spends at least 8 hours a day in the Participant's household;
- (g) If the services were being performed in a day care center, a statement:
  - (1) that the day care center complies with all applicable laws and regulations of the state of residence,
  - (2) that the day care center provides care for more than 6 individuals (other than individuals residing at the center), and
  - (3) of the amount of fee paid to the provider.
- (h) If the Participant is married, a statement containing the following:
  - (1) the Spouse's salary or wages if he or she is employed, or
  - (2) if the Participant's Spouse is not employed, that
    - (i) he or she is incapacitated, or
    - (ii) he or she is a full-time student attending an educational institution and the months during the year which he or she attended such institution.

(i) **Grace Period.** Notwithstanding anything in this Section to the contrary, Employment-Related Day Care Expenses incurred during the Grace Period, up to the remaining benefit balance, shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.

(j) **Claims for reimbursement.** If a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator.

## ARTICLE VIII BENEFITS AND RIGHTS

### 8.1 CLAIM FOR BENEFITS

(a) **Insurance claims.** Any claim for Benefits underwritten by Insurance Contract(s) shall be made to the Insurer. If the Insurer denies any claim, the Participant or beneficiary shall follow the Insurer's claims review procedure.

(b) **Day Care Flexible Spending Arrangement or Health Flexible Spending Arrangement claims.** Any claim for Day Care Flexible Spending Arrangement or Health Flexible Spending Arrangement Benefits shall be made to the Administrator. For the Health Flexible Spending Arrangement, if a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator. For the Day Care Flexible Spending Arrangement, if a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator. If the Administrator denies a claim, the Administrator may provide notice to the Participant or beneficiary, in writing, within 90 days after the claim is filed unless special circumstances require an extension of time for processing the claim. The notice of a denial of a claim shall be written in a manner calculated to be understood by the claimant and shall set forth:

- (1) specific references to the pertinent Plan provisions on which the denial is based;
- (2) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such information is necessary; and
- (3) an explanation of the Plan's claim procedure.

(c) **Appeal.** Within 60 days after receipt of the above material, the claimant shall have a reasonable opportunity to appeal the claim denial to the Administrator for a full and fair review. The claimant or his duly authorized representative may:

- (1) request a review upon written notice to the Administrator;
- (2) review pertinent documents; and
- (3) submit issues and comments in writing.

(d) **Review of appeal.** A decision on the review by the Administrator will be made not later than 60 days after receipt of a request for review, unless special circumstances require an extension of time for processing (such as the need to hold a hearing), in which event a decision should be rendered as soon as possible, but in no event later than 120 days after such receipt. The decision of the Administrator shall be written and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based.

(e) **Forfeitures.** Any balance remaining in the Participant's Day Care Flexible Spending Arrangement or Health Flexible Spending Arrangement as of the end of the time for claims reimbursement for each Plan Year and Grace Period (if applicable) shall be forfeited and deposited in the benefit plan surplus of the Employer pursuant to Section 6.3 or Section 7.8, whichever is applicable, unless the Participant had made a claim for such Plan Year, in writing, which has been denied or is pending; in which event the amount of the claim shall be held in his benefit until the claim appeal procedures set forth above have been satisfied or the claim is paid. If any such claim is denied on appeal, the amount held beyond the end of the Plan Year shall be forfeited and credited to the benefit plan surplus.

## **8.2 APPLICATION OF BENEFIT PLAN SURPLUS**

Any forfeited amounts credited to the benefit plan surplus by virtue of the failure of a Participant to incur a qualified expense or seek reimbursement in a timely manner may, but need not be, separately accounted for after the close of the Plan Year (or after such further time specified herein for the filing of claims) in which such forfeitures arose. In no event shall such amounts be carried over to reimburse a Participant for expenses incurred during a subsequent Plan Year for the same or any other Benefit available under the Plan; nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by Treasury regulations. Amounts in the benefit plan surplus shall be used to defray any administrative costs and experience losses or used to provide additional benefits under the Plan.

## **ARTICLE IX ADMINISTRATION**

### **9.1 PLAN ADMINISTRATION**

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power to administer the Plan in all of its details, subject, however, to the pertinent provisions of the Code. The Administrator's powers shall include, but shall not be limited to the following authority, in addition to all other powers provided by this Plan:

(a) To make and enforce such rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;

(b) To interpret the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits by operation of the Plan;

(c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;

(d) To reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;

(e) To provide Employees with a reasonable notification of their benefits available by operation of the Plan;

(f) To approve reimbursement requests and to authorize the payment of benefits;

(g) To appoint such agents, counsel, accountants, consultants, and actuaries as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder.

## **9.2 EXAMINATION OF RECORDS**

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

## **9.3 PAYMENT OF EXPENSES**

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of highly compensated employees.

## **9.4 INSURANCE CONTROL CLAUSE**

In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of an independent third party Insurer whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the benefits Participants are entitled to and the circumstances under which insurance terminates.

**9.5 INDEMNIFICATION OF ADMINISTRATOR**

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

**ARTICLE X  
AMENDMENT OR TERMINATION OF PLAN**

**10.1 AMENDMENT**

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

**10.2 TERMINATION**

The Employer is establishing this Plan with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the Employer reserves the right to terminate this Plan, in whole or in part, at any time. In the event the Plan is terminated, no further contributions shall be made. Benefits under any Insurance Contract shall be paid in accordance with the terms of the Insurance Contract.

No further additions shall be made to the Health Flexible Spending Arrangement or Day Care Flexible Spending Arrangement, but all payments from such fund shall continue to be made according to the elections in effect until 90 days after the termination date of the Plan. Any amounts remaining in any such fund or benefit as of the end of such period shall be forfeited and deposited in the benefit plan surplus after the expiration of the filing period.

**ARTICLE XI  
MISCELLANEOUS**

**11.1 PLAN INTERPRETATION**

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 11.12.

**11.2 GENDER AND NUMBER**

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

**11.3 WRITTEN DOCUMENT**

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Treasury regulations thereunder relating to cafeteria plans.

**11.4 EXCLUSIVE BENEFIT**

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

**11.5 PARTICIPANT'S RIGHTS**

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

**11.6 ACTION BY THE EMPLOYER**

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

**11.7 EMPLOYER'S PROTECTIVE CLAUSES**

(a) **Insurance purchase.** Upon the failure of either the Participant or the Employer to obtain the insurance contemplated by this Plan (whether as a result of negligence, gross neglect or otherwise), the Participant's Benefits shall be limited to the insurance premium(s), if any, that remained unpaid for the period in question and the actual insurance proceeds, if any, received by the Employer or the Participant as a result of the Participant's claim.

(b) **Validity of insurance contract.** The Employer shall not be responsible for the validity of any Insurance Contract issued hereunder or for the failure on the part of the Insurer to make payments provided for under any Insurance Contract. Once insurance is applied for or obtained, the Employer shall not be liable for any loss which may result from the failure to pay Premiums to the extent Premium notices are not received by the Employer.

**11.8 NO GUARANTEE OF TAX CONSEQUENCES**

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.



**11.9 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS**

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

**11.10 FUNDING**

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, benefit or asset of the Employer from which any payment under the Plan may be made.

**11.11 GOVERNING LAW**

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the State of Washington.

**11.12 SEVERABILITY**

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

**11.13 CAPTIONS**

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

**11.14 CONTINUATION OF COVERAGE (COBRA)**

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each Participant will be entitled to continuation coverage as prescribed in Code Section 4980B, and related regulations. If during the Plan Year, the Employer employs fewer than twenty (20) employees on a typical business day, this Section shall not apply.

**11.15 FAMILY AND MEDICAL LEAVE ACT (FMLA)**

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with Regulation 1.125-3.

**11.16 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in accordance with HIPAA and regulations thereunder.

**11.17 UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)**

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniform Services Employment And Reemployment Rights Act (USERRA) and the regulations thereunder.

**11.18 COMPLIANCE WITH HIPAA PRIVACY STANDARDS**

(a) **Application.** If the Health Flexible Spending Arrangement under this Cafeteria Plan is subject to the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 164, the "Privacy Standards"), then this Section shall apply.

(b) **Disclosure of PHI.** The Plan shall not disclose Protected Health Information to any member of the Employer's workforce unless each of the conditions set out in this Section are met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present or future physical or mental health or condition of an individual, including information about treatment or payment for treatment.

(c) **PHI disclosed for administrative purposes.** Protected Health Information disclosed to members of the Employer's workforce shall be used or disclosed by them only for purposes of Plan administrative functions. The Plan's administrative functions shall include all Plan payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill Plan responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care.

(d) **PHI disclosed to certain workforce members.** The Plan shall disclose Protected Health Information only to members of the Employer's workforce who are authorized to receive such Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the Plan. "Members of the Employer's workforce" shall refer to all employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.

(1) An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the Plan.

(2) In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this

Section and the Privacy Standards, the incident shall be reported to the Plan's privacy officer. The privacy officer shall take appropriate action, including:

- (i) investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;
  - (ii) appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;
  - (iii) mitigation of any harm caused by the breach, to the extent practicable; and
  - (iv) documentation of the incident and all actions taken to resolve the issue and mitigate any damages.
- (e) **Certification.** The Employer must provide certification to the Plan that it agrees to:
- (1) Not use or further disclose the information other than as permitted or required by the Plan documents or as required by law;
  - (2) Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the Plan, agrees to the same restrictions and conditions that apply to the Employer with respect to such information;
  - (3) Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;
  - (4) Report to the Plan any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law;
  - (5) Make available Protected Health Information to individual Plan members in accordance with Section 164.524 of the Privacy Standards;
  - (6) Make available Protected Health Information for amendment by individual Plan members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;
  - (7) Make available the Protected Health Information required to provide an accounting of disclosures to individual Plan members in accordance with Section 164.528 of the Privacy Standards;
  - (8) Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the Plan available to the Department of Health and Human Services for purposes of determining compliance by the Plan with the Privacy Standards;

(9) If feasible, return or destroy all Protected Health Information received from the Plan that the Employer still maintains in any form, and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

(10) Ensure the adequate separation between the Plan and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above.

#### 11.19 COMPLIANCE WITH HIPAA ELECTRONIC SECURITY STANDARDS

Under the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164.300 et. seq., the "Security Standards"):

(a) **Implementation.** The Employer agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic Protected Health Information that the Employer creates, maintains or transmits on behalf of the Plan. "Electronic Protected Health Information" shall have the same definition as set out in the Security Standards, but generally shall mean Protected Health Information that is transmitted by or maintained in electronic media.

(b) **Agents or subcontractors shall meet security standards.** The Employer shall ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information shall agree, in writing, to implement reasonable and appropriate security measures to protect the Electronic Protected Health Information.

(c) **Employer shall ensure security standards.** The Employer shall ensure that reasonable and appropriate security measures are implemented to comply with the conditions and requirements set forth in Section 11.18.

IN WITNESS WHEREOF, this Plan document is hereby executed this  
\_\_\_\_\_ day of \_\_\_\_\_.

City of Gig Harbor

By \_\_\_\_\_  
EMPLOYER

ADOPTING RESOLUTION

The undersigned Principal of City of Gig Harbor (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on June 8, 2009, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of Cafeteria Plan including a Day Care Flexible Spending Arrangement and Health Flexible Spending Arrangement effective June 1, 2009, presented to this meeting is hereby approved and adopted and that the duly authorized agents of the Employer are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

RESOLVED, that the Administrator shall be instructed to take such actions that are deemed necessary and proper in order to implement the Plan, and to set up adequate accounting and administrative procedures to provide benefits under the Plan.

RESOLVED, that the duly authorized agents of the Employer shall act as soon as possible to notify the employees of the Employer of the adoption of the Cafeteria Plan by delivering to each employee a copy of the summary description of the Plan in the form of the Summary Plan Description presented to this meeting, which form is hereby approved.

The undersigned further certifies that attached hereto as Exhibits A and B, respectively, are true copies of City of Gig Harbor Flexible Benefits Plan and the Summary Plan Description approved and adopted in the foregoing resolutions.

\_\_\_\_\_  
Principal

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

**Exhibit B**

**City of Gig Harbor**

**Flexible Benefits: Summary Plan Description**

**CITY OF GIG HARBOR FLEXIBLE BENEFITS PLAN  
SUMMARY PLAN DESCRIPTION**



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## CITY OF GIG HARBOR FLEXIBLE BENEFITS PLAN

### INTRODUCTION

We are pleased to announce that we have established a "Flexible Benefit Plan" for you and other eligible employees. Under this Plan, you will be able to choose among certain benefits that we make available. The benefits that you may choose are outlined in this Summary Plan Description. We will also tell you about other important information concerning the Plan, such as the rules you must satisfy before you can join and the laws that protect your rights.

One of the most important features of our Plan is that the benefits being offered are generally ones that you are already paying for, but normally with money that has first been subject to income and Social Security taxes. Under our Plan, these same expenses will be paid for with a portion of your pay before Federal income or Social Security taxes are withheld. This means that you will pay less tax and have more money to spend and save.

Read this Summary Plan Description carefully so that you understand the provisions of our Plan and the benefits you will receive. This SPD describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language. If the non-technical language in this SPD and the technical, legal language of the Plan document conflict, the Plan document always governs. Also, if there is a conflict between an insurance contract and either the Plan document or this Summary Plan Description, the insurance contract will control. If you wish to receive a copy of the legal Plan document, please contact the Administrator.

This SPD describes the current provisions of the Plan which are designed to comply with applicable legal requirements. The Plan is subject to federal laws, such as the Internal Revenue Code and other federal and state laws which may affect your rights. The provisions of the Plan are subject to revision due to a change in laws or due to pronouncements by the Internal Revenue Service (IRS) or other federal agencies. We may also amend or terminate this Plan. If the provisions of the Plan that are described in this SPD change, we will notify you.

We have attempted to answer most of the questions you may have regarding your benefits in the Plan. If this SPD does not answer all of your questions, please contact the Administrator (or other plan representative). The name and address of the Administrator can be found in the Article of this SPD entitled "General Information About the Plan."

### I ELIGIBILITY

#### 1. When can I become a participant in the Plan?

Before you become a Plan member (referred to in this Summary Plan Description as a "Participant"), there are certain rules which you must satisfy. First, you must meet the eligibility requirements and be an active employee. After that, the next step is to actually join the Plan on the "entry date" that we have established for all employees. The "entry date" is defined in Question 3 below. You will also be required to complete certain application forms before you can enroll in the Health Flexible Spending Account or Dependent Care Flexible Spending Account.

#### 2. What are the eligibility requirements for our Plan?

You will be eligible to join the Plan once you have satisfied the conditions for coverage under our group medical plan.

**3. When is my entry date?**

Once you have met the eligibility requirements, your entry date will be the first day of the month coinciding with or following the date you met the eligibility requirements.

**4. What must I do to enroll in the Plan?**

Before you can join the Plan, you must complete an application to participate in the Plan. The application includes your personal choices for each of the benefits which are being offered under the Plan. You must also authorize us to set some of your earnings aside in order to pay for a portion of the benefits you have elected.

However, if you are already covered under any of the insured benefits, you will automatically participate in this Plan to the extent of your premiums unless you elect not to participate in this Plan.

**II  
OPERATION**

**1. How does this Plan operate?**

Before the start of each Plan Year, you will be able to elect to have some of your upcoming pay contributed to the Plan. These amounts will be used to pay for the benefits you have chosen. The portion of your pay that is paid to the Plan is not subject to Federal income or Social Security taxes. In other words, this allows you to use tax-free dollars to pay for certain kinds of benefits and expenses which you normally pay for with out-of-pocket, taxable dollars. Also, we will make additional Employer contributions to the Plan that you may use to increase the amounts used to pay benefits. However, if you receive a reimbursement for an expense under the Plan, you cannot claim a Federal income tax credit or deduction on your return. (See the Article entitled "General Information About Our Plan" for the definition of "Plan Year.")

**III  
CONTRIBUTIONS**

**1. How much of my pay may the Employer redirect?**

Each year, we will automatically contribute on your behalf enough of your compensation to pay for the insurance coverage provided unless you elect not to receive any or all of such coverage. You may also elect to have us contribute on your behalf enough of your compensation to pay for any other benefits that you elect under the Plan. These amounts will be deducted from your pay over the course of the year.

**2. How much will the Employer contribute each year?**

We will contribute an amount equal to \$1,500 for you each year. This contribution is to be used only in the Health Flexible Spending Account and will be made on a pro rata basis during the year.

**3. What happens to contributions made to the Plan?**

Before each Plan Year begins, you will select the benefits you want and how much of the contributions should go toward each benefit. It is very important that you make these

choices carefully based on what you expect to spend on each covered benefit or expense during the Plan Year. Later, they will be used to pay for the expenses as they arise during the Plan Year.

**4. When must I decide which accounts I want to use?**

You are required by Federal law to decide before the Plan Year begins, during the election period (defined below). You must decide two things. First, which benefits you want and, second, how much should go toward each benefit.

If you are already covered by any of the insured benefits offered by this Plan, you will automatically become a Participant to the extent of the premiums for such insurance unless you elect, during the election period (defined below), not to participate in the Plan.

**5. When is the election period for our Plan?**

You will make your initial election on or before your entry date. (You should review Section I on Eligibility to better understand the eligibility requirements and entry date.) Then, for each following Plan Year, the election period is established by the Administrator and applied uniformly to all Participants. It will normally be a period of time prior to the beginning of each Plan Year. The Administrator will inform you each year about the election period. (See the Article entitled "General Information About Our Plan" for the definition of Plan Year.)

**6. May I change my elections during the Plan Year?**

Generally, you cannot change the elections you have made after the beginning of the Plan Year. However, there are certain limited situations when you can change your elections. You are permitted to change elections if you have a "change in status" and you make an election change that is consistent with the change in status. Currently, Federal law considers the following events to be a change in status:

- Marriage, divorce, death of a spouse, legal separation or annulment;
- Change in the number of dependents, including birth, adoption, placement for adoption, or death of a dependent;
- Any of the following events for you, your spouse or dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, a change in worksite, or any other change in employment status that affects eligibility for benefits;
- One of your dependents satisfies or ceases to satisfy the requirements for coverage due to change in age, student status, or any similar circumstance; and
- A change in the place of residence of you, your spouse or dependent that would lead to a change in status, such as moving out of a coverage area for insurance.

In addition, if you are participating in the Dependent Care Flexible Spending Account, then there is a change in status if your dependent no longer meets the qualifications to be eligible for dependent care.

There are detailed rules on when a change in election is deemed to be consistent with a change in status. In addition, there are laws that give you rights to change health coverage for

you, your spouse, or your dependents. If you change coverage due to rights you have under the law, then you can make a corresponding change in your elections under the Plan. If any of these conditions apply to you, you should contact the Administrator.

If the cost of a benefit provided under the Plan increases or decreases during a Plan Year, then we will automatically increase or decrease, as the case may be, your salary redirection election. If the cost increases significantly, you will be permitted to either make corresponding changes in your payments or revoke your election and obtain coverage under another benefit package option with similar coverage, or revoke your election entirely.

If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, then you may revoke your elections and elect to receive on a prospective basis coverage under another plan with similar coverage. In addition, if we add a new coverage option or eliminate an existing option, you may elect the newly-added option (or elect another option if an option has been eliminated) and make corresponding election changes to other options providing similar coverage. If you are not a Participant, you may elect to join the Plan. There are also certain situations when you may be able to change your elections on account of a change under the plan of your spouse's, former spouse's or dependent's employer.

These rules on change due to cost or coverage do not apply to the Health Flexible Spending Account, and you may not change your election to the Health Flexible Spending Account if you make a change due to cost or coverage for insurance.

You may not change your election under the Dependent Care Flexible Spending Account if the cost change is imposed by a dependent care provider who is your relative.

**7. May I make new elections in future Plan Years?**

Yes, you may. For each new Plan Year, you may change the elections that you previously made. You may also choose not to participate in the Plan for the upcoming Plan Year. If you do not make new elections during the election period before a new Plan Year begins, we will assume you want your elections for insured benefits only to remain the same and you will not be considered a Participant for the non-insured benefit options under the Plan for the upcoming Plan Year.

**IV  
BENEFITS**

**1. What benefits are available?**

Under our Plan, you can choose to receive your entire compensation and your Employer's contribution or use a portion to pay for the following benefits or expenses during the year:

Health Flexible Spending Account:

The Health Flexible Spending Account enables you to pay for expenses allowed under Sections 105 and 213(d) of the Internal Revenue Code which are not covered by our insured medical plan and save taxes at the same time. The Health Flexible Spending Account allows you to be reimbursed by the Employer for out-of-pocket medical, dental and/or vision expenses incurred by you and your dependents.

Drug costs, including "over-the-counter" drugs may be reimbursed. You may not, however, be reimbursed for the cost of other health care coverage maintained outside of the Plan, or for long-term care expenses. A list of covered expenses is available from the Administrator.

The most that you can contribute to your Health Flexible Spending Account each Plan Year is \$3,000. In order to be reimbursed for a health care expense, you must submit to the Administrator an itemized bill from the service provider. We will also provide you with a debit or credit card to use to pay for medical expenses, such as co-pays, deductibles, medical equipment and drug costs. The Administrator will provide you with further details. Amounts reimbursed from the Plan may not be claimed as a deduction on your personal income tax return. Reimbursement from the fund shall be paid at least once a month. Expenses under this Plan are treated as being "incurred" when you are provided with the care that gives rise to the expenses, not when you are formally billed or charged, or you pay for the medical care.

Newborns' and Mothers' Health Protection Act: Group health plans generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

Dependent Care Flexible Spending Account:

The Dependent Care Flexible Spending Account enables you to pay for out-of-pocket, work-related dependent day-care cost with pre-tax dollars. If you are married, you can use the account if you and your spouse both work or, in some situations, if your spouse goes to school full-time. Single employees can also use the account.

An eligible dependent is someone for whom you can claim expenses on Federal Income Tax Form 2441 "Credit for Child and Dependent Care Expenses." Children must be under age 13. Other dependents must be physically or mentally unable to care for themselves. Dependent Care arrangements which qualify include:

- (a) A Dependent (Day) Care Center, provided that if care is provided by the facility for more than six individuals, the facility complies with applicable state and local laws;
- (b) An Educational Institution for pre-school children. For older children, only expenses for non-school care are eligible; and
- (c) An "Individual" who provides care inside or outside your home: The "Individual" may not be a child of yours under age 19 or anyone you claim as a dependent for Federal tax purposes.

You should make sure that the dependent care expenses you are currently paying for qualify under our Plan. The law places limits on the amount of money that can be paid to you in a calendar year from your Dependent Care Flexible Spending Account. Generally, your reimbursements may not exceed the lesser of: (a) \$5,000 (if you are married filing a joint return or you are head of a household) or \$2,500 (if you are married filing separate returns); (b) your taxable compensation; (c) your spouse's actual or deemed earned income (a spouse who is a full time student or incapable of caring for himself/herself has a monthly earned income of \$250



for one dependent or \$500 for two or more dependents). Also, in order to have the reimbursements made to you from this account be excludable from your income, you must provide a statement from the service provider including the name, address, and in most cases, the taxpayer identification number of the service provider on your tax form for the year, as well as the amount of such expense as proof that the expense has been incurred. In addition, Federal tax laws permit a tax credit for certain dependent care expenses you may be paying for even if you are not a Participant in this Plan. You may save more money if you take advantage of this tax credit rather than using the Dependent Care Flexible Spending Account under our Plan. Ask your tax adviser which is better for you.

**Premium Expense Account:**

A Premium Expense Account allows you to use tax-free dollars to pay for certain premium expenses under various insurance programs that we offer you. These premium expenses include:

- Health care premiums under our insured group medical plan.
- Cancer insurance premiums.

Under our Plan, we will establish sub-accounts for you for each different type of insurance coverage that is available. Also, certain limits on the amount of coverage may apply.

The Administrator may terminate or modify Plan benefits at any time, subject to the provisions of any insurance contracts providing benefits described above. We will not be liable to you if an insurance company fails to provide any of the benefits described above. Also, your insurance will end when you leave employment, are no longer eligible under the terms of any insurance policies, or when insurance terminates.

Any benefits to be provided by insurance will be provided only after (1) you have provided the Administrator the necessary information to apply for insurance, and (2) the insurance is in effect for you.

**V  
BENEFIT PAYMENTS**

**1. When will I receive payments from my accounts?**

During the course of the Plan Year, you may submit requests for reimbursement of expenses you have incurred. Expenses are considered "incurred" when the service is performed, not necessarily when it is paid for. The Administrator will provide you with acceptable forms for submitting these requests for reimbursement. If the request qualifies as a benefit or expense that the Plan has agreed to pay, you will receive a reimbursement payment soon thereafter. Remember, these reimbursements which are made from the Plan are generally not subject to federal income tax or withholding. Nor are they subject to Social Security taxes. Requests for payment of insured benefits should be made directly to the insurer. You will only be reimbursed from the Dependent Care Flexible Spending Account to the extent that there are sufficient funds in the Account to cover your request.

**2. What happens if I don't spend all Plan contributions during the Plan Year?**

If you have not spent all the amounts in your Health Flexible Spending Account or Dependent Care Flexible Spending Account by the end of the Plan Year, you may continue to

incur claims for expenses during the "Grace Period." The "Grace Period" extends 2 1/2 months after the end of the Plan Year, during which time you can continue to incur claims and use up all amounts remaining in your Health Flexible Spending Account or Dependent Care Flexible Spending Account.

Any monies left at the end of the Plan Year and the Grace Period will be forfeited. Obviously, qualifying expenses that you incur late in the Plan Year or during the Grace Period for which you seek reimbursement after the end of such Plan Year and Grace Period will be paid first before any amount is forfeited. For the Health Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. For the Dependent Care Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. Because it is possible that you might forfeit amounts in the Plan if you do not fully use the contributions that have been made, it is important that you decide how much to place in each account carefully and conservatively. Remember, you must decide which benefits you want to contribute to and how much to place in each account before the Plan Year begins. You want to be as certain as you can that the amount you decide to place in each account will be used up entirely.

**3. Family and Medical Leave Act (FMLA)**

If you take leave under the Family and Medical Leave Act, you may revoke or change your existing elections for health insurance and the Health Flexible Spending Account. If your coverage in these benefits terminates, due to your revocation of the benefit while on leave or due to your non-payment of contributions, you will be permitted to reinstate coverage for the remaining part of the Plan Year upon your return. For the Health Flexible Spending Account, you may continue your coverage or you may revoke your coverage and resume it when you return. You can resume your coverage at its original level and make payments for the time that you are on leave. For example, if you elect \$1,200 for the year and are out on leave for 3 months, then return and elect to resume your coverage at that level, your remaining payments will be increased to cover the difference - from \$100 per month to \$150 per month. Alternatively your maximum amount will be reduced proportionately for the time that you were gone. For example, if you elect \$1,200 for the year and are out on leave for 3 months, your amount will be reduced to \$900. The expenses you incur during the time you are not in the Health Flexible Spending Account are not reimbursable.

If you continue your coverage during your unpaid leave, you may pre-pay for the coverage, you may pay for your coverage on an after-tax basis while you are on leave, or you and your Employer may arrange a schedule for you to "catch up" your payments when you return.

**4. Uniformed Services Employment and Reemployment Rights Act (USERRA)**

If you are going into or returning from military service, you may have special rights to health care coverage under your Health Flexible Spending Account under the Uniformed Services Employment and Reemployment Rights Act of 1994. These rights can include extended health care coverage. If you may be affected by this law, ask your Administrator for further details.

**5. What happens if I terminate employment?**

If you terminate employment during the Plan Year, your right to benefits will be determined in the following manner:

- (a) You will remain covered by insurance, but only for the period for which premiums have been paid prior to your termination of employment.

(b) You will still be able to request reimbursement for qualifying dependent care expenses for the remainder of the Plan Year from the balance remaining in your dependent care account at the time of termination of employment. However, no further salary redirection and contributions will be made on your behalf after you terminate. You must submit claims within 90 days after the end of the Plan Year in which termination occurs.

(c) For health benefit coverage and Health Flexible Spending Account coverage on termination of employment, please see the Article entitled "Continuation Coverage Rights Under COBRA." Upon your termination of employment, your participation in the Health Flexible Spending Account will cease, and no further salary redirection and Employer contributions will be contributed on your behalf. However, you will be able to submit claims for health care expenses that were incurred before the end of the period for which payments to the Health Flexible Spending Account have already been made. Your further participation will be governed by "Continuation Coverage Rights Under COBRA."

**6. Will my Social Security benefits be affected?**

Your Social Security benefits may be slightly reduced because when you receive tax-free benefits under our Plan, it reduces the amount of contributions that you make to the Federal Social Security system as well as our contribution to Social Security on your behalf.

**VI  
HIGHLY COMPENSATED AND KEY EMPLOYEES**

**1. Do limitations apply to highly compensated employees?**

Under the Internal Revenue Code, highly compensated employees and key employees generally are Participants who are officers, shareholders or highly paid. You will be notified by the Administrator each Plan Year whether you are a highly compensated employee or a key employee.

If you are within these categories, the amount of contributions and benefits for you may be limited so that the Plan as a whole does not unfairly favor those who are highly paid, their spouses or their dependents. Federal tax laws state that a plan will be considered to unfairly favor the key employees if they as a group receive more than 25% of all of the nontaxable benefits provided for under our Plan.

Plan experience will dictate whether contribution limitations on highly compensated employees or key employees will apply. You will be notified of these limitations if you are affected.

**VII  
PLAN ACCOUNTING**

**1. Periodic Statements**

The Administrator will provide you with a statement of your account periodically during the Plan Year that shows your account balance. It is important to read these statements carefully so you understand the balance remaining to pay for a benefit. Remember, you want to spend all the money you have designated for a particular benefit by the end of the Plan Year.

**VIII  
GENERAL INFORMATION ABOUT OUR PLAN**

This Section contains certain general information which you may need to know about the Plan.

**1. General Plan Information**

City of Gig Harbor Flexible Benefits Plan is the name of the Plan.

Your Employer has assigned Plan Number 501 to your Plan.

The provisions of the Plan become effective on June 1, 2009, which is called the Effective Date of the Plan.

Your Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on January 1 and ends on December 31, except for the first Plan Year which began on June 1.

**2. Employer Information**

Your Employer's name, address, and identification number are:

City of Gig Harbor  
3510 Grandview ST  
Gig Harbor, Washington 98335  
91-6001435

**3. Plan Administrator Information**

The name, address and business telephone number of your Plan's Administrator are:

City of Gig Harbor  
3510 Grandview ST  
Gig Harbor, Washington 98335  
(253) 851-8136

The Administrator keeps the records for the Plan and is responsible for the administration of the Plan. The Administrator will also answer any questions you may have about our Plan. You may contact the Administrator for any further information about the Plan.

**4. Service of Legal Process**

The name and address of the Plan's agent for service of legal process are:

City of Gig Harbor  
3510 Grandview ST  
Gig Harbor, Washington 98335

**5. Type of Administration**

The type of Administration is Employer Administration.

**6. Claims Submission**

Claims for expenses should be submitted to:

Flex-Plan Services, Inc  
PO Box 53250  
Bellevue, WA 98015

**IX  
ADDITIONAL PLAN INFORMATION**

**1. Claims Process**

You should submit all reimbursement claims during the Plan Year. For the Health Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. For the Dependent Care Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. Any claims submitted after that time will not be considered.

Claims that are insured will be handled in accordance with procedures contained in the insurance policies. All other general requests should be directed to the Administrator of our Plan. If a dependent care or medical expense claim under the Plan is denied in whole or in part, you or your beneficiary will receive written notification. The notification will include the reasons for the denial, with reference to the specific provisions of the Plan on which the denial was based, a description of any additional information needed to process the claim and an explanation of the claims review procedure. Within 60 days after denial, you or your beneficiary may submit a written request for reconsideration of the denial to the Administrator.

Any such request should be accompanied by documents or records in support of your appeal. You or your beneficiary may review pertinent documents and submit issues and comments in writing. The Administrator will review the claim and provide, within 60 days, a written response to the appeal. (This period may be extended an additional 60 days under certain circumstances.) In this response, the Administrator will explain the reason for the decision, with specific reference to the provisions of the Plan on which the decision is based. The Administrator has the exclusive right to interpret the appropriate plan provisions. Decisions of the Administrator are conclusive and binding.

**X  
CONTINUATION COVERAGE RIGHTS UNDER COBRA**

Under federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), certain employees and their families covered under health benefits under this Plan will be entitled to the opportunity to elect a temporary extension of health coverage (called "COBRA continuation coverage") where coverage under the Plan would otherwise end. This notice is intended to inform Plan Participants and beneficiaries, in summary fashion, of their rights and obligations under the continuation coverage provisions of COBRA, as amended and reflected in final and proposed regulations published by the Department of the Treasury. This notice is intended to reflect the law and does not grant or take away any rights under the law.

The Plan Administrator or its designee is responsible for administering COBRA continuation coverage. Complete instructions on COBRA, as well as election forms and other information, will be provided by the Plan Administrator or its designee to Plan Participants who

become Qualified Beneficiaries under COBRA. While the Plan itself is not a group health plan, it does provide health benefits. Whenever "Plan" is used in this section, it means any of the health benefits under this Plan including the Health Flexible Spending Account.

**1. What is COBRA continuation coverage?**

COBRA continuation coverage is the temporary extension of group health plan coverage that must be offered to certain Plan Participants and their eligible family members (called "Qualified Beneficiaries") at group rates. The right to COBRA continuation coverage is triggered by the occurrence of a life event that results in the loss of coverage under the terms of the Plan (the "Qualifying Event"). The coverage must be identical to the coverage that the Qualified Beneficiary had immediately before the Qualifying Event, or if the coverage has been changed, the coverage must be identical to the coverage provided to similarly situated active employees who have not experienced a Qualifying Event (in other words, similarly situated non-COBRA beneficiaries).

**2. Who can become a Qualified Beneficiary?**

In general, a Qualified Beneficiary can be:

(a) Any individual who, on the day before a Qualifying Event, is covered under a Plan by virtue of being on that day either a covered Employee, the Spouse of a covered Employee, or a Dependent child of a covered Employee. If, however, an individual who otherwise qualifies as a Qualified Beneficiary is denied or not offered coverage under the Plan under circumstances in which the denial or failure to offer constitutes a violation of applicable law, then the individual will be considered to have had the coverage and will be considered a Qualified Beneficiary if that individual experiences a Qualifying Event.

(b) Any child who is born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage, and any individual who is covered by the Plan as an alternate recipient under a qualified medical support order. If, however, an individual who otherwise qualifies as a Qualified Beneficiary is denied or not offered coverage under the Plan under circumstances in which the denial or failure to offer constitutes a violation of applicable law, then the individual will be considered to have had the coverage and will be considered a Qualified Beneficiary if that individual experiences a Qualifying Event.

The term "covered Employee" includes any individual who is provided coverage under the Plan due to his or her performance of services for the employer sponsoring the Plan. However, this provision does not establish eligibility of these individuals. Eligibility for Plan coverage shall be determined in accordance with Plan Eligibility provisions.

An individual is not a Qualified Beneficiary if the individual's status as a covered Employee is attributable to a period in which the individual was a nonresident alien who received from the individual's Employer no earned income that constituted income from sources within the United States. If, on account of the preceding reason, an individual is not a Qualified Beneficiary, then a Spouse or Dependent child of the individual will also not be considered a Qualified Beneficiary by virtue of the relationship to the individual. A domestic partner is not a Qualified Beneficiary.

Each Qualified Beneficiary (including a child who is born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage) must be offered the opportunity to make an independent election to receive COBRA continuation coverage.

**3. What is a Qualifying Event?**

A Qualifying Event is any of the following if the Plan provided that the Plan participant would lose coverage (i.e., cease to be covered under the same terms and conditions as in effect immediately before the Qualifying Event) in the absence of COBRA continuation coverage:

- (a) The death of a covered Employee.
- (b) The termination (other than by reason of the Employee's gross misconduct), or reduction of hours, of a covered Employee's employment.
- (c) The divorce or legal separation of a covered Employee from the Employee's Spouse. If the Employee reduces or eliminates the Employee's Spouse's Plan coverage in anticipation of a divorce or legal separation, and a divorce or legal separation later occurs, then the divorce or legal separation may be considered a Qualifying Event even though the Spouse's coverage was reduced or eliminated before the divorce or legal separation.
- (d) A covered Employee's enrollment in any part of the Medicare program.
- (e) A Dependent child's ceasing to satisfy the Plan's requirements for a Dependent child (for example, attainment of the maximum age for dependency under the Plan).

If the Qualifying Event causes the covered Employee, or the covered Spouse or a Dependent child of the covered Employee, to cease to be covered under the Plan under the same terms and conditions as in effect immediately before the Qualifying Event, the persons losing such coverage become Qualified Beneficiaries under COBRA if all the other conditions of COBRA are also met. For example, any increase in contribution that must be paid by a covered Employee, or the Spouse, or a Dependent child of the covered Employee, for coverage under the Plan that results from the occurrence of one of the events listed above is a loss of coverage.

The taking of leave under the Family and Medical Leave Act of 1993 ("FMLA") does not constitute a Qualifying Event. A Qualifying Event will occur, however, if an Employee does not return to employment at the end of the FMLA leave and all other COBRA continuation coverage conditions are present. If a Qualifying Event occurs, it occurs on the last day of FMLA leave and the applicable maximum coverage period is measured from this date (unless coverage is lost at a later date and the Plan provides for the extension of the required periods, in which case the maximum coverage date is measured from the date when the coverage is lost.) Note that the covered Employee and family members will be entitled to COBRA continuation coverage even if they failed to pay the employee portion of premiums for coverage under the Plan during the FMLA leave.

**4. What factors should be considered when determining to elect COBRA continuation coverage?**

You should take into account that a failure to continue your group health coverage will affect your rights under federal law. First, you can lose the right to avoid having pre-existing condition exclusions applied by other group health plans if there is more than a 63-day gap in health coverage and election of COBRA continuation coverage may help you avoid such a gap. Second, if you do not elect COBRA continuation coverage and pay the appropriate premiums for the maximum time available to you, you will lose the right to convert to an individual health insurance policy, which does not impose such pre-existing condition exclusions. Finally, you

should take into account that you have special enrollment rights under federal law (HIPAA). You have the right to request special enrollment in another group health plan for which you are otherwise eligible (such as a plan sponsored by your Spouse's employer) within 30 days after Plan coverage ends due to a Qualifying Event listed above. You will also have the same special right at the end of COBRA continuation coverage if you get COBRA continuation coverage for the maximum time available to you.

**5. What is the procedure for obtaining COBRA continuation coverage?**

The Plan has conditioned the availability of COBRA continuation coverage upon the timely election of such coverage. An election is timely if it is made during the election period.

**6. What is the election period and how long must it last?**

The election period is the time period within which the Qualified Beneficiary must elect COBRA continuation coverage under the Plan. The election period must begin not later than the date the Qualified Beneficiary would lose coverage on account of the Qualifying Event and ends 60 days after the later of the date the Qualified Beneficiary would lose coverage on account of the Qualifying Event or the date notice is provided to the Qualified Beneficiary of her or his right to elect COBRA continuation coverage. If coverage is not elected within the 60 day period, all rights to elect COBRA continuation coverage are forfeited.

Note: If a covered Employee who has been terminated or experienced a reduction of hours qualifies for a trade readjustment allowance or alternative trade adjustment assistance under a federal law called the Trade Act of 2002, and the employee and his or her covered dependents have not elected COBRA coverage within the normal election period, a second opportunity to elect COBRA coverage will be made available for themselves and certain family members, but only within a limited period of 60 days or less and only during the six months immediately after their group health plan coverage ended. Any person who qualifies or thinks that he or she and/or his or her family members may qualify for assistance under this special provision should contact the Plan Administrator or its designee for further information.

The Trade Act of 2002 also created a new tax credit for certain TAA-eligible individuals and for certain retired employees who are receiving pension payments from the Pension Benefit Guaranty Corporation (PBGC) (eligible individuals). Under the new tax provisions, eligible individuals can either take a tax credit or get advance payment of 65% of premiums paid for qualified health insurance, including continuation coverage. If you have questions about these new tax provisions, you may call the Health Coverage Tax Credit Consumer Contact Center toll-free at 1-866-628-4282. TTD/TTY callers may call toll-free at 1-866-626-4282. More information about the Trade Act is also available at [www.doleta.gov/tradeact](http://www.doleta.gov/tradeact).

**7. Is a covered Employee or Qualified Beneficiary responsible for informing the Plan Administrator of the occurrence of a Qualifying Event?**

The Plan will offer COBRA continuation coverage to Qualified Beneficiaries only after the Plan Administrator or its designee has been timely notified that a Qualifying Event has occurred. The Employer (if the Employer is not the Plan Administrator) will notify the Plan Administrator or its designee of the Qualifying Event within 30 days following the date coverage ends when the Qualifying Event is:

- (a) the end of employment or reduction of hours of employment,
- (b) death of the employee,



- (c) commencement of a proceeding in bankruptcy with respect to the Employer, or
- (d) enrollment of the employee in any part of Medicare.

**IMPORTANT:**

**For the other Qualifying Events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you or someone on your behalf must notify the Plan Administrator or its designee in writing within 60 days after the Qualifying Event occurs, using the procedures specified below. If these procedures are not followed or if the notice is not provided in writing to the Plan Administrator or its designee during the 60-day notice period, any spouse or dependent child who loses coverage will not be offered the option to elect continuation coverage. You must send this notice to the Plan Administrator or its designee.**

**NOTICE PROCEDURES:**

Any notice that you provide must be ***in writing***. Oral notice, including notice by telephone, is not acceptable. You must mail, fax or hand-deliver your notice to the person, department or firm listed below, at the following address:

City of Gig Harbor  
3510 Grandview ST  
Gig Harbor, Washington 98335

If mailed, your notice must be postmarked no later than the last day of the required notice period. Any notice you provide must state:

- the **name of the plan or plans** under which you lost or are losing coverage,
- the **name and address of the employee** covered under the plan,
- the **name(s) and address(es) of the Qualified Beneficiary(ies)**, and
- the **Qualifying Event** and the **date** it happened.

If the Qualifying Event is a **divorce or legal separation**, your notice must include a **copy of the divorce decree or the legal separation agreement**.

Be aware that there are other notice requirements in other contexts, for example, in order to qualify for a disability extension.

Once the Plan Administrator or its designee receives ***timely notice*** that a Qualifying Event has occurred, COBRA continuation coverage will be offered to each of the qualified beneficiaries. Each Qualified Beneficiary will have an independent right to elect COBRA continuation coverage. Covered employees may elect COBRA continuation coverage for their spouses, and parents may elect COBRA continuation coverage on behalf of their children. For each Qualified Beneficiary who elects COBRA continuation coverage, COBRA continuation coverage will begin on the date that plan coverage would otherwise have been lost. If you or your spouse or dependent children do not elect continuation coverage within the 60-day election period described above, the right to elect continuation coverage will be lost.

**8. Is a waiver before the end of the election period effective to end a Qualified Beneficiary's election rights?**

If, during the election period, a Qualified Beneficiary waives COBRA continuation coverage, the waiver can be revoked at any time before the end of the election period. Revocation of the waiver is an election of COBRA continuation coverage. However, if a waiver is later revoked, coverage need not be provided retroactively (that is, from the date of the loss of coverage until the waiver is revoked). Waivers and revocations of waivers are considered made on the date they are sent to the Plan Administrator or its designee, as applicable.

**9. Is COBRA coverage available if a Qualified Beneficiary has other group health plan coverage or Medicare?**

Qualified Beneficiaries who are entitled to elect COBRA continuation coverage may do so even if they are covered under another group health plan or are entitled to Medicare benefits on or before the date on which COBRA is elected. However, a Qualified Beneficiary's COBRA coverage will terminate automatically if, after electing COBRA, he or she becomes entitled to Medicare or becomes covered under other group health plan coverage (but only after any applicable preexisting condition exclusions of that other plan have been exhausted or satisfied).

**10. When may a Qualified Beneficiary's COBRA continuation coverage be terminated?**

During the election period, a Qualified Beneficiary may waive COBRA continuation coverage. Except for an interruption of coverage in connection with a waiver, COBRA continuation coverage that has been elected for a Qualified Beneficiary must extend for at least the period beginning on the date of the Qualifying Event and ending not before the earliest of the following dates:

- (a) The last day of the applicable maximum coverage period.
- (b) The first day for which Timely Payment is not made to the Plan with respect to the Qualified Beneficiary.
- (c) The date upon which the Employer ceases to provide any group health plan (including a successor plan) to any employee.
- (d) The date, after the date of the election, that the Qualified Beneficiary first becomes covered under any other Plan that does not contain any exclusion or limitation with respect to any pre-existing condition, other than such an exclusion or limitation that does not apply to, or is satisfied by, the Qualified Beneficiary.
- (e) The date, after the date of the election, that the Qualified Beneficiary first enrolls in the Medicare program (either part A or part B, whichever occurs earlier).
- (f) In the case of a Qualified Beneficiary entitled to a disability extension, the later of:
  - (1) (i) 29 months after the date of the Qualifying Event, or (ii) the first day of the month that is more than 30 days after the date of a final determination under Title II or XVI of the Social Security Act that the disabled Qualified Beneficiary whose disability resulted in the Qualified Beneficiary's entitlement to the disability extension is no longer disabled, whichever is earlier; or

- (2) the end of the maximum coverage period that applies to the Qualified Beneficiary without regard to the disability extension.

The Plan can terminate for cause the coverage of a Qualified Beneficiary on the same basis that the Plan terminates for cause the coverage of similarly situated non-COBRA beneficiaries, for example, for the submission of a fraudulent claim.

In the case of an individual who is not a Qualified Beneficiary and who is receiving coverage under the Plan solely because of the individual's relationship to a Qualified Beneficiary, if the Plan's obligation to make COBRA continuation coverage available to the Qualified Beneficiary ceases, the Plan is not obligated to make coverage available to the individual who is not a Qualified Beneficiary.

**11. What are the maximum coverage periods for COBRA continuation coverage?**

The maximum coverage periods are based on the type of the Qualifying Event and the status of the Qualified Beneficiary, as shown below.

- (a) In the case of a Qualifying Event that is a termination of employment or reduction of hours of employment, the maximum coverage period ends 18 months after the Qualifying Event if there is not a disability extension and 29 months after the Qualifying Event if there is a disability extension.

- (b) In the case of a covered Employee's enrollment in the Medicare program before experiencing a Qualifying Event that is a termination of employment or reduction of hours of employment, the maximum coverage period for Qualified Beneficiaries other than the covered Employee ends on the later of:

- (1) 36 months after the date the covered Employee becomes enrolled in the Medicare program; or

- (2) 18 months (or 29 months, if there is a disability extension) after the date of the covered Employee's termination of employment or reduction of hours of employment.

- (c) In the case of a Qualified Beneficiary who is a child born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage, the maximum coverage period is the maximum coverage period applicable to the Qualifying Event giving rise to the period of COBRA continuation coverage during which the child was born or placed for adoption.

- (d) In the case of any other Qualifying Event than that described above, the maximum coverage period ends 36 months after the Qualifying Event.

**12. Under what circumstances can the maximum coverage period be expanded?**

If a Qualifying Event that gives rise to an 18-month or 29-month maximum coverage period is followed, within that 18- or 29-month period, by a second Qualifying Event that gives rise to a 36-months maximum coverage period, the original period is expanded to 36 months, but only for individuals who are Qualified Beneficiaries at the time of and with respect to both Qualifying Events. In no circumstance can the COBRA maximum coverage period be expanded to more than 36 months after the date of the first Qualifying Event. The Plan Administrator must be notified of the second qualifying event within 60 days of the second qualifying event. This

notice must be sent to the Plan Administrator or its designee in accordance with the procedures above.

**13. How does a Qualified Beneficiary become entitled to a disability extension?**

A disability extension will be granted if an individual (whether or not the covered Employee) who is a Qualified Beneficiary in connection with the Qualifying Event that is a termination or reduction of hours of a covered Employee's employment, is determined under Title II or XVI of the Social Security Act to have been disabled at any time during the first 60 days of COBRA continuation coverage. To qualify for the disability extension, the Qualified Beneficiary must also provide the Plan Administrator with notice of the disability determination on a date that is both within 60 days after the date of the determination and before the end of the original 18-month maximum coverage. This notice must be sent to the Plan Administrator or its designee in accordance with the procedures above.

**14. Does the Plan require payment for COBRA continuation coverage?**

For any period of COBRA continuation coverage under the Plan, Qualified Beneficiaries who elect COBRA continuation coverage may be required to pay up to 102% of the applicable premium and up to 150% of the applicable premium for any expanded period of COBRA continuation coverage covering a disabled Qualified Beneficiary due to a disability extension. Your Plan Administrator will inform you of the cost. The Plan will terminate a Qualified Beneficiary's COBRA continuation coverage as of the first day of any period for which timely payment is not made.

**15. Must the Plan allow payment for COBRA continuation coverage to be made in monthly installments?**

Yes. The Plan is also permitted to allow for payment at other intervals.

**16. What is Timely Payment for COBRA continuation coverage?**

Timely Payment means a payment made no later than 30 days after the first day of the coverage period. Payment that is made to the Plan by a later date is also considered Timely Payment if either under the terms of the Plan, covered Employees or Qualified Beneficiaries are allowed until that later date to pay for their coverage for the period or under the terms of an arrangement between the Employer and the entity that provides Plan benefits on the Employer's behalf, the Employer is allowed until that later date to pay for coverage of similarly situated non-COBRA beneficiaries for the period.

Notwithstanding the above paragraph, the Plan does not require payment for any period of COBRA continuation coverage for a Qualified Beneficiary earlier than 45 days after the date on which the election of COBRA continuation coverage is made for that Qualified Beneficiary. Payment is considered made on the date on which it is postmarked to the Plan.

If Timely Payment is made to the Plan in an amount that is not significantly less than the amount the Plan requires to be paid for a period of coverage, then the amount paid will be deemed to satisfy the Plan's requirement for the amount to be paid, unless the Plan notifies the Qualified Beneficiary of the amount of the deficiency and grants a reasonable period of time for payment of the deficiency to be made. A "reasonable period of time" is 30 days after the notice is provided. A shortfall in a Timely Payment is not significant if it is no greater than the lesser of \$50 or 10% of the required amount.

**17. Must a Qualified Beneficiary be given the right to enroll in a conversion health plan at the end of the maximum coverage period for COBRA continuation coverage?**

If a Qualified Beneficiary's COBRA continuation coverage under a group health plan ends as a result of the expiration of the applicable maximum coverage period, the Plan will, during the 180-day period that ends on that expiration date, provide the Qualified Beneficiary with the option of enrolling under a conversion health plan if such an option is otherwise generally available to similarly situated non-COBRA beneficiaries under the Plan. If such a conversion option is not otherwise generally available, it need not be made available to Qualified Beneficiaries.

**18. How is my participation in the Health Flexible Spending Account affected?**

You can elect to continue your participation in the Health Flexible Spending Account for the remainder of the Plan Year, subject to the following conditions. You may only continue to participate in the Health Flexible Spending Account if you have elected to contribute more money than you have taken out in claims. For example, if you elected to contribute an annual amount of \$500 and, at the time you terminate employment, you have contributed \$300 but only claimed \$150, you may elect to continue coverage under the Health Flexible Spending Account. If you elect to continue coverage, then you would be able to continue to receive your health reimbursements up to the \$500. However, you must continue to pay for the coverage, just as the money has been taken out of your paycheck, but on an after-tax basis. The Plan can also charge you an extra amount (as explained above for other health benefits) to provide this benefit.

**IF YOU HAVE QUESTIONS**

If you have questions about your COBRA continuation coverage, you should contact the Plan Administrator or its designee. For more information about your rights under ERISA, including COBRA, the Health Insurance Portability and Accountability Act (HIPAA), and other laws affecting group health plans, contact the nearest Regional or District Office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA). Addresses and phone numbers of Regional and District EBSA Offices are available through EBSA's website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

**KEEP YOUR PLAN ADMINISTRATOR INFORMED OF ADDRESS CHANGES**

In order to protect your family's rights, you should keep the Plan Administrator informed of any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator or its designee.

**XI  
SUMMARY**

The money you earn is important to you and your family. You need it to pay your bills, enjoy recreational activities and save for the future. Our flexible benefits plan will help you keep more of the money you earn by lowering the amount of taxes you pay. The Plan is the result of our continuing efforts to find ways to help you get the most for your earnings.

If you have any questions, please contact the Administrator.



**Subject: BB16 Mitigation Improvements**  
Project Consultant Services Contract  
-- Construction Survey and Professional  
Technical Support Services

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

**Dept. Origin:** Engineering Division

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

**For Agenda of:** June 8, 2009

**Exhibits:** Consultant Services Contract  
Exhibit A Scope of Services  
Exhibit B Schedule of Rates  
Exhibit C HWA Cost Estimate

	Initial & Date
<b>Concurred by Mayor:</b>	<u><i>CLH June 3/09</i></u>
<b>Approved by City Administrator:</b>	<u><i>POK</i></u>
<b>Approved as to form by City Atty:</b>	<u><i>approved by email</i></u>
<b>Approved by Finance Director:</b>	<u><i>OP 4/3</i></u>
<b>Approved by Department Head:</b>	<u><i>SM</i></u>

Expenditure	Amount	Appropriation
Required \$554,518.00	Budgeted \$ 7,500,000	Required \$ 0

**INFORMATION / BACKGROUND**

This contract provides for construction survey and professional technical support services to be provided by David Evans and Associates, Inc. for the BB16 Mitigation Improvements Project (CSP-0823). This contract includes a \$35,000 contingency amount for unanticipated work tasks to be used only at the direction of the City. Please see the attached scope of services and fee schedule for further detailed description of work involved in its entirety provided by David Evans and Associates.

**FISCAL CONSIDERATION**

As anticipated in the 2009 Budget, funding for these services will be provided by Franciscan Health System as required by separate agreement. Franciscan Health System has been made aware of the need for this work.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor to execute the Consultant Services Contract for David Evans and Associates, Inc. for the Construction Survey and Professional Technical Support Services for the BB16 Mitigation Improvements Project (CSP-0823) in the not to exceed amount of (\$554,518.00).

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

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

**RECITALS**

WHEREAS, the City is presently engaged in construction surveying and technical support services for the BB16 Interchange Improvements Project and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated May 2009, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

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

**TERMS**

**I. Description of Work**

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

**II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Five Hundred Fifty-Four Thousand, Five Hundred Eighteen Dollars and Zero Cents (\$554,518.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B and Exhibit C** or bill at rates in excess of the hourly rates shown in **Exhibit B and Exhibit C**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

### III. Relationship of Parties

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

### IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by August 31, 2010; provided however, that additional time shall be granted by the City for excusable days or extra work.

### V. Termination

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



B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

## VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

## VII. Indemnification

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

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

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

WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

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

### VIII. Insurance

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

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

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

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

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

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

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

### **IX. Exchange of Information**

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

### **X. Ownership and Use of Records and Documents**

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

### **XI. City's Right of Inspection**

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

### **XII. Consultant to Maintain Records to Support Independent Contractor Status**

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of

Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

### **XIII. Work Performed at the Consultant's Risk**

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

### **XIV. Non-Waiver of Breach**

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

### **XV. Resolution of Disputes and Governing Law**

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

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Director of Operations determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

### **XVI. Written Notice**

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary.

Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT: DAVID EVANS & ASSOCIATES, INC.	City of Gig Harbor
ATTN: Randy Anderson	ATTN: Stephen Misiurak, P.E
3700 Pacific Highway East, Suite 311	City Engineer
Tacoma, WA 98424	3510 Grandview Street
(253) 922-9780	Gig Harbor, WA 98335
	(253) 851-6170

### **XVII. Assignment**

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

### **XVIII. Modification**

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

### **XIX. Entire Agreement**

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CONSULTANT  
By: Michael Walsh  
Its Principal

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

REVIEWED BY: Jack H.  
ASSOCIATE

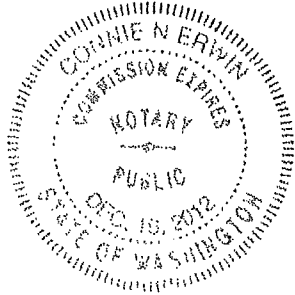
APPROVED AS TO FORM:  
\_\_\_\_\_  
City Attorney

ATTEST:  
\_\_\_\_\_  
City Clerk

STATE OF WASHINGTON )  
 )  
COUNTY OF King ) ss.

I certify that I know or have satisfactory evidence that Michael Clark is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Vice President/Sign of David Evans & Associates, Inc to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 6-3-09



Connie N. Erwin

Connie N Erwin  
(print or type name)

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

415 118<sup>th</sup> Ave S.E Bellevue WA

My Commission expires: 12-16-2012

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF PIERCE         )

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

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

\_\_\_\_\_

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

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



**CITY OF GIG HARBOR**

**EXHIBIT A**

**SCOPE OF SERVICES**

for

**CONSTRUCTION SURVEY AND PROFESSIONAL SUPPORT SERVICES**

for

**SR 16/BURNHAM DRIVE NW**

**INTRODUCTION**

David Evans and Associates, Inc. (DEA) will provide construction survey and professional support services for the construction of the SR 16/Burnham Drive NW project under the direction of the City of Gig Harbor (City) and as described in this Scope of Services. This project involves improvement work on the SR 16/Burnham Drive NW interchange including the four existing on-off ramps to the interchange.

DEA understands that the City will enter into an agreement with the Washington State Department of Transportation (WSDOT) to provide construction administration and management, inspection and materials testing and related work for this project. This agreement is strictly between the City and WSDOT and creates no legal relationship between DEA and WSDOT. This agreement will limit DEA's involvement and responsibilities in the project to the tasks specifically noted in this scope of services document.

DEA will work directly for the City as a retained consultant for this project. All DEA communications, directions, meetings, or correspondence will be solely from and with the City. The commonality between DEA, the City, and WSDOT will be the successful development of this project.

DEA will not be responsible for decisions made or actions taken by WSDOT including but not limited to approvals, change orders, progress payments, commitments to permitting agencies or utility companies, project scheduling or work procedures.

General work tasks provided by DEA will include pre-bid construction support, interpretation of information in the approved project plans, assisting the City with Requests for Information (RFI's), construction surveying, providing wetlands and stream relocation inspection services, wetland monitoring for a one-year period and related technical support and acting as the City's advocate in the development of this project.

***Construction Elements, Duration, and Staging***

Work to be completed as part of this project consists of widening of four existing interchange ramps, two existing ramp terminus roundabouts, and their adjoining roadways; construction of new sidewalks, curb and gutter, concrete barrier, and guardrail; six structural earth walls and two cantilevered soldier pile retaining walls; installation of storm drainage pipes, structures, and a stormwater detention and wetland pond; illumination systems; modifications to an existing ITS system; striping; paving, permanent signing; traffic control; removal of an existing stream culvert and stream restoration; wetland mitigation and restoration, grading and plantings; temporary erosion and sediment control measures and other related work.

It is anticipated that the City will build the project in 2009 and 2010 and the anticipated construction work will be done in 220 working days. Survey and engineering work may be required in off hours as needed by the contractor.

As identified in the Plans and Specifications, the project is proposed to be constructed in five (5) separate construction stages for both the west and east sides of the interchange. This approach to construction sequencing was developed in order to simultaneously accommodate construction activities and the continuous movement of public traffic through the interchange. The constrained project site conditions require the Contractor to work on one side of a ramp or roundabout and complete these construction activities behind temporary concrete barriers before being approved to work on another area of the interchange. Construction activities at the west and east sides of the interchange can be done relatively independent of each other.

The construction survey and professional support services will work in concert with the project's requirement to have the interchange improvements constructed in five (5) separate construction stages. Survey crews will provide support to the City and Contractor on an on-call basis and it is anticipated that the survey requests will be made at different times for each of the five (5) separate construction stages. Professional support services will be provided for each of the five (5) separate construction stage over the course of the 220 working days afforded the Contractor.

***Environmental Considerations***

The conditions of the state and federal permits obtained for this project must be followed during and after the development of the wetland mitigation site and stream relocation work. Wetland monitoring for a one-year period is included in this scope of work. The City is aware and understands that wetland monitoring will be required for a 10-year period for this project and the City will address those long term monitoring requirements for years 2 through 9 in the future. This effort is not included in this scope of services.

At the request of the City wetland monitoring and reporting work from a prior related project, Canterwood Boulevard NW, will be carried over and completed as a part of this project. Carry over work will be referred to as Phase 1 work in this scope of services.

***General Considerations***

DEA will perform its services for the work described in this scope of services following the degree of care and skill ordinarily established by professional consultants and following the standards of the industry.

The City understands and agrees that the amount of effort expended by DEA for the fulfillment of work established in this scope of services and the number of hours used for this project is highly dependent on the actions and capabilities of the contractor that the City selects for this project. It is understood that DEA has no control over the selection of the contractor that will work on this project. The costs and number of hours shown in Exhibit B are based on the selection of a contractor that works in general conformance with industry standards. Inordinate requests for information, filing numerous or onerous claims, review and re-review of work more than once and related actions will increase the time needed by DEA to bring the contract to a successful conclusion. The City and DEA agree that work on all tasks will be limited to the hours shown on exhibit B. Once the hours are expended DEA's work effort will stop unless the City authorizes supplemental funding through contingency approval or supplement. The City and DEA also agree that estimated subtask hours noted in exhibit B may be shifted to another subtask within the major task as determined by DEA. Total task budget will not be exceeded without City approval. Monthly invoices will be itemized by major task only.

**TASK 1 PROJECT MANAGEMENT**

DEA will:

- Attend one startup meeting with the City and WSDOT staff to review the project, establish lines of communication between DEA, WSDOT and the City, and establish an organizational structure for DEA construction survey and professional services support;
- Provide professional engineering and surveying management and support throughout the duration of the project and limited to the hours shown in the attached Exhibit B;
- Attend site meetings (every other week average) upon request of the City. DEA will not be expected to attend weekly construction meetings (estimate a total of 12 meetings);
- Provide project administrative services to include invoicing, project record management, and project archiving. DEA will prepare and submit monthly invoices to the City. The invoices will include a summary of the hours of worked during the billing period. It will include the individuals who worked on the project and the hours they spent on the project. The invoices will show labor and expenses correlated to the task numbers included herein;
- Provide design consistency through the construction phase of the project which includes engineering services from the design team to provide additional information or clarifications as warranted. The estimated weekly effort from the design team includes on-call time from the senior professional engineer (6 hours), design engineer (3 hours), and CADD technician (1.5 hours) over the course of an approximate 44 week construction period;
- Provide QA/QC review throughout the construction phase of the project and professional project oversight; and
- Provide subconsultant coordination and management.

**TASK 2 PROFESSIONAL ENGINEERING SERVICES**

As requested by the City, DEA will provide professional engineering services through the duration of the construction project. This work may include providing additional engineering information for the developed plans or specifications, providing draft response information for contractor submitted requests for information (RFI's) and similar information when requested by the City or WSDOT.

The contractor will submit engineering drawings and calculations to the City for approval for retaining walls and possibly for de-watering plans. DEA will review submittals for up to three types of retaining walls, displacement rammed aggregate piers and similar work for conformance to industry standards and report its findings to the City. Review work will consist of an initial review and one re-review by DEA. DEA understands that all walls will follow WSDOT standards for wall design. DEA will rely on professional engineering geotechnical information that will be provided by the contractor's retained engineer who prepared the engineering drawings.

The City and DEA agree that work on this task will be limited to the hours shown in Exhibit B and will not be exceeded by DEA. Once the hours are expended on this task work efforts will stop unless the City authorizes supplemental funding.

DEA will, at the request of the City or WSDOT:

- Provide pre-bid engineering support for this project;
- Attend one pre-construction conference with the City, WSDOT, and the contractor;
- Review up to eight change orders that may be forwarded to the City from WSDOT or the contractor;
- Provide claims support to the City on an on-call basis but limited to the hours shown in Exhibit B;
- Review shop drawings for six structural earth walls to include one re-review each;
- Review shop drawing for two soldier pile walls to include one re-review each;
- Review cable fence and Bridge Pedestrian Railing Type 10-Inch BP;
- Review a work plan for approximately 400 displacement rammed aggregate piers and one re-review;
- Review up to two de-watering plans that may be submitted to the City by the contractor;
- Review a maximum of ten RFI's (one review and one re-review each);
- Review a maximum of eight plan changes (one review and one re-review each); and
- Review a stream diversion and de-watering plan.

**TASK 3 CONSTRUCTION SURVEYING**

DEA will provide construction surveying for the project. All requests for construction survey work will be presented to DEA through the City or with the City's approval through WSDOT's construction manager not less than three (3) business days before staking of the requested item is required. DEA will set sufficient construction stakes, offset stakes, or hubs for the work but this will not relieve the contractor from needing his/her own competent and experienced staking laborer. The contractor shall be fully responsible for all data, dimensions, elevations, and data measured or taken from the provided stakes or hubs.

DEA will develop a traffic control plan for its own survey work and will provide traffic control labor as necessary for its survey work. Traffic control will be done as a subcontracted service to DEA and will be performed by a person with a valid Washington flagging card.

DEA understands that survey construction work may be needed after regular working hours or on weekends. Additional hours are included in Exhibit B to accommodate after hours survey work or work on weekends for this project and are shown in Exhibit B as "Extra/Overtime survey hours."

DEA will:

- Meet with the City, WSDOT and contractor one time to establish lines of communication and understand the contractor's work schedule and proposed method of operation;
- Set and maintain horizontal and vertical control points throughout the project area as needed to perform DEA's work. DEA will establish up to four benchmarks throughout the project in locations specified by WSDOT or the contractor;
- Stake clearing and grubbing limits with hub and lath at approximate 100-foot intervals (inter-visible), or closer as needed at angle points;
- Stake TESC facilities to include silt fencing and TESC appurtenances;
- Stake site preparation plan work to include saw cutting and removal work;
- Stake SE wall C-2;
- Stake SE wall CR-1;
- Stake SE wall B-1;
- Stake SE wall BR-1;
- Stake SE wall A-1;
- Stake SE wall BL-2;
- Stake soldier pile wall B-1;
- Stake soldier pile wall BL-2;
- Stake grid for approximately 400 displacement rammed aggregate piers;
- Stake sub-grade "yellow tops" (or offset grade stakes) at 50-foot stations including high and low points, and beginning and ends of curves. Cuts or fills will be marked to sub-grade elevation at centerline road and cut sheets will be provided;
- Stake gravel base "blue tops" at 50-foot stations including high and low points, and beginning and ends of curves. Cuts or fills will be marked to gravel base elevation at centerline road and cut sheets will be provided;

- Stake HMA “red tops” at 50-foot stations including high and low points, and beginning and ends of curves. Cuts or fills will be marked to finish grade elevation at centerline road and cut sheets will be provided;
- Stake 8 traffic islands, 2 traffic circles and 11 sidewalk ramps;
- Stake approximately 2400 lineal feet of storm drainage system and 65 structures with stakes at each catch basin or structure;
- Stake the stormwater treatment wetland/detention pond;
- Stake the finished grade for curb and gutter, driveways and sidewalks. Cut sheets will be provided to identify the cut or fill to finished grade at the top back of curb;
- Stake/mark out the project’s striping plan and channelization;
- Stake the project’s illumination system;
- Stake the project’s sign plan;
- Stake the temporary construction Class ‘A’ sign plan;
- Stake the project’s wetland mitigation and stream reconstruction work;
- Stake road centerline monuments; DEA will stake the road centerline monuments with a nail set in the asphalt at the monument location and four additional reference marks set at a 2-foot offset position. After the actual monument has been set in place by others, DEA will mark the actual point on the monument;
- Provide survey information for “record drawings”
- Work after hours or on weekends as Extra/Overtime survey hours;
- Prepare a traffic control plan for WSDOT review and approval for survey work that will be done in WSDOT R/W;
- Comply with DNR’s monument destruction and relocation requirements for all existing monuments which will include completion of the required DNR monument destruction form prior to monument destruction by the Contractor, and;
- Prepare “as-built” plans of the wetland mitigation sites 1, 2, and 3.

Conditions of construction staking work:

- Additional work, not included in this construction surveying task, which is requested and performed will be done on a time and expense basis and will be considered extra work and done only at the direction of the City;
- All construction staking will be done on a one-time basis only. Re-staking work will be done on a time and expense basis and will be considered extra work and will be done at the direction of the City;
- Working days for the Contractor as identified the Contract Specifications include Monday through Saturday, therefore the estimate includes 175 hours for staking services on an overtime basis;
- Wetland survey work does not include the staking of individual wetland plants or plantings;
- Survey work will not be done for private utility companies; and
- No property survey work or staking of right-of-way lines will be done that will require the filing of a Record of Survey.

**TASK 4 WETLAND AND STREAM RELOCATION INSPECTION AND  
PHASE 1 CARRYOVER WORK**

DEA will inspect the contractor's work for conformance with the requirements of the project plans and approved permits. DEA will make site visits to observe and document contractor activities as related to wildlife issues, submittals for sizes and condition of plant materials, soil amendments, review planting locations, slopes and elevations, and observation of construction techniques.

DEA will maintain a written record of the work observed that involves permit conditions including filed notations of any changes to the approved plans. DEA will assist with fish removal work to accommodate in-stream work needed for the project.

The City is required to provide the U.S. Army Corps of Engineers (Corps) with an annual mitigation status report, including as-built drawings, no later than 13 months from the date of permit issuance, which was August 4, 2008 so reports are due no later than September 4, 2009. Although annual status reports on mitigation construction are required until mitigation construction is complete this scope of services provides only for the first year report. Reports for sites 1, 2 and 3 will be combined when possible. This task includes one agency visit after reports are submitted.

DEA will prepare the Year 1 Mitigation Monitoring Reports for Sites 1 through 3 per Corp standards as outlined in *Mitigation Monitoring Report Format* dated August 3, 2006. The mitigation reports will document both wetland and stream performance standards as outlined in the Corps permit. DEA will combine, as feasible, the mitigation monitoring reports. This task does not include a separate one-year warranty inspection letter but that information will be included in the Mitigation Monitoring Reports. The data collected during the site inspection period will be documented in the Year 1 Mitigation Report per the Performance Standards within the JARPA exhibits, Mitigation Report requirements (DEA, 2008), and Corps reporting requirements.

In accordance with Exhibit 6 of the project's JARPA permit package work will be done at the following three sites:

Site 1 (Phase 1 carryover work): Wetland creation area located east of Burnham Drive NW and south of Borgen Boulevard NW, completed during February 2009.

Site 2 (Phase 2 new work): Wetland restoration site that includes removing fill and a culvert along an abandoned road, and planting 161 conifers along McCormick Creek, located west of Burnham Drive NW within Wetland 1. Construction is proposed to occur during the 2009 in-water work window (July 15 through September 15).

Site 3 (Phase 1 carryover work): One new culvert crossing, fishway, stream channel, and restoration of temporary wetland impacts associated with widening of Canterwood Boulevard NW. Construction occurred during the 2008 in-water work window, but due to a loss of bedload within the culvert and fishway, these areas will be rebuilt during the 2009 in-water work window.

For this project task, DEA will:

- Prepare an annual mitigation status report for Site 1;
- Prepare an annual mitigation status report for Site 2;
- Prepare an annual mitigation status report for Site 3;
- Provide field construction and implementation assistance and fish salvage work for Sites 2 and 3;
- Prepare a mitigation monitoring report for Site 1;
- Prepare a mitigation monitoring report for Site 2; and
- Prepare a mitigation monitoring report for Site 3.

#### **TASK 5 GEOTECHNICAL SERVICES**

DEA will retain the services of a geotechnical subconsultant, HWA GeoSciences Inc. (HWA), to assist with construction engineering work on this project. Geotechnical assistance may include soils review work, retaining wall structure construction work, water table monitoring and de-watering work, and other work when deemed necessary by DEA or the CITY. HWA will also provide assistance to the City with preparing specific design services required for WSDOT approval to address retaining wall constructability issues.

HWA will review contractor submittals and requests for information (RFI), attend relevant preconstruction conferences and construction meetings, and provide full time construction inspection during the installation of the proposed displacement rammed aggregate piers (D-RAP's) and soldier pile walls. Specific geotechnical construction services are described as follows:

HWA will review contractor submittals and requests for information (RFI) for each of the relevant geotechnical design aspects of the project including:

- A. Structural earth wall (SEW) design for Walls A-1, A-2, BL-2, BR-1/B-1 and CR-1/C-2,
- B. D-RAP installation for Walls BR-1/B-1 and CR-1/C-2, and
- C. Soldier pile wall construction of Walls A-2 and B-1.

HWA will attend a preconstruction conference to discuss construction procedures for installation of the displacement rammed aggregate piers (D-RAP's) to be installed per the plans at Wall BR-1 from STA 3+75 to 6+13, Wall B-1 from STA 3+88 to 4+80, Wall CR-1 from STA 1+00 to 1+80 and Wall C-2 from STA 1+00 to 1+75. Both the undersigned HWA Project Manager and Project Engineer will attend this meeting.

HWA will provide daily full time inspection during D-RAP installation, performed by our Project Engineer. On site HWA will monitor volume of stone replaced and determine the average diameter of each D-RAP, confirm that each D-RAP is located as shown on the Plans,



and monitor that each D-RAP is installed to the proper depth. If obstructions are encountered, HWA will evaluate the methods for removal and determine the appropriate course of action.

HWA's estimated time spent on the project includes on-site monitoring as well as writing daily field reports. Field time required is based on an average production rate of approximately 250 lineal feet of D-RAP's installed per day with a total of approximately 6200 lineal feet of D-RAP's.

The HWA Project Manager will assist the Project Engineer with decisions concerning D-RAP installation during construction, and review the daily field reports before they are finalized. This time includes one full day site visit.

HWA will attend a preconstruction conference to discuss procedures for installation of the soldier pile fill retaining at Wall B-1 between STA 1+00 and 3+88. Both the undersigned Project Manager and Project Engineer will attend this meeting.

HWA will provide full time inspection during construction of Soldier Pile Fill Wall B-1 STA 2+50 to 3+88. The inspection will include:

Inspection of Wall B-1 2+50 to 3+88 Shaft Excavations: HWA will provide daily full time inspection, performed by our Project Engineer during construction of the soldier pile fill wall. HWA will verify subgrade conditions at the bottom of each shaft excavation before placement of concrete and steel. HWA estimates completion of approximately three shafts per day, with total of eleven hours per day for inspection, as detailed in Task 3.

Inspection of CDF Fill for Wall B-1 2+50 to 3+88: HWA will be on-site to monitor placement of controlled density fill (CDF) behind the soldier pile wall from STA 2+50 to 3+88. HWA's estimate of the time required is based on a production rate of one lift per day for four days, for a total of four lifts. HWA's estimate includes hours to be on-site and to prepare daily field reports. HWA has included time for our Project Manager to visit the site during CDF placement.

HWA will provide inspection, performed by the Project Engineer during construction of the soldier pile shafts for Wall B-1 from STA 1+00 to 2+50. HWA will verify subgrade conditions at the bottom of each shaft excavation before placement of concrete and steel. HWA estimates completion of approximately three shafts per day, with total of eleven hours per day for inspection, as detailed in Task 3.

HWA will provide inspection, performed by the Project Engineer during construction of the soldier pile shafts for Wall A-2 from STA 2+10 to 3+54. HWA will verify subgrade conditions at the bottom of each shaft excavation before placement of concrete and steel. HWA estimates completion of approximately three shafts per day, with total of eleven hours per day for inspection, as detailed in Task 3.

At the conclusion of the project, HWA will provide a brief report summarizing our observations during construction for each of the portions of the project which HWA observed. HWA will also provide project management for the geotechnical construction services tasks.

**TASK 6 PROJECT CLOSE OUT**

DEA will assist the City with completing work tasks that need to be done to finalize the project. These work tasks will include a review of all contractor obligations and contractor warranties for work, equipment and plantings, resolution of working day issues, resolution of claims for extra, finalization of all permitting obligations and meetings if necessary with permitting agencies, assisting the City with claims from the traveling public if applicable, assisting the City with finalization of the project's final "punch list", assisting the City with possible Labor and Industry issues and other issues on which the City may request assistance.

Some of these issues may not arise at project close out and will not be needed or work on some of them could be extensive. Therefore the City and DEA agree that work on this task and sub-tasks will be limited to the hours shown in Exhibit B and will not be exceeded by DEA. Once the hours are expended on this task work efforts will stop unless the City authorizes supplemental funding.

For this project task, DEA will:

- Review with the City all contractor obligations and warranties due the City;
- Assist the City with resolving working days issues if needed;
- Assist the City with resolving claims for extra work;
- Assist the City with finalization of permitting conditions including meeting with staff from the permitting agencies if necessary;
- Assist the City with claims from the traveling public resulting from the work on the project;
- Assist the City with finalization and completion of final "punch list" items of work;
- Assist the City with possible Labor and Industry issues; and
- Assist the City with other issues as requested by the City.

**CONTINGENCIES**

A contingency amount has been included for unanticipated work tasks. This fund will only be used at the direction of the City.

At the City's request, DEA may provide the City with supplemental engineering, environmental, and related services on an on-call basis. Biological support may include meetings with Washington Department of Fish and Wildlife (WDFW), Corps of Engineer (COE) staff or other agency staff members to resolve issues or clarify design plans or intents. Work on this task will be done at the verbal request of, or through written or electronic communications with the City. If authorized to conduct the work, this time will be tracked by DEA on daily time sheets and shown as a separate subtask charge code on the monthly invoices submitted to the City.

## EXCLUSIONS, CONDITIONS, AND WORK ASSUMPTIONS

DEA has prepared this scope of services and related cost spreadsheet with the assumption that a reasonable, competent, and responsive contractor and construction manager are selected by the City for the project. DEA assumes that the City, WSDOT, DEA, and the contractor will work under normal project conditions and environment and DEA agrees to work professionally to enhance this condition. DEA does not anticipate a hostile contractor work environment, excessive inquiries by the contractor, excessive claims or complaints by the contractor, or the need to provide direction to the contractor or WSDOT to perform work tasks that are the contractor's or WSDOT's responsibility.

DEA understands that WSDOT will provide construction supervision administrations, inspection, materials acceptance and testing and overall construction management of this project for the City.

DEA shall not be responsible for materials inspections, construction means, methods, techniques, sequences or procedures, review of falsework or formwork plans, mix designs, construction submittals or safety precautions and programs in connection with the contractor's work, except as otherwise provided in this scope of services. DEA shall not be responsible for the contractor's failure to carry out the work in accordance with the contract documents. DEA understands that the City will provide construction management through a separate representative. DEA will not perform work or be responsible for work that is typically related to construction management.

The following work tasks are not included in this scope of services:

- Overall construction management and administration;
- Materials inspections and testing;
- Negotiations with impacted utilities;
- Attendance at public meetings or hearing;
- Negotiations with adjacent property owners;
- Survey work for the contractor's traffic control plan;
- Surveying of property lines or right-of-way lines setting or re-setting of property corners, or performing survey work that would require the filing of a Record of Survey; and
- DEA will do the survey work for the "as-constructed" drawings and will supply that information to WSDOT who will compile and finalize these documents and submit them to the City.

**PROJECT COMPLETION**

DEA will begin work immediately upon receiving a written notice to proceed from the City and will continue until the project is completed by the contractor. It is anticipated that the project will start in mid-2009 and will be completed by mid-2010.

**EXPENSES**

Reimbursable expenses will include:

- A substantial amount of work will be done under traffic conditions and in WSDOT right-of-way. DEA will be required to comply with a WSDOT approved traffic control plan and may require independent traffic control labor while working in WSDOT right-of-way;
- Fees for reprographics services, postage and express delivery when necessary;
- Mileage and travel expenses.

CITY OF GIG HARBOR  
 SR 16/BURNHAM DRIVE NW  
 CONSTRUCTION ADMINISTRATION SERVICES

EXHIBIT B

SCHEDULE OF RATES AND ESTIMATED HOURS

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
	WBS CODE NUMBER	Engineering Manager Structural Engineer	Project Manager Survey Manager	Senior Professional Engineer	Design Engineer	CADD Technician	Project Surveyor	Survey Technician	2-Person Crew	Executive Administrator Sr. Graphics Specialists	Administrative Assistant	Senior Scientist	Senior Landscape Architect	Task Labor Costs	Task Expenses
1															
2	DAVID EVANS AND ASSOCIATES, INC														
3	3700 PACIFIC AVENUE EAST, SUITE 311														
4	TACOMA, WA. 98424														
5		M. Clark	R. Anderson	K. Harris	V. Vaskellis	O. Ahrensfield	M. Christman	A. Dreller		G. Williams	J. Martinez	S. Swarts	J. Gage		
6		D. Benson	A. Tebaldi												
7		J. Menard	S. Douihett												
8	Estimate based on 220 working days														
9															
10	<b>TASK 1--PROJECT MANAGEMENT</b>														
11	Attend one startup meeting with the City and WSDOT (2 persons)		6												\$ 1,200.00
12	Provide professional engineering and surveying management and support		104												\$ 20,800.00
13	Prepare for and attend site meetings (every other week average) upon invite only by City		44												\$ 8,800.00
14	Provide project administrative services, filing, archiving, invoicing and related		12							22	44				\$ 7,548.00
15	Provide design consistency through the construction phase of the project			264	132	66									\$ 67,320.00
16	Provide QA/QC for project and professional project oversight	16													\$ 3,840.00
17	Provide subconsultant coordination and management		12												\$ 2,400.00
18															\$ -
19															\$ -
20	<b>Total</b>	16	178	264	132	66	0	0	0	22	44	0	0		\$ 111,908.00
21															
22	<b>TASK 2--PROFESSIONAL ENGINEERING SERVICES</b>														
23	Provide pre-bid engineering support		8	8							2				\$ 3,102.00
24	Attend one pre-construction conference with City, WSDOT, and contractor		4	4							2				\$ 1,622.00
25	Review up to eight change orders forwarded to the City from WSDOT or the contractor	4		8							1				\$ 2,391.00
26	Provide claims support to the City on an on-call basis (minimal estimated hours only)		32								2				\$ 6,542.00
27	Review shop drawings for six structural earth walls (one review and one re-review)	24	24												\$ 10,702.00
28	Review shop drawings for two soldier pile walls and precast fascia panels (one review and one re-review)	8	8												\$ 3,620.00
29	Review cable fence and bridge pedestrian railing Type 10 BP	4									1				\$ 960.00
30	Review a work plan for approximately 400 displacement rammed aggregate piers and one re-review		8												\$ 1,671.00
31	Review up to 2 de-watering plans		4								1				\$ 800.00
32	Review a maximum of 10 RFI's (one review and one re-review each)		4	20							1				\$ 4,271.00
33	Review a maximum of eight plan changes (one review and one re-review each)	4	4	16							1	4			\$ 4,551.00
34	Review a stream diversion and de-watering plan		4												\$ 1,315.00
35															\$ -
36															\$ -
37	<b>Total</b>	44	100	56	0	0	0	0	0	0	13	4	0		\$ 41,447.00
38															
39	<b>TASK 3--CONSTRUCTION SURVEYING</b>														
40	Meet with the City, WSDOT and Contractor one time		3				3								\$ 915.00
41	Set and maintain Horizontal and Vertical Control, Offsets, and Temporary BM's		2				4		24						\$ 4,660.00
42	Stake clearing and grubbing limits		2				4		24						\$ 4,660.00
43	Stake TESC facilities to include silt fence		2				4		24						\$ 4,660.00
44	Stake site preparation plan work to include saw cutting and removal work		2				6		24						\$ 4,870.00
45	Stake SE wall C-2		2				2		8						\$ 1,890.00
46	Stake SE wall CR-1		2				3		12						\$ 2,635.00
47	Stake SE wall B-1		2				2		6						\$ 1,570.00
48	Stake SE wall BR-1		2				4		14						\$ 3,060.00
49	Stake SE wall A-1		2				2		8						\$ 1,890.00
50	Stake SE wall BL-2		2				4		10						\$ 2,420.00
51	Stake soldier pile wall B-1		2				2		8						\$ 1,890.00
52	Stake soldier pile wall A-2		2				2		8						\$ 1,890.00
53	Stake grid for approximately 400 displacement rammed aggregate piers		4				8		32						\$ 6,760.00
54	Stake Sub-Grade "yellow tops" at 50-foot Stations on Centerline		2				24		72						\$ 14,440.00
55	Stake gravel base "blue tops" at 50-foot Stations		2				16		40						\$ 8,480.00
56	Stake HMA "red tops" at 50-foot Stations		2				16		60						\$ 11,680.00
57	Stake 8 traffic islands, 2 traffic circles and 11 sidewalk ramps		2				8		32						\$ 6,360.00
58	Stake approximately 2400 lineal feet of storm drainage system and 65 structures		2				2		60						\$ 12,520.00
59	Stake the stormwater treatment wetland/detention pond		4				8		24						\$ 5,080.00
60	Stake finished grade for approximately 2400 LF of curb and gutter, driveways and sidewalks		2				24		60						\$ 12,920.00
61	Stake/mark out project's striping plan and channelization		2				16		20						\$ 5,280.00
62	Stake project's illumination system		1				8		24						\$ 4,880.00
63	Stake project's sign plan		2				6		16						\$ 3,590.00
64	Stake project's wetland mitigation and stream reconstruction work		2				8		24						\$ 5,080.00
65	Stake road centerline monuments		4				4		16						\$ 3,780.00
66	Provide Survey Information for "Record Drawings"		8				24	12	40						\$ 11,540.00
67	Work after hours or on week ends as Extra/Overtime survey hours								175						\$ 28,000.00
68	Prepare traffic control plan for WSDOT review and approval for survey work in their R/W		4				16								\$ 2,480.00
69	Comply with DNR's monument destruction/relocation requirements for all existing monuments		4				24	8	16						\$ 6,560.00
70	Prepare "as-built" plans for the wetland mitigation sites 1, 2, and 3		4				20	24	24						\$ 9,980.00
71															\$ -
72															\$ -
73	<b>Total</b>	0	78	0	0	20	300	32	905	0	0	0	0		\$ 196,420.00
74															

CITY OF GIG HARBOR  
 SR 16/BURNHAM DRIVE NW  
 CONSTRUCTION ADMINISTRATION SERVICES

EXHIBIT B  
 SCHEDULE OF RATES AND ESTIMATED HOURS

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	
		WBS	Engineering	Project	Senior	Design	CADD	Project	Survey	2-Person	Executive	Administrative	Senior	Senior	Task	Task	
1		CODE	Manager	Manager	Professional	Engineer	Technician	Surveyor	Technician	Crew	Administrator	Assistant	Scientist	Landscape	Labor Costs	Expenses	
2	DAVID EVANS AND ASSOCIATES, INC	NUMBER	Structural	Survey	Engineer						Sr. Graphics			Architect			
3	3700 PACIFIC AVENUE EAST, SUITE 311		Engineer	Manager							Specialists						
4	TACOMA, WA. 98424		M. Clark	R. Anderson	K. Harris	V. Vaskellis	O. Ahrensfeld	M. Christman	A. Dreler		G. Williams	J. Martinez	S. Swarts	J. Gage			
5			D. Benson	A. Tebaldi													
6			J. Menard	S. Shanafelt													
7				S. Douthett													
8	Estimate based on 220 working days																
81																	
82	TASK 4---WETLAND AND STREAM RELOCATION INSPECTION AND																
83	PHASE 1 CARRYOVER WORK										4	2	18	8	\$	3,468.00	
84	Prepare an annual mitigation status report for Site 1										4	2	18	8	\$	3,468.00	
85	Prepare an annual mitigation status report for Site 2										4	2	8	8	\$	2,358.00	
86	Prepare an annual mitigation status report for Site 3												64	40	\$	11,904.00	
87	Provide field construction and implementation assistance and fish salvage work for Sites 2 & 3										4	8	40	16	\$	7,296.00	
88	Prepare a mitigation monitoring report for Site 1										4	8	40	16	\$	7,296.00	
89	Prepare a mitigation monitoring report for Site 2										4	8	40	16	\$	7,296.00	
90	Prepare a mitigation monitoring report for Site 3														\$	-	
91															\$	-	
92															\$	-	
93	Total		0	0	0	0	0	0	0	0	24	30	228	112	\$	43,086.00	
94																	
95	TASK 5---GEOTECHNICAL SERVICES														\$	100,872.00	
96	Geotechnical Services---HWA GeoSciences (See Exhibit C)														\$	-	
97															\$	-	
98															\$	-	
99	Total		0	0	0	0	0	0	0	0	0	0	0	0	\$	100,872.00	
100																	
101	TASK 6---PROJECT CLOSE OUT														\$	1,480.00	
102	Review with the City all contractor obligations and warranties due the City			4	4										\$	942.00	
103	Assist the City with resolving working days issues as needed			4								2			\$	3,342.00	
104	Assist the City with resolving claims for extra work			16								2			\$	3,376.00	
105	Assist the City with finalization of permitting conditions and meet if permitting agencies if necessary			8									16		\$	1,084.00	
106	Assist the City with claims form the traveling public			4								4			\$	2,280.00	
107	Assist the City with finalization and completion of final "punch list" items of work			8	4										\$	1,084.00	
108	Assist the City with possible Labor and Industry issues			4								4			\$	2,422.00	
109	Assist the City with other issues as requested by the City			8	4							2			\$	-	
110															\$	-	
111															\$	-	
112	Total		0	56	12	0	0	0	0	0	0	14	16	0	\$	16,010.00	
113																	
129			60	412	332	132	86	300	32	905	46	101	248	112	\$	509,743.00	
130	Total Hours														\$	3,275.00	
131	Rate		\$ 240.00	\$ 200.00	\$ 170.00	\$ 125.00	\$ 90.00	\$ 105.00	\$ 85.00	\$ 160.00	\$ 92.00	\$ 71.00	\$ 111.00	\$ 120.00			
132	Labor		14,400.00	82,400.00	56,440.00	16,500.00	7,740.00	31,500.00	2,720.00	144,800.00	4,232.00	7,171.00	27,528.00	13,440.00			
133																	
134	CONTINGENCIES														\$	35,000.00	
135	Contingencies (Additional work done at City's request)														\$	544,743.00	
136																	
137																	
138	EXPENSES															\$	3,000.00
139	Traffic Control Labor for survey work in WSDOT RW															\$	500.00
140	Reproduction, Postage, Express Delivery															\$	3,000.00
141	Mileage and travel expenses															\$	9,775.00
142																	
143																	
144																\$	554,518.00
145																	
146																	

Exhibit C

**Project Cost Estimate**  
**SR 16 / Burnham Drive NW Interchange**  
**Task T200 - Construction Services**  
**Gig Harbor Washington**



HWA Ref: 2009-002-21 T200  
 Date: 30-Apr-09  
 Revised Date 22-May-09  
 Prepared By: EOA/JLG

**Proposed Scope of Work:** Geotechnical Engineering Services for the additional design and construction of the proposed improvements including structural earth walls, soldier pile retaining walls, and displacement rammed aggregate piers (D-RAPs).

**ESTIMATED HWA LABOR:**

WORK TASK DESCRIPTION	PERSONNEL & 2009 HOURLY BILLING RATES							TOTAL HOURS	TOTAL AMOUNT
	Principal \$245.00	Geol. VII \$181.00	Engr. VI \$157.00	Engr. III \$109.00	Geol. IV \$106.00	CAD \$70.00	Admin. \$67.00		
1. Drilling observation and analysis	8		32	56				96	\$13,088
2. Liquefiable sand hand borings and analysis			2	16	16			34	\$3,754
3. Geotechnical engineering of earth pressure diagrams	4		16	32				52	\$6,980
4. Displacement rammed aggregate pier design and analysis	12		48	12				72	\$11,784
5. Review Contractor Submittals and RFIs	2		4	8				14	\$1,990
6. Attend Preconstruction Meeting for D-RAPs			6	6				12	\$1,596
7. Full-time Inspection for D-RAP Installation			16	210				226	\$25,402
8. Attend Preconstruction Meeting for Soldier Pile Walls			6	6				12	\$1,596
9a. Inspection of Wall B-1 2+50 to 3+88 Shaft Excavations				80				80	\$8,720
9b. Inspection of CDF Fill for Wall B-1 2+50 to 3+88			8	24				32	\$3,872
10. Inspection of Wall B-1 1+00 to 2+50 Shaft Excavations				90				90	\$9,810
11. Inspection of Wall A-2 2+10 to 3+54 Shaft Excavations				80				80	\$8,720
12. Prepare Summary Report of Inspection Services	2		4	8				14	\$1,990
13. Project Management for Geotechnical Tasks			10					10	\$1,570
<b>TOTAL HWA LABOR:</b>	<b>28</b>	<b>0</b>	<b>152</b>	<b>628</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>824</b>	<b>\$100,872</b>

**ESTIMATED DIRECT EXPENSES:**

Mileage @ \$0.55/mile	\$3,025
Miscellaneous expenses (parking, field supplies, etc.)	\$250
<b>TOTAL DIRECT EXPENSES:</b>	<b>\$3,275</b>

**PROJECT TOTALS AND SUMMARY:**

Labor Total	\$100,872
Direct Expenses	\$3,275
<b>GRAND TOTAL:</b>	<b>\$104,147</b>

**CONDITIONS**

1. The costs for the construction tasks 5 through 13 are estimates and our actual costs will vary. Factors beyond our control including contractor schedule, means and methods, and weather will have a direct influence on our costs. If the contractor's schedule requires our representative to be on site for longer durations than estimated herein, we will contact DEA and request a budget supplement before exceeding this budget.



**Subject:** Second Reading of Ordinance –  
Sehmel Drive Area-Wide Rezone  
(ZONE 09-0003)

**Proposed Council Action:** Adopt ordinance  
at this second reading.

**Dept. Origin:** Planning

**Prepared by:** Jennifer Kester  
Senior Planner

**For Agenda of:** June 8, 2009

**Exhibits:** Draft Ordinance; Planning Commission  
Recommendation; Planning Commission Minutes  
Initial & Date

**Concurred by Mayor:**

CLH 5/29/09

**Approved by City Administrator:**

POK

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

5/13/09

**Approved by Finance Director:**

N/A

**Approved by Department Head:**

TD 5/28/09

Expenditure		Amount		Appropriation	
Required	0	Budgeted	0	Required	0

**INFORMATION / BACKGROUND**

The City Council asked the Planning Commission to review an area-wide rezone to correct inconsistencies between the land use designation and zoning district designation of 11 parcels located just east and south of Sehmel Drive NW consisting of approximately 18 acres. The current land use designation for these properties is Employment Center (EC). The current zoning district for these properties is Residential Business (RB-1) or Single-Family Residential (R-1). The Council asked the Planning Commission to consider rezoning the affected parcels to Employment District (ED).

Of the 18 acres subject to this application, 13.5 acres are currently being used for light industrial or ministorage, The other property is either vacant or contain single family homes; currently 4 single-family homes are in the subject area.

The Planning Commission held a work study session on this area-wide rezone on April 2, 2009 and held a public hearing on the rezone on April 16, 2009.

After the public hearing, the Planning Commission recommended approval of an area-wide rezone to ED for 11 parcels located just east and south of Sehmel Drive NW.

**POLICY CONSIDERATIONS**

Zoning map amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. The Council should generally consider whether the proposed amendment furthers public health, safety and welfare, and whether the proposed amendment is consistent with the Gig



Harbor Municipal Code, the Comprehensive Plan and the Growth Management Act (Chapter 36.70A RCW). Area-wide rezones are considered a Type V legislative action (GHMC 19.01.003).

In addition, applications for amendments to the zoning district map may only be approved if all of the following criteria are satisfied:

1. *The application for the zoning district map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan;*
2. *The application for the zoning district amendment must further or bear a substantial relationship to the public health, safety and general welfare;*
3. *No substantial detrimental effect will be caused by the granting of the application for the amendment;*
4. *The proponents of the application have the burden of proof in demonstrating that conditions have changed since the original zoning or original designation for the property on the zoning district map. (GHMC 17.100.035)*

**Gig Harbor Comprehensive Plan:**

From the Land Use Element of the Comprehensive Plan

Policy 2.2.3.a:

**Employment Centers**

*Broadly defines an area that is intended to meet long-term employment needs of the community. Employment centers consist of the following:*

- 1) *Wholesale distribution facilities*
- 2) *Manufacturing and assembly*
- 3) *Warehousing/storage*
- 4) *Business offices/business complexes*
- 5) *Medical facilities/hospitals*
- 6) *Telecommunication services*
- 7) *Transportation services and facilities*
- 8) *Conditional allowances of commercial facilities which are subordinate to and supportive of employment activities*

**Planning Commission Analysis:**

The Planning Commission's complete analysis and findings on the criteria for approval contained in GHMC 17.100.035 can be found in their enclosed Notice of Recommendation. Below is a summation of their analysis:

- Of the 18 acres subject to this application, 13.5 acres are currently being used for light industrial or ministorage.
- On March 23, 2009, the City Council adopted ORD 1156 which annexed the subject property to the City of Gig Harbor. This annexation took effect on April 6, 2009. Prior to the annexation, the County zoning for this property was Community Employment (CE).
- The ED zone is the only zone which fully implements the EC designation.

- The Growth Management Act requires consistency between Comprehensive Plan (land use designations) and development regulations (zoning). A rezone to ED for this property would achieve Comprehensive Plan consistency.
- The City's ED zoning is most consistent with the County's CE zoning.

**ENVIRONMENTAL ANALYSIS**

The SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the proposed amendments on April 22, 2009 as per WAC 197-11-340(2).

**FISCAL CONSIDERATION**

None

**BOARD OR COMMITTEE RECOMMENDATION**

The Planning Commission is recommending approval of this area-wide rezone.

**RECOMMENDATION / MOTION**

**Move to:** Adopt ordinance at this second reading.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, APPROVING A CITY-INITIATED REZONE OF 11 PARCELS CONSISTING OF 17.97 ACRES FROM RB-1 AND R-1 ZONING DISTRICTS TO EMPLOYMENT DISTRICT (ED), LOCATED JUST EAST AND SOUTH OF SEHMEL DRIVE NW; PIERCE COUNTY ASSESSOR PARCEL NUMBERS 0122361001, 0122361006, 0122361008, 0122361009, 0122361013, 0122361066, 0122361067, 0122361068, 0122361077, 0122361078 AND THE SOUTHEAST PORTION OF PARCEL NUMBER 0122361045 WHICH LIES EAST OF SEHMEL DRIVE NW; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF GIG HARBOR; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE**

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WHEREAS, on March 23, 2009, the City Council adopted Ordinance No. 1156 which annexed property known as the Burnham Sehmel annexation area to the City of Gig Harbor, and the annexation took effect on April 6, 2009; and

WHEREAS, the current Comprehensive Plan land use designation for 11 parcels within the annexed area, located just east and south of Sehmel Drive NW consisting of 17.97 acres, is Employment Center (EC), and the current zoning district for these parcels is Residential Business (RB-1) or Single-Family Residential (R-1); and

WHEREAS, the existing EC comprehensive plan land use designation anticipates employment-based and industrial development; and

WHEREAS, of the 17.97 acres subject to this rezone, 13.5 acres are currently being used for light industrial or ministorage; uses which are consistent with Employment District (ED) zoning; and

WHEREAS, the ED zoning district is the only zoning district which implements the EC land use designation; and

WHEREAS, prior to the annexation, the County zoning for this property was Community Employment (CE), and the City's ED zoning district is similar to and consistent with Pierce County's CE zoning district; and

WHEREAS, the City Council initiated a request for an area-wide rezone of the subject properties for consistency with the Comprehensive Plan land use designation and forwarded the request to the Planning Commission for consideration; and

WHEREAS, the proposed rezone is a Type V action as defined in GHMC 19.01.003(B) for area-wide zoning map amendments; and

WHEREAS, a final decision for a Type V application shall be rendered by the City Council after a recommendation from the Planning Commission as per GHMC 19.01.003(A); and

WHEREAS, the Planning Commission held a work study session on April 2, 2009 and held a public hearing on the area-wide rezone on April 16, 2009, and recommended approval; and

WHEREAS, on April 3, 2009, the proposed area-wide rezone was sent to the Washington Department of Community, Trade and Economic Development, pursuant to RCW 36.70A.106; and

WHEREAS, a SEPA threshold determination of non-significance (DNS) for the proposed rezone was issued on April 22, 2009 and was not appealed; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on May 26, 2009; and

WHEREAS, on \_\_\_\_\_, 2009, the City Council held a second reading during a regular City Council meeting; Now, therefore,

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

Section 1. Criteria. Zoning map amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. Applications for amendments to the zoning district map may only be approved if all of the following criteria are satisfied:

- A. The application for the zoning district map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan;
- B. The application for the zoning district amendment must further or bear a substantial relationship to the public health, safety and general welfare;
- C. No substantial detrimental effect will be caused by the granting of the application for the amendment;
- D. The proponents of the application have the burden of proof in demonstrating that conditions have changed since the original zoning or original designation for the property on the zoning district map. (GHMC 17.100.035)

Section 2. Findings. The City Council considered the recommendation of the Planning Commission, and makes the following findings in relation to the criteria of approval in section 1 above:

- A. The Comprehensive Plan has designated this area Employment Center (EC). The Employment District (ED) zoning more properly implements the EC comprehensive plan designation than the present RB-1 and R-1 zoning districts. The proposal to rezone the subject properties to ED is consistent with and furthers the goals and policies of the Comprehensive Plan.
- B. Allowing the continuation and future expansion of legally established industrial uses (under County code) will further the general welfare of the citizens of Gig Harbor by providing additional employment and industrial opportunities within the City. Safety and public health will be addressed at the time of further development through a number of City regulations including requirements for all new development to be served by sewers, limitations on road access points, traffic concurrency and other public works standards. The future development of the properties will have to address public health and safety concerns.
- C. No substantial detrimental effect would be caused by the granting of this rezone request. The majority of the properties within the rezone area currently contain uses consistent with the intent of the ED zoning district: ministorage and light industrial. While four single-family homes exist in the rezone area, those homes will be allowed to remain; and, in the event of damage or destruction by an act of nature, the owners may rebuild those homes.
- D. Prior to the annexation of this property on April 6, 2009, the City had not yet conducted a thorough review of the subject area, existing uses and appropriate zoning. In addition, the pre-annexation zoning did not take into account the County's zoning of the property as Community Employment. Uses were established under the County zoning which met County codes, but not the City's pre-annexation zoning. The proposed rezone recognizes the existing uses legally established under county regulation.

Section 3. Rezone. The 17.97 acres of real property located just east and south of Sehmel Drive NW, as shown on Exhibit "A" attached hereto and incorporated by this reference, including tax parcel numbers: 0122361001, 0122361006, 0122361008, 0122361009, 0122361013, 0122361066, 0122361067, 0122361068, 0122361077, 0122361078 and the southeast portion of parcel number 0122361045 which lies east of Sehmel Drive NW, are hereby rezoned from RB-1 and R-1 to Employment District (ED).

Section 4. Zoning Map. The Planning Director is hereby instructed to effectuate the necessary changes to the Official Zoning Map of the City in accordance with the zoning established by section 3.

Section 5. 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 6. Effective Date. This ordinance shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

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

CITY OF GIG HARBOR

\_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

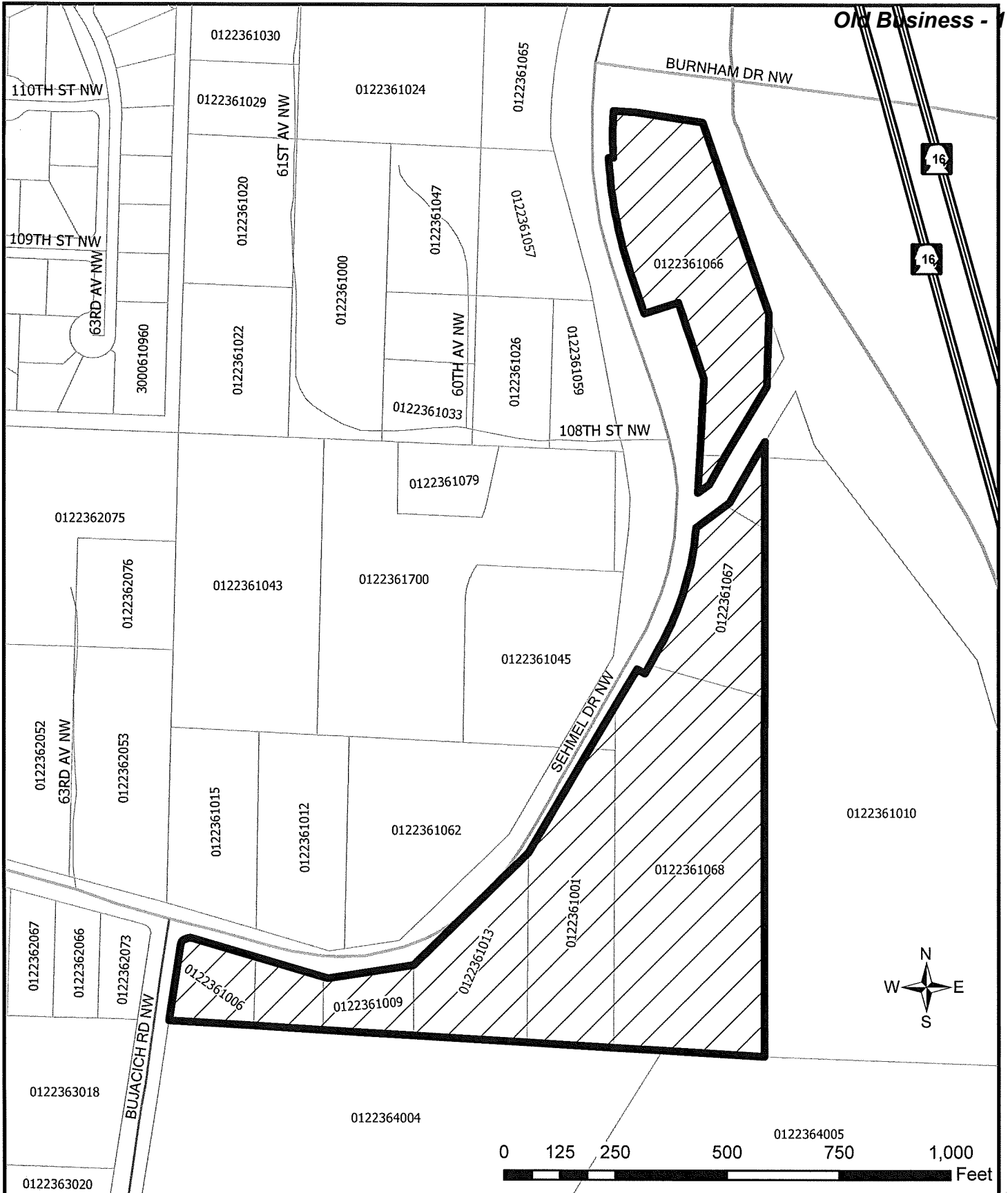
\_\_\_\_\_  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

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

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO:

# Exhibit A



## Sehmel Drive Area-Wide Rezone ZONE 09-0003



COMMUNITY DEVELOPMENT DEPARTMENT

## NOTICE OF RECOMMENDATION

### CITY OF GIG HARBOR PLANNING COMMISSION ZONE 09-0003

**TO:** Mayor Hunter and Members of the Council  
**FROM:** Harris Atkins, Chair, Planning Commission  
**RE:** ZONE 09-0003 – Sehmel Drive Area-Wide Rezone

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The City Council has asked the Planning Commission to review an area-wide rezone to correct inconsistencies between the land use designation and zoning district designation of 11 parcels located just east and south of Sehmel Drive NW consisting of approximately 18 acres. The current land use designation for these properties is Employment Center (EC). The current zoning district for these properties is Residential Business (RB-1) or Single-Family Residential (R-1). The Council asked the Planning Commission to provide a recommendation on rezoning the affected parcels to Employment District (ED).

The Planning Commission held a work study session on this area-wide rezone on April 2, 2009 and held a public hearing on the rezone on April 16, 2009.

After the public hearing, the Planning Commission recommended approval of the Sehmel Drive Area-Wide rezone based on the findings below.

#### **FINDINGS:**

- Of the 18 acres subject to this application, 13.5 acres are currently being used for light industrial or ministorage.
- On March 23, 2009, the City Council adopted ORD 1156 which annexed the subject property to the City of Gig Harbor. This annexation took effect on April 6, 2009. Prior to the annexation, the County zoning for this property was Community Employment (CE).
- The ED zone is the only zone which fully implements the EC designation.
- The Growth Management Act requires consistency between Comprehensive Plan (land use designations) and development regulations (zoning). A rezone to ED for this property would achieve Comprehensive Plan consistency.



- The City's ED zoning is most consistent with the County's CE zoning.

Applications for amendments to the zoning district map may only be approved if all of the criteria in GHMC 17.100 are satisfied. The Planning Commission makes the following findings for each of the criterion for approval:

1. *The application for the zoning district map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan;*

The Comprehensive Plan has designated this area Employment Center (EC). The Employment District (ED) zoning more properly implements the EC comprehensive plan designation than the present RB-1 and R-1 zoning districts. The proposal to rezone the subject properties to ED is consistent with and furthers the goals and policies of the Comprehensive Plan.

2. *The application for the zoning district amendment must further or bear a substantial relationship to the public health, safety and general welfare;*

Allowing the continuation and future expansion of legally established industrial uses (under County code) will further the general welfare of the citizens of Gig Harbor by providing additional employment and industrial opportunities within the City.

Safety and public health will be addressed at the time of further development through a number of City regulations including requirements for all new development to be served by sewers, limitations on road access points, traffic concurrency and other public works standards. The future development of the properties will have to address public health and safety concerns.

3. *No substantial detrimental effect will be caused by the granting of the application for the amendment;*

No substantial detrimental effect would be caused by the granting of this rezone request. The majority of the properties within the rezone area currently contain uses consistent with the intent of the ED zoning district: ministorage and light industrial. While four single-family homes exist in the rezone area, those homes will be allowed to remain; and, in the event of damage or destruction by an act of nature, the owners may rebuild those homes.

4. *The proponents of the application have the burden of proof in demonstrating that conditions have changed since the original zoning or original designation for the property on the zoning district map.*

Prior to the annexation of this property on April 6, 2009, the City had not done a thorough review of the subject area, existing uses and appropriate zoning. In addition, the pre-annexation zoning did not take into account the County's zoning of the property as Community Employment. Uses were established under the County zoning which met County codes, but not the City's pre-annexation zoning. The

proposed rezone recognizes the existing uses legally established under county regulation.

Harris Atkins, Chair  
Planning Commission

HARRIS ATKINS Date 5/6/2009

**City of Gig Harbor Planning Commission  
Minutes of Work-Study Session  
April 2, 2009  
Gig Harbor Civic Center**

**PRESENT:** Commissioners: Harris Atkins, Joyce Ninen, Jill Guernsey, Michael Fisher and Dick Allen. Commissioners Absent: Jim Pasin, Jeane Derebey. Staff Present: Jennifer Kester and Peter Katich. Guest Present: Karl Scherer, Dino Formiller, Paul and Betty Garrison, and Florence Wintermute

**CALL TO ORDER:** Chair Harris Atkins called the meeting to order at 5:05 p.m.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of February 19, 2009 with corrections – Ninen/Guernsey **Motion passed unanimously**

Minutes for the March 5, 2009 meeting were passed out and will be reviewed at the next meeting.

Minutes for the March 16, 2009 joint meeting of the Commission and Council and the March 19, 2009 Commission meeting will be ready for distribution by the next meeting.

**City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –**  
**ZONE 07-0006 – Mixed Use District Overlay (MUD) Amendments and Area-Wide Rezone**

Ms. Kester addressed proposed approach for rezoning the area currently zoned Mixed Use District Overlay to MX Mixed Use District. She addressed the proposed setback, height and use regulations for the district. In regard to side yard setbacks, Ms. Ninen inquired as to the side yard setback requirements of other jurisdictions. She inquired of Mr. Katich what the city of Tacoma's side yard setback requirements were. Mr. Katich noted that the city had recently revised its code to require a 5 foot side yard setback. Mr. Allen expressed his opinion that reduced setbacks pose a fire safety issue. Chair Atkins inquired as to whether staff had consulted the Fire District regarding the requirement. Ms. Kester indicated that the International Residential Code required fire resistive construction for structures located within 5 feet of a side property line. Ms. Kester suggested that the Commission focus on aesthetics and open space in their deliberations concerning the setback issue, not fire safety as that is addressed by the building code. Given that the City consistently requires eight foot side yard setbacks for single-family homes outside of the Historic District, the Commission reached consensus that a minimum 8 foot side yard setback for nonresidential and residential should be required.

Turning to the proposed height requirement for the district, Ms. Kester indicated that Rick Gagliano, Vice Chair of the city's Design Review Board, had reviewed the height issue and provided his comments as well as a sketch that addresses the minimum floor to floor height required for mixed use buildings that include retail, office and residential uses. In this regard, a minimum floor to floor height for retail is 14 feet, while residential and office uses typically require 10 feet between floors. Ms. Kester addressed how the maximum 35 foot height limit for a structure could actually be taller on the downhill side of sloping parcels. Discussion ensued among the Commission members on the use of incentives that would allow for additional height above the 35 feet. After much discussion on the issue, the Commission reached consensus that the height incentive set forth in proposed GHMC 17.57.070.B should be increased from 10 to 15 feet if at least 25 percent of the gross floor area of a mixed use building contains residential and at least 25 percent of the gross floor area of the building is nonresidential. The additional 15 feet would allow a four-story building with the first floor as retail.

Lastly, with regard to permitted, conditional and prohibited uses within the proposed district, Ms. Kester noted that ministorage and industrial level 1 uses are currently listed as conditional uses within the proposed district and inquired of the Commission regarding whether they should be allowed as such or prohibited. Ms. Ninen indicated her preference to allow them as conditional uses. Chair Atkins indicated that a consistent vision may not exist for the area. Commission members commented that the Comprehensive Plan will need to be amended to align with the regulations of the new mixed use district. Ms. Kester indicated that the GMA required 7 year update to occur in 2011 would be an opportunity to resolve any inconsistencies. Ms. Guernsey indicated her preference to allow the two industrial uses as conditional uses. After discussion, the Commission reached consensus that the two industrial uses should remain conditional uses within the proposed district.

**MOTION:** Move to recommend approval of the proposed area-wide rezone and new MX District as amended, subject to the preparation of a notice of recommendation and a vision statement for the district by staff. Atkins / Ninen – **Motion passed unanimously**

*Future Actions:*

- Staff to prepare a draft notice of recommendation which includes a vision statement for the district for Planning Commissions review at the May 7<sup>th</sup> meeting.

The Commission adjourned for a 5 minute break at 6:20pm

**City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –**  
**ZONE 09-0003 – Sehmel Drive Area-Wide Rezone**

Ms. Kester explained the background associated with the request for an area-wide rezone of the area, which will officially be annexed into the city on April 6, 2009. She

noted that the area in question consists of approximately 18 acres and comprised of 11 parcels, all of which are currently designated as RB-1 District under the pre-annexation zoning for the property except for one parcel that has an R-1 District designation. She also noted that a number of owners of property within the proposed area-wide rezone area were in attendance at the meeting. She indicated that the Commission has two options; the area-wide rezone currently before them or other zoning schemes previously discussed in 2008 during their review of all RB-1 zoned areas within the city.

Mr. Allen inquired if there was any opposition to the area-wide rezone by the owners of property within the area. Ms. Kester indicated none that she was aware of but that the property owners in attendance may desire to provide some input at the meeting. Chair Atkins inquired as to why the inconsistency wasn't identified earlier. Ms. Kester noted that none of the staff currently involved in the annexation were working on it at the time it was considered by the City Council at the 10% petition stage. Chair Atkins indicated his desire to hear what the property owners had to say regarding the proposal. Several property owners, including Paul and Betty Garrison, expressed their support for the rezone and noted that it would allow them to continue and/or expand current uses located on the site and allow additional options for future development. One property owner indicated that she "would just like to be left alone." That property owner currently lives in a single-family residence on a parcel which is subject to the rezone. Ms. Kester explained the owner's nonconforming rights and expressed that the City would have no authority to make her remove her home if this rezone was approved. Ms. Kester indicated that the Planning Commission would be conducting a public hearing on this request on April 16, 2009.

#### **UPCOMING MEETINGS:**

Ms. Kester addressed additional meetings and topics to be discussed at future meetings. Chair Atkins requested a status report on code amendments previously considered by the Commission. Chair Atkins indicated his desire to have the City Attorney discuss issues associated with Development Agreements at an upcoming meeting. Chair Atkins also requested that the City Attorney address possible inconsistencies between Comprehensive Plan and zoning designations throughout the city. Ms. Kester indicated that she would prepare a status report on the code amendments; make arrangements to have the City Attorney attend an upcoming Commission meeting to discuss Development Agreements; and, indicated that the plan and zoning district inconsistencies review should be part of a larger effort possibly done in the future.

#### *Future Actions:*

- Staff to provide a status report on previous Planning Commission work program items.
- Staff to arrange a meeting with the City Attorney to discuss the upcoming review of Comprehensive Plan Amendments, in particular associated development agreements. Tentative date set: June 4, 2009.

**ADJOURNMENT**

**MOTION:** Move to adjourn at 7:18pm. Ninen / Fisher – **Motion passed unanimously**

**City of Gig Harbor Planning Commission  
Minutes of Work-Study Session / Public Hearing  
April 16<sup>th</sup>, 2009  
Gig Harbor Civic Center**

**PRESENT:** Commissioners: Harris Atkins, Dick Allen, Joyce Ninen, Michael Fisher and Jim Pasin. Absent: Jill Guernsey and Jeane Derebey.

**STAFF PRESENT:** Tom Dolan, Jennifer Kester and Cindy Andrews

**CALL TO ORDER:** Chair Harris Atkins called the meeting to order at 5:02 pm.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of March 5<sup>th</sup>, 2009 with changes.  
Ninen / Pasin – Motion passed.

**MOTION:** Move to approve the minutes of March 16<sup>th</sup>, 2009 with corrections.  
Ninen / Fisher – Motion passed.

**MOTION:** Move to approve the minutes of March 19<sup>th</sup>, 2009 with corrections.  
Ninen / Pasin – Motion passed.

**MOTION:** Move to approve the minutes of April 2<sup>nd</sup>, 2009 with corrections.  
Ninen / Fisher – Motion passed.

**WORK STUDY SESSION:**

**Off-Street Parking Requirements Clarification:**

Senior Planner Jennifer Kester discussed the amendments and clarifications proposed to the off-street parking requirements resulting from recent zoning code amendments and potential future amendments. Ms. Kester summarized the proposed changes addressing them by topic.

Gross Floor Area: Ms. Kester discussed the recent update to the definition of “gross floor area,” explaining that the parking code referenced floor area only. The amendment would simply be a correction adding “gross” before “floor area” for consistency. Commissioner Jim Pasin discussed his concern with applying the gross floor area definition to parking standards. Chair Harris Atkins asked how staff had interpreted the definition. Ms. Kester stated that parking is currently based on gross floor area, by interpretation, and that this amendment would not result in any change to parking calculations. It would only remove the interpretation portion of staff work. Commissioner Michael Fisher asked how retail and non-retail areas would be

defined. Ms. Kester explained that parking standards would be based on the total space of the store. Planning Director Tom Dolan added that the amendment would be very specific and eliminate potential confusion. Vice Chair Joyce Ninen asked if "floor area" could be equal to "gross floor area." Mr. Dolan explained that a footnote could be added to the parking requirements which stated, "see gross floor area".

Ms. Kester described the proposed amendment related to the ED and PCD-BP changes. The commission members discussed the ED and PCD-BP zones; Pierce County parking standards; and requirements for ministorage and cemetery parking. Mr. Pasin discusses his concern with attaching parking requirements to gross floor area standards. Commission members discuss the addition of "gross" in front of "floor area." Ms. Ninen and Mr. Atkins agreed. Mr. Fisher and Mr. Pasin stated they would like to revisit basing parking requirements on "gross floor area" at a later date. Commissioner Dick Allen had no concerns with inserting "gross" in front of "floor area" however he would like to revisit the overall parking requirement issue as well. Mr. Dolan explained that if no action were taken on the staff's proposal that the planning staff would continue to interpret the code as it had been previously interpreted, explaining that new cases would be reviewed on an individual basis. Commission members continued the discussion on parking requirements. Mr. Pasin asked when the gross floor area issue could be revisited by the Commission members. Mr. Dolan stated that the Planning Commission agenda had been booked out and it may be awhile before the issue could be looked at. Mr. Pasin agreed to insert "gross" in front of "floor area;" however, he suggested that the overall parking requirements should be reviewed as soon as possible. Mr. Atkins agreed.

Stormwater Manual Update: Ms. Kester summarized the proposed updates to the Stormwater Manual suggesting adding the definition in the zoning code to be consistent with the new manual. Mr. Fisher discussed porous paving and its long term use. Ms. Kester stated that it worked well long term if properly maintained. Mr. Pasin asked for clarification on the terms concrete vs. porous asphalt. Mr. Atkins clarified. Commission members discussed porous asphalt. Mr. Pasin asked if a recommendation would be required this evening. Ms. Kester replied no, explaining that staff would like a final decision by May.

**PUBLIC HEARING:**

Call to Order: 6:00 pm

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

Zone 09-0003 – Sehmel Drive Area Wide Rezone

Mr. Atkins summarized the proposed area-wide rezone providing a description of the area, the uses and the total amount of acres involved.

Ms. Kester summarized the proposal, discussing the previous zoning designation and the proposed zoning designation. Ms Kester discussed the current uses of the properties noting



that of the 18 acres, 13.5 currently held a mini-storage and industrial facilities and the remaining 4.5 were used for single family residences. Ms. Kester discussed the nonconforming use rights of the single family residences. Mr. Atkins asked what the difference had been in Pierce County zoning and City of Gig Harbor zoning. Ms. Kester offered the explanation. Mr. Allen asked for clarification of legal nonconforming use regulations and possible expansion of the existing structures. Ms. Kester explained.

**Dino Formiller, 2641 64<sup>th</sup> St, Gig Harbor, WA-** Mr. Formiller discussed an e-mail from the previous Community Development Director John Vodopich addressing the change in zoning designation from EC to ED, stating that Mr. Vodopich did not anticipate any problems with a change in designation only that a public hearing would be necessary. Mr. Formiller expressed his concern that the property had been designated single family residential at the time of annexation and was unsure why it was not designated ED at the time of annexation. Mr. Atkins asked if the proposed rezone would be to Mr. Formiller's benefit. Mr. Formiller agreed.

**Carl Schuler, Gig Harbor North Self Storage LLC, P.O Box 3683, Silverdale, WA 98383:**

Mr. Schuler is a partner in the mini-storage complex subject to the rezone; he discussed his surprised that the property had been zoned as R-1. Mr. Schuler discussed the site, the greenbelt surrounding the property and his hope that the rezone to ED will move forward, explaining his concern that an R-1 designation would be inappropriate.

**Paul Garrison, P.O. Box 1021, Wauna WA 98359:** Mr. Garrison discussed the nonconforming use section of the GHMC and was concerned that it indicated that nonconforming uses should go away. Ms. Kester explained nonconforming use and structures standards. Mr. Garrison urged the Planning Commission to move forward with the rezone.

**Public Hearing closed at 6:16 pm**

Ms. Ninen stated she would be in favor of the rezone to ED based on the public's comments supporting the rezone. Mr. Pasin expressed his concern for the single family residences currently in the zone, asking how the City's zone transition standards for future development would be applied. Ms. Kester discussed the application of the zone transition standards. Mr. Fisher pointed out that the area had existed for a long period of time with a mix of single family and industrial uses and felt that the rezone would be appropriate. Mr. Allen also agreed that the rezone would be appropriate.

**MOTION:** Move to recommend the area-wide rezone for the Sehmel Drive Area (Zone 09-0003) to ED Zone. Ninen / Fisher – motion passed.

Ms. Kester reviewed the remaining process for the rezone.

**WORK STUDY SESSION:**

Ms. Kester provided Mr. Atkins with the notice of recommendation for the previously proposed ED and PCD-BP amendments for his signature, Mr. Atkins signed the recommendation.

**Off-Street Parking Requirements Clarification:**

Mr. Atkins returned to the Off-Street Parking Requirements Clarification discussion. Mr. Atkins suggested taking each item one at a time beginning with Gross Floor Area. Mr. Atkins discussed the insertion of the word “gross” before “floor area” into the GHMC, indicating that there had been an agreement in the previous discussion and asking for a motion.

**MOTION:** To recommend approval of the change to the ordinance inserting “gross” in front of “floor area” where it appears in the parking matrix. Ninen / Fisher – Motion passed

**ED and PCD-BP intent and allowed uses:** Mr. Atkins asked Ms. Kester to review the new items added as a result of the new uses proposed in the ED and PCD-BP amendments. Commission members discussed business services and ancillary services, parking standards and shared parking. Ms. Kester recommended that the requirement remain at 1 stall per 300 square feet of gross floor area and that the Planning Commission revisit the overall parking requirement issue at a later date. Mr. Atkins agreed.

**Cemeteries:** No further discussion

**Ancillary Services:** Ms. Kester discussed the proposed parking requirement of 1 stall per 300 square feet of gross floor area, stating that perhaps no parking is required do to very little pass-by use. Mr. Dolan stated that ancillary services are primarily for employees, suggesting that each case could be looked at individually and the decision on parking made by the Director. Mr. Atkins added that a lot would depend on the location and the operation. Mr. Pasin disagreed, stating that he felt the decision should not be left up to the director. Mr. Dolan suggested looking at what other jurisdictions propose. Mr. Atkins and Ms. Ninen agreed. Ms. Kester agreed to return and present the Commissioners with a breakdown from other jurisdictions. Commission members agreed.

**Stormwater Manual Update:** Mr. Dolan discussed porous paving. Mr. Atkins addressed the public concerns that grass pavers had not been pedestrian friendly, asking if staff had any discussion on the subject. Ms. Kester indicated that some citizens had expressed concern that grass in grasscrete pavers did not grow well. Commission members discussed porous paving and grass pavers. Mr. Atkins asked for a motion.

**MOTION:** Move to recommend the proposed amendment to the Off-Street Parking Requirements Design Standards to include the porous paving. Ninen / Fisher – Motion passed.

Ms. Ninen explained that the amendment also include the new definition for porous paving in section 17.04.675.

Ms. Kester stated that the Commission members could revisit the parking standards at the next meeting and that she would also provide an update on the Planning and Building Committee recommendations on parking widths.

**Discussion Items:**

Ms. Kester updated commission members on recent passing of the Gross Floor Area Amendment and Shared Parking Amendment by the City Council. She discussed the 2009 Comprehensive Plan docket scheduled for public hearing before the City Council on May 11<sup>th</sup>, 2009. Ms. Kester discussed the Height Restriction Area Amendment explaining that Council members had requested a work study session on the item. Ms. Kester discussed the Marina Parking Amendments that would be before Council members in June or July of this year.

Mr. Pasin asked if the Neighborhood Design Area program had been scheduled to go before the City Council. Ms. Kester stated that it had been placed on the Council's work program agenda.

**MOTION:** Move to adjourn at 7:25 pm. Ninen / Fisher – Motion passed.

DRAFT



**Subject: Ordinance – Amending the Special Events Chapter of the Gig Harbor Municipal Code.**

**Proposed Council Action:**

Adopt the attached Ordinance as presented.

**Dept. Origin:** Administration

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

**For Agenda of:** June 8, 2009

**Exhibits:** Ordinance

Initial & Date

**Concurred by Mayor:** *GLH 5/29/09*

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

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

**Approved by Finance Director:** *DR 5/09*

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

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

Chapter 5.28 of the Municipal Code regulating Special Events was adopted in 1983 and inadequately reflects current conditions. The following is an overview of the recommended changes:

- Change “director of administration” to “City Administrator” throughout the chapter. This is a housekeeping amendment.
- Raise the application fee from \$25.00 to \$50.00 to offset the cost of staff to process the application.
- Add requirements to the application to provide hold harmless language and a list of vendors.
- Amend the clean-up cost requirements.
- Increasing the time for submitting an application from 15 to 30 days before the event to allow staff to adequately review the information and to address any concerns.
- Update the insurance requirements to adequately protect the city per recommendation from the city’s insurance pool, AWC RMSA.
- Updates the requirements for businesses who gather under the direction of a non-profit organization for a special event.

**FISCAL CONSIDERATION**

Increasing the cost of a Special Event Permit will help to offset the cost for staff review and administration of the permit.

**BOARD OR COMMITTEE RECOMMENDATION**

The Finance / Safety Committee discussed increasing the insurance requirements at its April 20, 2009 meeting and recommended doing so.

**RECOMMENDATION / MOTION**

**Move to:** Adopt the attached Ordinance as presented.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO SPECIAL EVENTS, AMENDING CHAPTER 5.28 OF THE GIG HARBOR MUNICIPAL CODE TO REFLECT CURRENT POSITION TITLES, INCREASING THE APPLICATION FEE, ADDING HOLD HARMLESS LANGUAGE AND VENDOR LIST REQUIREMENTS TO THE APPLICATION PROCESS, AMENDING THE FILING PERIOD, UPDATING INSURANCE REQUIREMENTS, DELETING THE BOND REQUIREMENT AND THE SPECIAL EVENT TEMPORARY LICENSE GROUP BOND OR CASH DEPOSIT REQUIREMENTS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, Chapter 5.28 of the Gig Harbor Municipal Code was adopted in 1983 to establish provisions for licensing and regulating special events on public right of ways; and

WHEREAS, the code does not adequately reflect current conditions; and

WHEREAS, in order to protect the city, it is necessary to require indemnification language; and

WHEREAS, a list of participating vendors will assist in the proper remittance of sales tax; and

WHEREAS, the current requirement for proof of liability insurance is inadequate and the city's insurance pool is recommending an increase in coverage limits and language to address liability when food and/or liquor are permitted; and

WHEREAS, in the interest of administrative efficiency, the City desires to eliminate the clean-up bond requirement and authorize billing in the event of failure to follow through with the clean-up required under GHMC 5.28.050(K); and

WHEREAS, the bonding or cash set-aside requirements in GHMC 5.28.140 are prohibitive for non-profit organizations and the guarantee of proper clean-up for a special event is sufficiently addressed in GHMC 5.28.050(K) and GHMC 5.28.070; and

WHEREAS, the fifteen day submittal requirement and \$25 fee are no longer sufficient to reflect the amount of employee time required to process an application; and

WHEREAS, the City Council considered this ordinance during its regular meetings of May 26 and June 8, 2009; Now, Therefore,

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

Section 1. Section 5.28.030 of the Gig Harbor Municipal Code shall be amended to read as follows:

**5.28.030 Permit – Required.**

No person shall engage in, participate in, aid, form or start any special event, unless a permit has been obtained from the ~~director of administration~~ City Administrator.

Section 2. Section 5.28.040 of the Gig Harbor Municipal Code shall be amended to read as follows:

**5.28.040 Permit – Application – Fee.**

There shall be paid by the sponsor(s) at the time of application, a fee of ~~\$25.00~~ \$50.00 for each special event.

Section 3. Section 5.28.050 of the Gig Harbor Municipal Code shall be amended to add new subsections L and M and as follows:

**5.28.050 Permit – Application – Contents.**

Applications for a special events permit shall ~~state~~ include, but not be limited to:

- A. Name and address of applicant;
- B. ...
- L. Hold Harmless Agreement that removes all liability from the City;
- M. List of all participating vendors.

Section 4. Section 5.28.060 of the Gig Harbor Municipal Code shall be amended to read as follows:

**5.28.060 Permit – Application – Filing period.**

A. An complete application for a special events permit shall be filed with the ~~director of administration~~ City Administrator or his designee not less than ~~45~~ 30 days nor more than 365 days before the date on which the event will occur.

B. The ~~director of administration~~ City Administrator shall notify the applicant in writing of approval or disapproval, no later than 20 days following the date of the application.

Section 5. Section 5.28.070 of the Gig Harbor Municipal Code is hereby deleted in its entirety and replaced with the following:

~~5.28.070 Bond required.~~

~~The director of administration shall set an amount for a cash deposit or surety bond as a guarantee that the expenses of cleaning up will be paid by the sponsoring organization. The amount shall not be less than \$50.00 nor more than \$500.00. The director shall determine the bond amount by such factors as type of event, projected number of participants and spectators, and the sponsor's experience.~~

**5.28.070 Costs of Clean-up.**

In the event a sponsoring organization fails to adequately provide clean-up in accordance with the plan submitted under GHMC 5.28.050(K), the City may conduct the necessary clean-up and bill the sponsoring organization for such costs. The sponsoring organization must make payment to the City upon receipt of the City's invoice for such costs.

Section 6. Section 5.28.080 of the Gig Harbor Municipal Code shall be amended to read as follows:

**5.28.080 Insurance required.**

A. The applicant shall show proof of liability insurance with a ~~combined single limit of \$500,000 for each incident~~ primary coverage limits of: \$1,000,000 General Aggregate (per event); \$1,000,000 Products Aggregate (if food and/or beverage vending is part of the event); \$250,000 Personal and Advertising Injury; \$50,000 Each Occurrence; \$50,000 Fire Legal Liability; and \$50,000 Damage to premises rented for 7 or fewer days.

B. A specimen copy listing the name and inclusive dates of the event shall be filed with the application, and shall name the city of Gig Harbor as an additional named insured for the event, including a provision prohibiting the cancellation of said policy except upon at least 30 days prior written notice to the city.

C. If alcohol is permitted and being served, the applicant must obtain a license from the Washington State Liquor Board and provide liquor liability coverage.

Section 7. Section 5.28.140 of the Gig Harbor Municipal Code shall be amended to read as follows:

**5.28.140 Special event temporary license Businesses participating in a special event.**

A. When two or more businesses temporarily gather for a special event under the direction and supervision of a nonprofit organization, only one temporary license special event permit shall be required. The sponsoring nonprofit organization shall be responsible for obtaining the license permit.

~~A group bond or cash deposit shall be filed for all profit-status businesses by the sponsoring organization as follows:~~

- ~~—1. One through 10 businesses, \$500.00;~~
- ~~—2. For each additional 10 businesses, an additional \$500.00.~~

B. A special event temporary license permit shall not exceed five consecutive days.

Section 8. Severability. If any portion of this Ordinance or its application to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remainder of the Ordinance or the application of the remainder to other persons or circumstances.

Section 9. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

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

CITY OF GIG HARBOR

\_\_\_\_\_  
CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

By: \_\_\_\_\_  
ANGELA BELBECK

FILED WITH THE CITY CLERK: 05/20/09  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO.





**Subject:** Public Hearing and First Reading of Ordinance - Development Agreement Processing Amendment

**Proposed Council Action:** Review the ordinance and adopt at second reading

**Dept. Origin:** Planning

**Prepared by:** Jennifer Kester  
Senior Planner

**For Agenda of:** June 8, 2009

**Exhibits:** Draft Ordinance

Initial & Date

**Concurred by Mayor:**

CLH 6/2/09

**Approved by City Administrator:**

RJK 6/3/09

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

email 6/2/09

**Approved by Finance Director:**

N/A

**Approved by Department Head:**

ID 6/3/09

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

The City staff has recommended differentiating the processing requirements for development agreements relating to legislative actions and those development agreements accompanying a project permit application. Currently all development agreements must be reviewed by the Planning Commission before final action by the City Council. The staff is proposing the following section be repealed:

**19.08.040 Approval procedure for development agreements.**

A development agreement is a Type 5 project permit application and shall be processed in accordance with the procedures established in this title. The planning commission's decision on a development agreement is a recommendation to the Gig Harbor city council. A development agreement shall be approved by resolution or ordinance of the Gig Harbor city council after a public hearing.

The staff has proposed the following review process:

- Legislative development agreements, such as those associated with a comprehensive plan amendment, would be reviewed by the Planning Commission with final action by the City Council.
- A development agreement related to a project permit application would be reviewed by the Hearing Examiner or city staff (depending on the final decisionmaker for the underlying permit). The Hearing examiner or staff recommendation would be reviewed by the City

Council for final action. The underlying decision on the application would be held in abeyance until the Council made its decision.

In addition, staff is proposing to extend the maximum term of development agreements from five (5) years to ten (10) years. This does not oblige the Council to approve agreements which will last 10 years. The Council can determine the appropriate length of agreement up to 10 years.

Finally, staff is proposing a one-time extension approved by the Planning Director for development agreements associated with project permit applications. The extensions would be granted if the developer can satisfactorily show that, for a residential project, at least 50% of the residential units are constructed, or for non-residential and mixed use projects, at least 50% of the gross floor area is constructed. This will allow a project partially constructed to be finished within the terms of the original agreement.

**ENVIRONMENTAL ANALYSIS**

The City's SEPA Responsible Official determined that this Ordinance is categorically exempt from SEPA, pursuant to WAC 197-11-800(19)

**FISCAL CONSIDERATION**

None

**BOARD OR COMMITTEE RECOMMENDATION**

The draft ordinance was reviewed by the Planning and Building Committee on June 1<sup>st</sup>, 2009.

**RECOMMENDATION / MOTION**

**Move to:** Staff recommends the Council review the ordinance and adopt at the second reading.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DEVELOPMENT AGREEMENTS, REPEALING AND REENACTING SECTION 19.08.040 OF THE GIG HARBOR MUNICIPAL CODE TO ESTABLISH PROCESSING REQUIREMENTS FOR DEVELOPMENT AGREEMENTS RELATING TO LEGISLATIVE ACTION AND THOSE DEVELOPMENT AGREEMENTS ACCOMPANYING A PROJECT PERMIT APPLICATION; AMENDING SECTION 19.08.050 OF THE GIG HARBOR MUNICIPAL CODE TO CLARIFY THAT DEVELOPMENT AGREEMENTS ARE NOT SUBJECT TO FINAL DECISION DEADLINES AND TO MAKE OTHER CLEAN-UP AMENDMENTS TO THE PROCEDURES FOR DEVELOPMENT AGREEMENTS, ; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, cities may enter into development agreements with developers for the purposes set forth in RCW 36.70B.170; and

WHEREAS, the City of Gig Harbor has an established procedure for the review and approval of development agreements in chapter 19.08 GHMC; and

WHEREAS, the Washington State Legislature clarified that development agreements that accompany project permit applications are subject to review under chapter 36.70C RCW as final land use decisions (RCW 36.70B.200); and

WHEREAS, to be consistent with state law and the City's processing of project permit applications, the City desires to address the differences between processing a development agreement associated with a legislative decision and processing of a development agreement associated with a project permit application; and

WHEREAS, RCW 36.70B.200 requires that the City Council pass an ordinance or resolution if the development agreement is approved; and

WHEREAS, a development agreement associated with a project permit application is not subject to the final decision deadlines in RCW 36.70B.080 and the City's corresponding codes; and

WHEREAS, the City's SEPA Responsible Official determined that this Ordinance is categorically exempt from SEPA, pursuant to WAC 197-11-800(19); and

WHEREAS, pursuant to RCW 36.70A.106, the City forwarded a copy of this Ordinance to the Washington State Department of Trade and Community Development on May 14, 2009; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on \_\_\_\_\_, 2009; and

WHEREAS, on \_\_\_\_\_, the City Council held a second reading during a regular City Council meeting; Now, therefore,

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

Section 1. Section 19.08.040 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new Section 19.08.040 is hereby added to the Gig Harbor Municipal Code to read as follows:

**19.08.040 Processing procedure for development agreements.**

A. A development agreement associated with a legislative action such as a comprehensive plan amendment or area-wide rezone shall be processed in accordance with the procedures established in this Title. The Planning Commission shall make its recommendation on any development agreement relating to legislative action to the City Council. A public hearing shall be held on the development agreement and if approved, the Council shall authorize the Mayor, in a resolution or ordinance, to execute the development agreement on behalf of the City.

B. A development agreement associated with a project permit application shall be processed in accordance with the procedures established in this Title.

1. If the final decision on the underlying project permit application is made by the Hearing Examiner, then the Hearing Examiner shall consider both the project permit application and the proposed development agreement together during the public hearing. The Hearing Examiner shall make a recommendation to the Council on the development agreement and his/her decision on the underlying project permit application shall be held in abeyance until the City Council considers the proposed development agreement in a public hearing. If the City Council approves the development agreement, the Council shall, by resolution or ordinance, authorize the Mayor to execute the development

agreement on behalf of the City. At this point, the Hearing Examiner may then issue his/her final decision on the underlying project permit application. Nothing in this section obligates the Hearing Examiner to forward a recommendation to the City Council for further consideration if the Hearing Examiner denies the underlying project permit application.

2. If the final decision on the underlying project permit application is made by the City administrative staff, then the City staff shall consider both the project permit application and the proposed development agreement together. The City staff shall make a recommendation to the Council on the development agreement, and the City staff's decision on the underlying project permit application shall be held in abeyance until the City Council considers the proposed development agreement in a public hearing. If the City Council approves the development agreement, the Council shall, by resolution or ordinance, authorize the Mayor to execute the development agreement on behalf of the City. At this point, the City staff may then issue its final decision on the underlying project permit application. Nothing in this section obligates City staff to forward a recommendation to the City Council for further consideration if City staff denies the underlying project permit application.

Section 3. Section 19.08.050 of the Gig Harbor Municipal Code shall be amended to read as follows:

**19.08.050. No Deadline for Final Decision, Form of Agreement, Council Approval, Term, Recordation.**

~~A. Form. All development agreements shall be in a form provided by the City Attorney's Office. The City attorney shall approve all development agreements for form prior to consideration by the planning commission.~~

A. Development agreements are not "project permit applications" as defined in RCW 36.70B.020. Therefore, there is no deadline for processing a development agreement. If an applicant requests that the City execute a development agreement as part of its approval of a project permit application, the applicant must agree to sign a written waiver of the deadline for issuance of a final decision of the project permit application, so that the development agreement may be processed.

B. No development agreement shall be presented to the decision-making body unless in a form approved by the City

Attorney. Every development agreement shall be signed by the property owner and all other parties with a substantial beneficial interest in the property that is the subject of the development agreement, prior to any public hearing held for the purpose of authorizing execution of the development agreement.

B.C. Term.

1. Development Agreements associated with a legislative action such as a comprehensive plan amendment or an area-wide rezone may be approved for a maximum period of five-ten years.

2. Development Agreements associated with a project permit application may be approved for a period of up to ten years. An applicant may request an extension to the Planning Director at least 60 days prior to expiration. The Planning Director may grant an extension for up to five years if the applicant can satisfactorily show that, for a residential project, at least 50% of the residential units are constructed, or for non-residential and mixed use projects, at least 50% of the gross floor area is constructed.

G.D. Recordation. A development agreement shall be recorded against the property, in the real property records of the Pierce County Assessor's Office. During the term of the development agreement, the agreement is binding on the parties and their successors, including the property owners in any area that is annexed to the City.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause or phrase of this Ordinance.

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

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

CITY OF GIG HARBOR

\_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

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Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

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Angela S. Belbeck

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO:

**TO: MAYOR HUNTER AND CITY COUNCIL**  
**FROM: TOM DOLAN, PLANNING DIRECTOR**  
**SUBJECT PERMIT EXTENSIONS**  
**DATE: JUNE 8, 2009**

At the April workshop with the City Council, the issue of permit extensions was discussed. It was identified that because of the current economic slowdown, many of the land use permits approved by the City were likely to expire due to the inability of project proponents to get financing for new construction. It was noted that land use permits in Gig Harbor have relatively short expiration periods. The current time lengths are:

Preliminary plats: 5 years with 1 one-year extension

Site Plans: 2 years to begin construction, no extension

Binding site plans: 4 years to submit building permits for all buildings.

Shoreline substantial development permits: 2 years to begin substantial progress on permit; 5 years to complete construction; 1 one-year extension allowed.

Conditional use permits: 1 year with 1 one-year extension

Variance: 1 year with 1 one-year extension

Design Review: 2 years to begin construction, no extension

The current maximum permit length of 2 years for site plans, conditional use permits, variances and design review is relatively short when you take into consideration all of the work that is necessary to obtain a building permit. At the April workshop, one of the ideas identified was allowing permit extensions provided the applicant paid for impact fees and hook-up fees in advance. Another idea is allowing 2 year permit extensions subject to compliance with any new development regulations that occur after the initial term of the of the permit. It is noted that Pierce County adopted a policy of allowing 2 year permit extensions.

Prior to bringing this back to the City, I sent out an e-mail requesting feedback to a group of builders and consultants indicating that Gig Harbor was considering extension of permits subject to payment of all or part of the impact fees. As an alternative I also indicated that extensions might also be subject to compliance with amendments to development regulations. I have forwarded to you the responses I have received. In summary, most of the responders think that extensions should be allowed without requiring the payment of impacts fees or compliance with new development regulations. The main argument is that the current economic situation is so severe that allowing permit extensions without condition will serve as a stimulus. They point out that Pierce County specifically allows 2 year extensions as part of their "stimulus" initiative.

In light of the comments received, staff is seeking direction from the City Council prior to further work on this issue.



June 4, 2009

To: City of Gig Harbor

Mayor Chuck Hunter

City Administrator Rob Karlinsey

Planning Director Tom Dolan

From: Westside Industrial Group, LLC

Dear Sirs,

On November 2, 2007 Westside Industrial Group received formal approval from Hearing Examiner Margaret Klockars, for both site plan, variance and design review of the Westside Business Park, Lot 1 building project located at 3208 57<sup>th</sup> St. Ct. NW, Gig Harbor, Washington. Several business owners expressed interest in a leasing opportunity in the new building, and the local economy was in a position to support any and all of them. The members of Westside Industrial Group now looked forward to the day when the building would be completed and ready for occupancy. The members of the Westside Industrial Group anticipated a profitable venture over time, and were committed to long-term commercial property ownership in the City of Gig Harbor.

After the marked challenges of the past year, I am writing to explain the difficult decision we now find ourselves making. I am also writing to request consideration for an extension of time for the commencement of construction, i.e. building permits, an exception from pre-payment of hook-up fees, or a portion thereof, and an exemption from changes to City Codes subsequent to November 2, 2007, as I will explain here;

The Westside Industrial Group solicited local business and residents of the Gig Harbor and surrounding area, in an unceasing effort to solidify an occupant and/or owner-occupant for the proposed 8,880 sq. ft. two-story building. The design-build plan for our company was to construct a light-industrial shop space for lease in the Gig Harbor community.

In the course of 18 months, two non-owner tenants were located, but at the same, in the ever-decreasing economic climate, banks ultimately refused financing for non-owner occupied ventures. At the present time, due to the pressure to commence construction no later than November 1, 2009, in the midst of one of the most serious economic downturns in history, the Westside Industrial Group has no other choice, but to sell the developed property. This is the only existing option we see, that will allow for present construction entitlements to carry to a new owner. It is currently on the market. The constraints and the timing could not be worse for our company. We are out of time.

Faced with a "no-choice" sale, our company is currently forced to accept the loss of most, if not all, hard costs associated with the building development phase. In addition, the company faces the reality

that a purchaser may not be found, knowing that currently, construction must begin somewhat prior to November 2, 2009, and prior to implementation of any new storm water regulations, (which would significantly impact, if not destroy any potential development). Our project went through many storm water considerations, deliberations and plan revisions, resulting in a single acceptable engineering solution.

It is my understanding that; 1.) no further storm water capacity exists for our project and 2.) any introduction of a new City Code requirement will effectively prevent the existing land use and permission that we have been granted for this site.

Under the present City Code, Westside Industrial Group, LLC finds itself in serious financial peril, with anticipated losses that are simply unacceptable. This holds true regardless of what happens in the next few months. We ask the City of Gig Harbor, at this time, to honor the existing site plan, provide our company with an extension of time and make no further demands, other than required compliance with rules established prior to November 2, 2007.


On behalf of the Westside Industrial Group, I am requesting a three year site plan extension due to the short term economic outlook and the circumstances I have described, (I note a reference here to the five-year Pierce County site plan period), and request that others in our circumstance would find the same remedy, as well, by means of a permanent amendment to the City Planning Department site plan regulations.

I would hope that Westside Industrial Group, LLC and the rest of the development community would be given due consideration in their attempts to provide an attractive commercial environment within the City limits of Gig Harbor. We have been doing our part to move forward, as best we can, in order to facilitate that end result.

I truly expect that the City of Gig Harbor will honor their previous agreement with Westside Industrial Group, LLC, and act expeditiously and diligently in providing for the immediate and urgent needs of all of the local developers who may need to delay, but ultimately continue their projects in Gig Harbor. I am genuinely looking forward to that reasonable and timely outcome, in this very difficult economic time.

Sincerely,

Howard Miller

A handwritten signature in black ink that reads "Howard Miller". The signature is written in a cursive style with a large, sweeping initial "H".

Westside Industrial Group, LLC

howard@westside-industrial.com

Ph. 253.722.8400 /253.720.8198

## Towslee, Molly

---

**From:** Wade Perrow [wade@wpconstruction.com]  
**Sent:** Wednesday, June 03, 2009 5:02 PM  
**To:** Dolan, Tom  
**Subject:** Permit extensions

---

**From:** Dolan, Tom [mailto:DolanT@cityofgigharbor.net]  
**Sent:** Tuesday, June 02, 2009 3:00 PM  
**To:** carl@halsanfrey.com; Wade Perrow; davesfa@comcast.net; stillwater@harbornet.com; jimbozich@upstructures.com; Thair Jorgenson; JChadwell@orminc.com; Terese@Westside-Industrial.com  
**Cc:** Karlinsey, Rob; Kester, Jennifer; Katich, Peter  
**Subject:** Permit extensions

The City of Gig Harbor is considering an ordinance that would allow the extension of land use permits provided that the applicant paid all or at least a portion of the required hook-up fees. [\[Wade\] I agree you need to pay to play and paying, if you paid 50% of sewer hook-up fee and water hook-up that would be much like a reservation of service rights which would in effect create win- win. City gets funds of the infrastructure investment the developer get a future service set aside.](#)

In today's economic climate, it is acknowledged that some of the land use permits that have been approved by the City cannot be constructed prior to their expiration.

In a somewhat related matter, if extensions are granted, concern has been expressed if there are changes to City Codes the extended permits will be exempt from the changes. [\[Wade\] They should be in my mind. It should be similar to a binding site plan and the rules should not change unless it is a Life Safety code change.](#)

Staff is considering recommending to the Council that if extensions are allowed (with or without the payment of hook-up fees) that the projects would be subject to any new regulations that are adopted. If the new regulations conflict with how the project is designed, this may require a modification to the permit which could include further hearing examiner consideration. [\[Wade\] This is really a bad idea. If you pay to play you should gain certain.](#)

We are going to be discussing these issues with the City Council at their meeting on 6/8/09. If you could e-mail me your comments prior to then, we'd be happy to share your comments with the City Council. Thanks in advance for your input.

Tom Dolan  
Planning Director  
City of Gig Harbor  
3510 Grandview St.  
Gig Harbor, WA 98335  
253-853-7615 phone  
253-858-6408 fax

## Towslee, Molly

---

**From:** Jim Bozich [jimbozich@upstructures.com]  
**Sent:** Tuesday, June 02, 2009 4:06 PM  
**To:** Dolan, Tom  
**Subject:** RE: Permit extensions

If the developer pays the fees the permit should be able to be extended without having to meet new regulations. I think the extensions should be granted up to 5 years then after that some type of review should occur with staff before another 5 year extension.

Jim Bozich  
PO Box 1640  
Gig Harbor, WA 98335  
253.853.3997 (p) 253.853.7370 (f)  
[jimbozich@upstructures.com](mailto:jimbozich@upstructures.com)

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

**From:** Dolan, Tom [mailto:DolanT@cityofgigharbor.net]  
**Sent:** Tuesday, June 02, 2009 3:00 PM  
**To:** carl@halsanfrey.com; wade@wpconstruction.com; davesfa@comcast.net; stillwater@harbornet.com; jimbozich@upstructures.com; Thair Jorgenson; JChadwell@orminc.com; Terese@Westside-Industrial.com  
**Cc:** Karlinsey, Rob; Kester, Jennifer; Katich, Peter  
**Subject:** Permit extensions

The City of Gig Harbor is considering an ordinance that would allow the extension of land use permits provided that the applicant paid all or at least a portion of the required hook-up fees. In today's economic climate, it is acknowledged that some of the land use permits that have been approved by the City cannot be constructed prior to their expiration.

In a somewhat related matter, if extensions are granted, concern has been expressed if there are changes to City Codes the extended permits will be exempt from the changes. Staff is considering recommending to the Council that if extensions are allowed (with or without the payment of hook-up fees) that the projects would be subject to any new regulations that are adopted. If the new regulations conflict with how the project is designed, this may require a modification to the permit which could include further hearing examiner consideration.

We are going to be discussing these issues with the City Council at their meeting on 6/8/09. If you could e-mail me your comments prior to then, we'd be happy to share your comments with the City Council. Thanks in advance for your input.

**Tom Dolan**  
Planning Director  
City of Gig Harbor  
3510 Grandview St.  
Gig Harbor, WA 98335  
253-853-7615 phone  
253-858-6408 fax

June 4, 2009

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

Dear City Council,

The City just now acknowledged what other jurisdictions has recognized several months ago. The economic crises we are in have delayed hundreds of good projects most with entitlements in-hand, but without the financial means or market to proceed at this time.

May I suggest the City should make provisions for extending existing Land-Use Permits a minimum of two years, possibly adding a provision to request an additional eighteen months if necessary; but without trying to extort money for the privilege.

Asking for up-front money from developers for connection fees that normally only become due upon the issuance of a building permit is inflicting additional financial pain just when developers could least afford it.

I suspect this type of action would bring criticism from developers region wide as a form of extortion. If the City implemented such fees in return for an extension, many more developers would completely avoid the City of Gig Harbor for their projects if they have not already made that decision.

As for code changes affecting approved projects, I offer the following:

If Land-Use Approvals are good enough today and it meets all City Zoning and Design Requirements, why would it not be good enough two years or three downstream? The only real code issue should be for a building permit issued and extended as it could relate to health and life safety issues.

Those types of issues should be corrected if any project passed the legally binding time period stated in the International Building Code or Residential Codes.

Sincerely,  
Snodgrass Freeman Associates

David Freeman, A.I.A.

**Attention:** In accordance with the Economic Stimulus Package for Pierce County, and Ordinance 2008-115s provisions are now available for one twenty-four (24) month time extensions on active building permits, vesting rights, and land use, subdivision, and other development applications & approvals. All requests for time extensions must be received between January 1, 2009 and close of business on June 30, 2009. All questions regarding the time extension should be directed to the County hot line, 253-798-7113. Calls will be returned as promptly as possible.

A scanned copy of Ordinance 2008-115s is attached to this notice, please see the pages that follow.

**ORDINANCE NO. 2008-115s**

**An Ordinance of the Pierce County Council Temporarily Allowing (Until July 1, 2009) Extensions of the Expiration Date of Certain Development Related Applications and Approvals as Set Forth in 18.60.030, 18A.85, 18F.40.070, and 18F.50.050 of the Pierce County Code in Response to the Economic Downturn in the Construction Industry; Adopting Interim Procedures for Extending the Expiration Date of Certain Development Applications; Adopting Interim Procedures for Extending the Expiration Date of Certain Permit Approvals for Preliminary Plats, Preliminary Short Plats, and Preliminary Large Lot Divisions; Adopting Interim Regulations through a New Section 18.160.065 Allowing for the One-Time Extension of Vested Rights for Certain Approved and Recorded Final Plats, Short Plats, Large Lots, Binding Site Plans, and Use Permits; Setting Forth an Effective Date; Establishing a Sunset Date; Requesting Planning Commission Review; and Adopting Findings of Fact.**

**Whereas**, the Pierce County Economic Stimulus Report dated September 15, 2008, recommends that extensions to the expiration date of preliminary plats be considered by the Council; and

**Whereas**, the severe downturn in the local, regional, and national housing markets, reduced demand for new housing, tightening credit market, and difficulty obtaining the financing necessary to complete a project, have resulted in a situation where developers of new housing and subdivisions are unable to finalize development proposals in a timely manner; and

**Whereas**, in order to prevent the expiration of development applications and approvals during the economic downturn, extensions of the expiration dates of certain development related applications and approvals are needed; and

**Whereas**, the expiration of a development application or approval can have significant financial impacts to a developer and also adversely affects the financial institutions and other investors which have provided financing in support of a development proposal; and



1       **Whereas**, the national scale of the housing market downturn and tightening  
2 credit markets have severely affected many builders and developers in Pierce County  
3 and many of these builders and developers are now struggling financially; and  
4

5       **Whereas**, the construction industry is a major employer in Pierce County,  
6 accounting for approximately 8.5% of all jobs in Pierce County; and  
7

8       **Whereas**, construction related activity is a significant tax generator and provides  
9 much needed revenue to local governments to finance public safety and other needed  
10 public services; and  
11

12       **Whereas**, Section 18.60.030 of the Pierce County Code provides for extensions  
13 of development permit applications including, but not limited to applications for formal  
14 subdivision, short subdivision, large lot division, binding site plan, building permit,  
15 shoreline substantial development permit, use permit, and variances, but limits the  
16 number and duration of such extensions; and  
17

18       **Whereas**, Titles 18, 18A, and 18F provide for extensions of development permit  
19 approvals for certain development approval types, but limits the number and duration of  
20 such extensions; and  
21

22       **Whereas**, Title 18 sets forth Pierce County's vesting procedures including the  
23 duration of vested rights;  
24

25       **Whereas**, providing for additional extensions of certain development related  
26 applications and approvals, including the extension of the vested rights associated with  
27 these applications and approvals, may aid the local economy by helping the  
28 construction industry to weather the economic downturn while preserving the  
29 investments made in the development permitting process; and  
30

31       **Whereas**, maintaining the viability of development applications and approvals will  
32 also help to ensure that the development industry is in a position to respond more  
33 quickly once favorable economic conditions return;  
34

35       **Whereas**, the Council finds that it is in the best interest of citizens of Pierce  
36 County and the local economy to temporarily modify the procedures for extending  
37 development related applications and approvals;  
38

39       **Whereas**, the local police power delegated to local governments by Art. XI,  
40 Section 11 of the Washington Constitution authorizes interim regulatory controls as  
41 have Washington's courts interpreting various sections of the Revised Code of  
42 Washington; See *Matson v. Clark County*, 79 Wn. App. 641, 904 P.2d 317 (1995);  
43 *Biggers v. Bainbridge Island*, 162 Wn.2d 683; 169 P.3d 14; 2007; and *Weden v. San*  
44 *Juan County*, 135 Wn.2d 678, 958 P.2d 273 (1998);





1       **Whereas**, the proposed interim regulations are categorical exempt from  
2 environmental review under the State Environmental Policy Act (SEPA) pursuant to  
3 WAC 197-11-800(20); and  
4

5       **Whereas**, The Council finds that the severe housing market downturn coupled  
6 with the tightening of credit markets has significantly impacted the construction industry  
7 and poses a threat to the local economy and the general public health, safety, and  
8 welfare due to reductions in construction related taxes and revenues and loss of  
9 construction related jobs. The Council finds that these conditions require actions to be  
10 taken to allow for the extension of certain existing development related applications and  
11 approvals that would likely expire due to the inability to obtain financing during the  
12 economic downturn. The Council finds that this action will benefit the local economy by  
13 helping to protect the construction industry from the significant financial losses  
14 associated with expired permit applications and permit approvals, including the loss of  
15 real estate entitlements, and will better enable the local construction industry to recover  
16 as the economy improves; **Now Therefore**,

17  
18       **BE IT ORDAINED by the Council of Pierce County:**  
19

20       Section 1. Section 18.60.030 C. of the Pierce County Code is hereby  
21 amended by adding an exception as follows:  
22

- 23       C. The application shall be deemed null and void if the applicant fails to submit  
24 additional information within 180 days of the Department's or Hearing  
25 Examiner's request, unless the applicant has been granted a time period  
26 extension. The applicant shall be granted a 180-day extension if:  
27       1. The applicant requests such an extension in writing prior to the expiration  
28       of the initial 180-day time period; and  
29       2. The Director or Hearing Examiner finds that unusual circumstances  
30       beyond the applicant's control have prevented them from providing the  
31       additional information within the initial 180-day time period. Only one  
32       extension may be granted.  
33

34       **Exception:** Effective until July 1, 2009, the applicant or agent of record  
35 for any unexpired development application submitted prior to November 1,  
36 2008, shall be granted a 24 month suspension of the 180 day submittal  
37 requirement upon written request.  
38

39       Upon receipt of a written suspension request, the Department of Planning  
40 and Land Services shall notify the applicant or agent of record in writing of  
41 the granting of the 24 month suspension, including the date on which the  
42 suspension expires. The 24 month suspension shall be calculated from  
43 the date that the suspension is received by the Department and shall  
44 supersede and serve in lieu of any previously granted time extension.  
45 Upon expiration of the suspension period, the applicant shall have 90  
46 calendar days to submit all previously requested information. Failure to  
47 submit all requested information prior to the expiration of this 90 day



1 period shall result in the application being deemed null and void. No  
2 additional time extensions beyond this 90 day period shall be granted.

3  
4 Information requested by the Pierce County Hearing Examiner shall not be  
5 subject to time extension unless such an extension is authorized by the  
6 Hearing Examiner.

7  
8 Section 2. A new Section 18.60.065 of the Pierce County Code, "Extension of  
9 Vested Rights," is hereby adopted as follows:

10  
11 **18.160.065 Extension of Vested Rights**

12 Until July 1, 2009, the Department shall grant a one time 24 month extension of  
13 the vested rights associated with any final plat, large lot, short plat, binding site  
14 plan, or use permit which received final approval and was recorded prior to  
15 November 1, 2008, and has a vested rights expiration date of July 1, 2011, or  
16 sooner. In order to receive an extension of vested rights, the property owner or  
17 agent of record shall submit a written request for the extension to the Department  
18 at least 30 days prior to the date upon which vested rights would otherwise  
19 expire. (See 18.160.060, Duration of Approvals) Upon receipt of a written  
20 extension request, the Department shall notify the property owner or agent of  
21 record in writing of the granting of the 24 month extension including the date on  
22 which this extension expires. The 24 month extension shall be calculated from  
23 the original vested rights expiration date. Additional requirements may apply  
24 where notes specifying vesting dates are included on the face of the recorded  
25 document. (See Title 18F, Land Divisions and Boundary Changes).

26  
27 Section 3. Section 18F.40.070 A.1. of the Pierce County Code is amended by  
28 adding an exception as follows:

29  
30 **18F.40.070 Preliminary Plats-Time Extensions.**

31 **A. General Requirements.**

- 32 1. The applicant or owner(s) may request a 1-time, 1-year time extension  
33 beyond the five years within which to submit a final plat, unless approved  
34 under 18F.40.090.

35  
36 **Exception:** Effective until July 1, 2009, a 1-time, 24 month time  
37 extension may be granted by the Hearing Examiner in lieu of, or in  
38 addition to, the 1-time, 1-year time extension following the procedures set  
39 forth in 18F.40.070 for any unexpired preliminary plat approved prior to  
40 November 1, 2008, provided however, that not more than one time  
41 extension may be valid at any time for a preliminary plat. Further  
42 provided, in no case shall more than two time extensions be granted to  
43 any preliminary plat unless such a preliminary plat is vested under a prior  
44 code which specifically allows multiple extensions. The extension shall be  
45 calculated from the expiration date of any previously approved time  
46 extension.



1        Section 4. Section 18F.50.050 A.2, of the Pierce County Code is amended by  
2 adding an exception as follows:

3  
4        **18F.50.050 Final Short Subdivisions and Final Large Lot Division Requirements.**  
5        **A. Time Limitations.**

- 6  
7            2. A proposed final short subdivision or final large lot division shall be  
8 submitted to the Planning Department within three years of the effective  
9 date of preliminary short subdivision/large lot division approval. The  
10 Department shall review the proposed final short subdivision/large lot  
11 division for compliance with the conditions of preliminary approval as set  
12 forth in 18F.50.050 D.

13  
14            ~~Exception: Effective until July 1, 2009, any unexpired preliminary short~~  
15 ~~subdivision/preliminary large lot division approved prior to November 1,~~  
16 ~~2008, shall be granted a one-time 24 month time extension from the~~  
17 ~~expiration date of the initial three year period in which to submit a final~~  
18 ~~short subdivision/final large lot division upon submittal of a written request.~~  
19 ~~In order to receive the extension, the property owner or agent of record~~  
20 ~~shall submit a written request for the extension to the Department at least~~  
21 ~~30 days prior to the date upon which the preliminary short~~  
22 ~~subdivision/preliminary large lot division would otherwise expire. Upon~~  
23 ~~receipt of a written extension request, the Department of Planning and~~  
24 ~~Land Services shall notify the applicant or agent of record in writing of the~~  
25 ~~expiration of the initial three year period and the granting of the 24 month~~  
26 ~~extension including the date on which this extension expires. Failure to~~  
27 ~~submit an extension request prior to the expiration date of the preliminary~~  
28 ~~short plat/preliminary large lot shall result in the preliminary short~~  
29 ~~plat/preliminary large lot approval being deemed null and void.~~

30  
31        Section 5. Section 18F.40.090 C., of the Pierce County Code is amended by  
32 adding an exception as follows:

33  
34        **18F.40.090 Phasing of a Final Plat.**

- 35  
36        **C. Time Limitations.** The first phase of a phased subdivision must submit for final  
37 plat approval within five years of the date of preliminary plat approval in  
38 accordance with 18F.40.060 A.1. Final plat approval by the Examiner will  
39 constitute an automatic 1-year extension of the remaining phases of such  
40 preliminary plat from the prior phase expiration date. In no case may any  
41 preliminary plat receive more than three 1-year time extensions or have more  
42 than eight years from preliminary plat approval to receive final plat approval for  
43 all phases.



1  
2 Exception: Effective until July 1, 2009, a 1-time, 24 month time  
3 extension may be granted by the Hearing Examiner to any phased  
4 subdivision. This time extension shall be in addition to the three 1-year  
5 time extensions allowed pursuant to this Section specified above.  
6 Granting of this 24 month time extension shall extend the maximum time  
7 period to receive final plat approval for all phases of the phased  
8 subdivision to ten years from the effective date of preliminary plat  
9 approval.

10  
11 Section 6. Effective until July 1, 2009, the Hearing Examiner may approve a  
12 phasing plan at the time of preliminary plat approval to any subdivision containing more  
13 than 750 dwelling units that is vested under PCC 16.08.040 upon applicant request.  
14 This phasing plan may allow for final plat submittal for multiple years beyond the five  
15 year time period provided for pursuant to RCW 58.17.140. The Examiner shall have  
16 discretion to determine the appropriate length of time beyond the statutory 5 year period  
17 for the completion of the phased subdivision based on the number of dwelling units  
18 included in the application and the general marketing conditions at the time of the public  
19 hearing; provided, however, that the maximum time period allowed for completion of the  
20 entire phased subdivision shall not exceed 12 years from the effective date of  
21 preliminary plat approval. Approval of the phasing plan shall extend the maximum time  
22 period to receive final plat approval for each phase of the phased subdivision to the  
23 number of years from the effective date of preliminary plat approval that the Examiner  
24 determines to be a reasonable estimate of the time necessary to complete the  
25 development of the entire project. If the Examiner exercises the discretion granted by  
26 this exception, the approved phasing plan shall be in lieu of the 1-year time extensions  
27 allowed pursuant to PCC 16.08.040; provided, however, that the Hearing Examiner may  
28 also approve a process for allowing up to three 1-year time extensions of the completion  
29 date of the phased subdivision as set forth in the approved phasing plan as a condition  
30 of project approval. This extension process may allow for the imposition of additional  
31 conditions of project approval.

32  
33 Section 7. For purposes of time extensions pursuant to Title 16, Title 17C, Title  
34 18, Title 18A, and Title 18F of the Pierce County Code, the Council declares that the  
35 current economic downturn is an unusual circumstance outside of an applicant's control  
36 and shall serve as adequate justification for the granting of time extensions by the  
37 Director or the Pierce County Hearing Examiner, as appropriate. Time extensions that  
38 are granted pursuant to this declaration shall continue to be subject to the conditions of  
39 approval and vested rights that applied to application or permit prior to the extension.  
40 No new conditions shall be imposed except in those circumstances where the Council  
41 determines by Ordinance that additional conditions are necessary to address a serious  
42 threat to the public health, safety or welfare. This declaration by the Council shall  
43 remain in effect until July 1, 2009.



1 Section 8. The Planning and Land Services Department is requested to forward  
2 the interim regulations adopted pursuant to this ordinance to the Pierce County  
3 Planning Commission for review by March 1, 2009. The Planning Commission is  
4 requested to forward its recommendations to the Council no later than April 1, 2009.

5  
6 Section 9. This ordinance shall become effective on January 1, 2009.  
7

8 Section 10. The interim regulations established pursuant to this Ordinance shall  
9 not be codified and shall sunset on July 1, 2009, unless reauthorized by the Pierce  
10 County Council; provided, however, that any time extension or suspension approved  
11 prior to the sunset date shall remain in effect for the duration of said extension or  
12 suspension. Any time extension or suspension submitted in accordance with the  
13 provisions of this Ordinance and prior to the sunset date shall be processed in  
14 accordance with the provisions set forth herein.  
15

16 Section 11. This Ordinance shall not apply to any action associated with a  
17 violation of Pierce County Code and shall not authorize time extensions for information,  
18 applications, permits, or other actions required for compliance.  
19

20 Section 12. Findings of Fact as set forth in Exhibit A are hereby adopted.  
21

22 PASSED this 2nd day of December, 2008.  
23

24 ATTEST:

PIERCE COUNTY COUNCIL  
Pierce County, Washington

25  
26  
27 Patricia L. Force, for  
28  
29 **Denise D. Johnson**  
30 Clerk of the Council

[Signature]  
31  
32  
33 **Terry Lee**  
34 Council Chair

[Signature]  
35  
36 **John W. Ladenburg**  
37 Pierce County Executive  
38 Approved  Vetoed , this  
39 5 day of Dec,  
40 2008.

41 Date of Publication of  
42 Notice of Public Hearing: November 13, 2008

43 Effective Date of Ordinance: January 1, 2009  
44



**Findings of Fact**

1. The Pierce County Economic Stimulus Report dated September 15, 2008, recommends that extensions to the expiration date of preliminary plats be considered by the Council.
2. The severe downturn in the local, regional, and national housing markets, reduced demand for new housing, tightening credit market, and difficulty obtaining the financing necessary to complete a project, have resulted in a situation where developers of new housing and subdivisions are unable to finalize development proposals in a timely manner.
3. The expiration of a development application or approval can have significant financial impacts to a developer and also adversely affects the financial institutions and other investors which have provided financing in support of a development proposal.
4. The construction industry is a major employer in Pierce County, accounting for approximately 8.5% of all jobs in Pierce County and construction related activity is a significant tax generator and provides much needed revenue to local governments to finance public safety and other needed public services.
5. Pierce County Code provides for opportunities to obtain time extensions for various applications and approvals, however these time extensions are of limited duration and are not of sufficient length to enable extensions beyond the current period of economic slowing.
6. Providing for additional extensions of certain development related applications and approvals, including the extension of the vested rights associated with these applications and approvals, may aid the local economy by helping the construction industry to weather the economic downturn while preserving the investments made in the development permitting process and will also help to ensure that the development industry is in a position to respond more quickly once favorable economic conditions return.
7. The Council finds that it is in the best interest of citizens of Pierce County and the local economy to temporarily modify the procedures for extending development related applications and approvals.
8. The local police power delegated to local governments by Art. XI, Section 11 of the Washington Constitution authorizes interim regulatory controls as have Washington's courts interpreting various sections of the Revised Code of Washington; See *Matson v. Clark County*, 79 Wn. App. 641, 904 P.2d 317 (1995); *Biggers v. Bainbridge Island*, 162 Wn.2d 683; 169 P.3d 14; 2007; and *Weden v. San Juan County*, 135 Wn.2d 678, 958 P.2d 273 (1998).



- 1 9. The proposed interim regulations are categorical exempt from environmental review  
2 under the State Environmental Policy Act (SEPA) pursuant to WAC 197-11-800(20).  
3
- 4 10. The Council finds that the severe housing market downturn coupled with the  
5 tightening of credit markets has significantly impacted the construction industry and  
6 poses a threat to the local economy and the general public health, safety, and  
7 welfare due to reductions in construction related taxes and revenues and loss of  
8 construction related jobs.  
9
- 10 11. The Council finds that these conditions require actions to be taken to allow for the  
11 extension of certain existing development related applications and approvals that  
12 would likely expire due to the inability to obtain financing during the economic  
13 downturn.  
14
- 15 12. The Council finds that this action will benefit the local economy by helping to protect  
16 the construction industry from the significant financial losses associated with expired  
17 permit applications and permit approvals, including the loss of real estate  
18 entitlements, and will better enable the local construction industry to recover as the  
19 economy improves.



June 6, 2009

Tom Dolan, Planning Director  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

Dear Mr. Dolan:

It is my understanding that the Gig Harbor City Council will be discussing whether to consider taking action that would grant time extensions on building and development permits within the city on June 8. On behalf of the Master Builders Association of Pierce County, thank you for the opportunity to provide the association's perspective on such a proposal.

The current economic downturn generally, and the housing market specifically, is a national (and even global) problem; the need for permit extensions is due to circumstances beyond any builder or developer's control. In 2007, Gig Harbor issued 70 single family (SFR) building permits. This number dropped to 20 in 2008. In Pierce County as a whole, the SFR permit activity dropped from 5155 in 2005 to 1636 in 2008, and activity has remained very low in 2009. (E.g., in unincorporated Pierce County, only 114 spec home and 173 custom home permits have been issued to date this year; this is compared to 877 spec home and 355 custom permits issued year to date in 2006.) Lot creation has also slowed significantly, due to the inability of developers to secure financing coupled with the sudden rush of foreclosed property and short sales onto the market.

Construction financing is not the only problem; even if a builder is able to finish a home, consumers are currently facing a very tight mortgage lending market and are rarely able to qualify to buy. While some predict that the market will hit bottom by the end of 2009, no one is sure of that prediction. Even if it does, new construction will lag behind the market as a whole because foreclosures and standing new inventory will have to sell before new construction can begin once more. According to the National Association of Home Builders' Spring 2009 Construction Forecast, the northwest region is predicted to be operating at 30% of a normal market level by the 4<sup>th</sup> quarter of 2009 and only 45% of a normal market level by 4<sup>th</sup> quarter 2010. ("Normal market" defined as activity levels in 2001-2003.)

All of this information is provided to you to assist the city in its decision whether to allow permit extensions, and if so, what regulatory requirements to place on permits that are extended. MBA requests that the city review and use an approach similar to that adopted by Pierce County in the attached ordinance. The County's extended permits will be reviewed under the same rules in place at the time of their original vesting – the rules on these projects will remain the same due to the economic ramifications that could kill the projects should new rules be applied. There is no benefit to the city if once the market starts to turn, there is a sudden backlog in permitting due to a requirement that staff members re-review projects or force projects to undergo review a

---



second time under different rules. There is also no benefit to the city's revenue should the projects fail.

Thank you once again for your consideration of this information, and please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Tiffany Speir". The signature is written in a cursive, slightly slanted style.

Tiffany Speir  
Government Affairs Director

Attachment

June 8, 2009

Mr. Tom Dolan, Planning Director  
City of Gig Harbor Development Services  
3510 Grandview Street  
Gig Harbor, WA 98335

Re: Permit Extension Ordinance

Dear Tom,

We appreciate the opportunity to comment on the City's consideration of a permit extension ordinance. This is a very important issue during our national recession which has drastically affected various segments of the economy, including severely affecting the local banking, real estate and construction sectors.

Permit and vesting extension ordinances have been implemented and/or are currently being considered in other jurisdictions within Pierce County, as well as, across the state and country. The vast majority are being considered as the local jurisdiction's efforts to support economic stimulus. While we commend the City in developing an ordinance to address this issue, our hope would be that the City would strongly consider the economic situation we all find ourselves in and not slide into the regulatory bureaucracy side of new legislation. A requirement to pay expensive fees and/or loss of vesting rights as a condition of permit extensions would be counterproductive under today's economic times.

Many of the projects that are in various stages of your permitting pipeline are greatly impacted by the current national and local recession. The current lack of financial liquidity for the building/development/construction industries, as well as, for business and home owners, combined with the current general reduction of market demand caused by the general recession, has required that many current projects to be slowed down or held until the economy begins to strengthen again.

Due to the current difficulties in obtaining financing for projects, under existing economic conditions, a loss of permit approvals often triggers re-appraisals. Most often, substantially lower real estate valuations are established in conjunction with the approved project, thereby requiring the reclassification of numerous loans which, in turn, affects the stability of the banking system. It reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default. The extension of permits in many cases could help to avoid the requirements for re-appraisals and reclassifications of existing

loans. Thus, in a time of economic downturn, financing for construction projects is difficult to obtain and easy to lose.

The current national recession has severely weakened the local building industry, and many landowners/contractors/developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants. This crisis in real estate financing and the building industry, in addition to the uncertainty over the state of the economy has resulted in increasing levels of unemployment in both the construction industry, as well as, many others in the local economy. The loss of permit approvals, if not addressed, only will exacerbate these losses.

With many approved projects put on hold due to the recession, granting extensions of time would allow developers/builders/property owners to restart projects as soon as the economy picks up. This will help the construction industry to create new jobs and businesses sooner, resulting in overall stimulation to the regional economy. The City would also benefit by collecting the various permit, impact and utility connection fees without the needless delay of repeating a one to two year permitting process.

The City's permitting process for various applications is very difficult, time consuming and expensive compared to most other jurisdictions. Extending the terms and vesting rights and the currently approved permits for a period of time would avoid the cost and time of both the applicants and City staff to re-process the permits and/or prevent the killing the project altogether in the face of this economy.

We would strongly request that the City strongly consider adopting a two-year economic stimulus permit and vesting extension ordinance similar to the one Pierce County put in place at the end of 2008. We believe that this would be of benefit to the City and all you represent in the community, as well as, to the applicant with their projects in various stages of permit approvals already in your system.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thair Jorgenson', with a long horizontal flourish extending to the right.

Thair Jorgenson, P.E.  
Principal Engineer  
North Pacific Design

Cc: Gordon Rush - RDC  
Matt Smith - RDC

## Towslee, Molly

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**From:** Dolan, Tom  
**Sent:** Monday, June 08, 2009 1:21 PM  
**To:** Towslee, Molly  
**Subject:** FW: Permit extensions

Here is another.....

Tom Dolan  
Planning Director  
City of Gig Harbor  
3510 Grandview St.  
Gig Harbor, WA 98335  
253-853-7615 phone  
253-858-6408 fax

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**From:** Eva Jacobson [mailto:stillwater@harbornet.com]  
**Sent:** Monday, June 08, 2009 12:20 PM  
**To:** Dolan, Tom; Karlinsey, Rob; Katich, Peter; Kester, Jennifer; "Chuck Hunter \(\hunterc@cityofgigharbor.net.\)"  
**Cc:** Thair Jorgenson  
**Subject:** RE: Permit extensions

Thank you for providing this opportunity to comment.

The sever downturn in the local, regional and national housing markets along with tight credit markets has created a situation where developers and builders are unable to start or finalize projects that have been approved. To put added stain on the owners is the possibility of the permit expiring in which case, credit or financing will be even harder to obtain. I have clients whose banks are asking for guarantees that the entitlements that are permitted are stable. Financial institutions are avoiding the adverse affects of any uncertainty in a project.

Construction related activity and the housing market are major contributors to the local economy by generating tax revenue and providing employment.

The City will help sustain this economy by providing for additional extensions for permitted projects to start and complete. However, if that additional time extension does not retain the vested rights of the permitted project, it will not accomplish this goal. Most owners and project developers would not have a viable project if new regulations are implemented and required. Many projects would need to start the engineering and design phases all over, to accommodate the new storm regulations proposed for later this year. Some projects would simply not be viable at all.

I strongly recommend that Gig Harbor staff and council consider a process that would allow extensions to certain development applications and approvals, and that the vested rights of the land use application be extended as well. I believe this action is critical to helping during the current economic downturn, which is an unusual circumstance outside of an applicant's control. It is in the best interest of the public health, safety and welfare to provide for additional time for projects and to aid the local economy by helping the construction industry to weather the economics while preserving the investments that owners have made in developments.

Thank you for your consideration of this very important issue,

Eva Jacobson  
Still Water Planning, Inc.  
P.O. Box 2314  
Gig Harbor, WA 98335

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**From:** Dolan, Tom [mailto:DolanT@cityofgigharbor.net]

**Sent:** Tuesday, June 02, 2009 3:00 PM

**To:** carl@halsanfrey.com; wade@wpconstruction.com; davesfa@comcast.net; stillwater@harbornet.com; jimbozich@upstructures.com; Thair Jorgenson; JChadwell@orminc.com; Terese@Westside-Industrial.com

**Cc:** Karlinsey, Rob; Kester, Jennifer; Katich, Peter

**Subject:** Permit extensions

The City of Gig Harbor is considering an ordinance that would allow the extension of land use permits provided that the applicant paid all or at least a portion of the required hook-up fees. In today's economic climate, it is acknowledged that some of the land use permits that have been approved by the City cannot be constructed prior to their expiration.

In a somewhat related matter, if extensions are granted, concern has been expressed if there are changes to City Codes the extended permits will be exempt from the changes. Staff is considering recommending to the Council that if extensions are allowed (with or without the payment of hook-up fees) that the projects would be subject to any new regulations that are adopted. If the new regulations conflict with how the project is designed, this may require a modification to the permit which could include further hearing examiner consideration.

We are going to be discussing these issues with the City Council at their meeting on 6/8/09. If you could e-mail me your comments prior to then, we'd be happy to share your comments with the City Council. Thanks in advance for your input.

Tom Dolan  
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Tom Dolan  
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City of Gig Harbor  
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Gig Harbor, WA 98335  
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Davis Wright Tremaine LLP  
SEATTLE OFFICE

MEMORANDUM

TO: John Chadwell, OPG Properties LLC

FROM: Marco de Sa e Silva

DATE: February 26, 2009

RE: Harbor Hill Development Agreement  
Legal Authority to Modify Term of Preliminary Plat Approval and Other  
Development Standards

---

You asked for a brief explanation of the legal authority on which the City of Gig Harbor may approve a development agreement that includes a provision under which the term of preliminary plat approval is extended from five years to twenty years. There are two statutory bases for this authority, although the City would need to amend two subsections in its development agreement ordinance, GHMC 10.08.010.B (this subsection does not currently authorize the modification of development standards in a development agreement) and GHMC 19.08.050.B (maximum term of development agreement limited to five years under this subsection) in order to exercise it.

First, RCW 58.17.140 expressly provides in part as follows:

A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within five years of the date of preliminary plat approval. **Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements.**

(Emphasis supplied.) The last sentence grants the City the express authority to adopt by ordinance procedures to extend the term of preliminary plat approval beyond five years. The procedure may be the making of a development agreement.

Second, under RCW 36.70B.170(1) and RCW 36.70B.170(3)(i), a development agreement must set forth the “build-out or vesting period for applicable standards.” Other cities and counties have exercised this authority in their development agreements by extending the time periods for local land use and subdivision approvals. However, in order to do this, the local ordinance regarding development agreements must expressly authorize it, so the development agreement is consistent with “applicable development regulations adopted by a local government” as required by RCW 36.70B.170(1). The following table provides examples of



Washington cities and counties that have adopted the authority to modify development standards in a development agreement. This authority is lacking in the City's current ordinance but could be added if approved by the City Council.

MUNICIPALITY	CODE SECTION	APPLICABLE LANGUAGE IN ORDINANCE
City of Issaquah	18.07.420(C)(3)	"A Development Agreement may deviate from the underlying district standards identified in the Land Use Code in order to achieve the components listed above."
City of Mercer Island	19.11.010(C)(4)	"An applicant may request modifications to any design and development standards ... by requesting a development agreement..."
City of Puyallup	1.15.030	"[A] development agreement may allow development standards different from those otherwise imposed under the Puyallup Municipal Code..."
City of Sea-Tac	15.22.055(C)(11)	"In the case of a development agreement where the proposed use would be the final use of the property, it shall be clearly documented that any departures to the standards of the Code, requested by the applicant, are in the judgment of the City..."
City of Yakima	15.10.020	"A particular [development] standard may be reduced or modified..."
Jefferson County	18.40.860(5)	"The development standards and conditions set forth in a development agreement shall be consistent with the applicable development regulations set forth in the Unified Development Code, except in the case of a master planned resort (which requires a site-specific Comprehensive Plan amendment), where adopted standards may be modified by the development standards contained in the agreement, so long as all project impacts have been adequately mitigated."
King County	21A.39.030(B)	"A UPD [Urban Planned Development] permit and development agreement may allow development standards different from those otherwise imposed under the King County Code..."
Snohomish County	30.75.130	"The county council may approve a development agreement that creates exemptions or modifications to the requirements of Title 30 SCC in order to allow for the siting, development, or expansion of an essential public facility."
Walla Walla County	17.14.030	"The development standards as approved in the development agreement shall apply to and govern the development and implementation of each area within the site in lieu of any conflicting or different standards or requirements elsewhere in the Walla Walla County Code."

There is no reason of which I am aware that the City could not authorize the modification of development standards in a development agreement (by amendment of GHMC 10.08.010.B) and the making of development agreements with terms greater than five years (by amendment of GHMC 19.08.050.B). The Gig Harbor City Council would have discretion whether or not to

approve any development agreement on a case-by-case basis, and I presume it would not approve any development agreement that did not provide public benefits.

Even before development agreements were authorized, local governments in Washington were acknowledged by our courts to have legal authority to modify development standards in a variety of ways, other than by the amendment of the ordinances containing those development standards, including variances, contract rezones, and planned unit developments. A development agreement is another method of doing so.

City staff should consult Angela Belbeck, whose firm has extensive experience in the proper scope of a development agreements made under RCW 36.70B.170 *et seq.*, for her opinion.

I understand that you might share a copy of this memorandum with City staff. Please let me know if you do so, so that I may send a copy also to Ms. Belbeck.

Please let me know if you have any questions.