

Gig Harbor City Council Meeting

**February 8, 2010
5:30 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
Monday, February 8, 2010 – 5:30 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of January 25, 2010.
2. Receive and File: Minutes from Council Budget Worksession November 16, 2009.
3. Liquor License Actions: a) Discontinuation – GH Mini-Mart; b) Application – Paradise Theatre; c) Application in Lieu of Current Privilege – Green Turtle.
4. Gig Harbor Historic Waterfront Association Agreement.
5. Wastewater Treatment Plant On-Call Engineering Services – Consultant Services Contract.
6. Voluntary Furlough Policy Extension.
7. Approval of USDA Rural Development Loan Application.
8. Approval of Payment of Bills for February 8, 2010: Checks #62801 through #62944 in the amount of \$1,249,015.04.
9. Approval of Payroll for the month of January: Checks #5635 through #5648 in the amount of \$339,427.62.

PRESENTATIONS:

2010 Amateur Golf Open Presentation – Larry Gilhuly, USGA Northwest Region Director.

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. Resolution - 2010 Comprehensive Plan amendment annual review docket.
2. Resolution - Canterwood Annexation Denial.
3. Cemeteries as conditional uses in the R-1 zone.
4. Outdoor Gallery Program Proposal – Gig Harbor Arts Commission.

STAFF REPORT:

Narrows Bridge Tolls – Rob Karlinsey.

PUBLIC COMMENT:

MAYOR’S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Operations Committee: Thu. Feb 11th at 3:00 p.m.
2. Civic Center Closed for Presidents’ Day – Mon. Feb 15th.
3. Boards and Commission Candidate Review: Mon. Feb 22nd at 5:30 p.m.
4. Jerisich Dock / Skansie Brothers Parks - Comprehensive Park Plan Workstudy Session: Mon. March 1st at 5:30 p.m.

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

ADJOURN:

DRAFT

MINUTES OF GIG HARBOR CITY COUNCIL MEETING - JANUARY 25, 2010

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

CALL TO ORDER: 5:32 p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of January 11, 2010.
2. Receive and File: Application for the EPA Donkey Creek Grant.
3. Correspondence / Proclamations: a) Pierce County READS; b) Arts Day.
4. Liquor License Action: a) Renewals: El Pueblito; Albertson's; 7 Seas Brewing Co.; Olympic Drive Mart; and Blazing Onion.
5. Appointment of Planning Commission Member.
6. Resolution – Interlocal with AWC Risk Management Services.
7. Residential Rental Agreement – 9702 Crescent Valley Drive.
8. Resolution – Delegation of Authority for Utility Maintenance Agreements.
9. Askegard Settlement.
10. Approval of Payment of Bills for January 25, 2010: Checks #62710 through #62800 in the amount of \$734,863.19.

MOTION: Move to adopt the Consent Agenda as presented.
Ekberg / Kadzik - unanimously approved.

PRESENTATIONS:

1. Proclamation for Pierce County READS. Mayor Hunter presented the proclamation to Kathleen Wolf, Pierce County Library, who presented the city with three copies of the chosen Pierce County READS 2010 book *Garlic and Sapphires* by Ruth Reichl. She announced the book signing event on Saturday, March 27th at Clover Park College.

2. Proclamation for Arts Day. Mayor Hunter then presented this proclamation to Fran Zarubik, Volunteer for Arts Advocacy Day who thanked Council for the consideration.

OLD BUSINESS:

1. Second Reading of Ordinance – Amending Planning Commission Member Terms. Senior Planner Jenn Kester presented this ordinance that amends Planning Commission terms from six to four years.

MOTION: Move to adopt Ordinance No. 1183 amending the Planning Commission Member terms.
Young / Payne - unanimously approved.

2. Appointments to the Council Committees. Mayor Hunter briefly introduced his recommendations and asked for a motion to confirm.

MOTION: Move to confirm the Council Committee appointments.
Young / Payne - unanimously approved.

NEW BUSINESS:

1. Appointment to the Zoo Trek Authority Board. Mayor Hunter explained that ZTA was requesting for a motion to nominate one of the four candidates.

MOTION: Move to cast a vote for Don Alvshere, City of Fife for Position 2 on the Zoo / Trek Authority Board.
Young / Conan – four voted in favor. Councilmembers Payne and Kadzik voted no.

STAFF REPORT:

1. Earthquake Exercise - After Action Report. Building Inspector / Fire Marshal Dick Bower reported on the city's participation in the Quake and Shake '09 emergency management exercise along with other agencies. The exercise was based on a 7.1 earthquake occurring on the Tacoma Fault and helped to identify several important areas for improvement. Rob Karlinsey added that grant funds would be used to purchase an antennae to enhance communications.

Councilmembers asked about the PC-NET Program. Mr. Bower explained that due to the budget, the city isn't partnering with Pierce County Department of Emergency Management for those services. A recommendation was made to contact the established neighborhoods to let them know.

2. Fire Inspections. Dick Bower gave an overview of the city's relationship with Pierce County Fire District #5 to perform fire inspection services. He explained that the fire district provided the services at no cost in 2009 due to the city's budget constraint, but could no longer do so. He reported that staff was meeting with representatives from the Fire District tomorrow to further discuss options.

After discussing the impact of raising the business license fee and the benefits of continuing the inspections, Council asked staff to move forward with the suggestion from the Chamber of Commerce to share the cost of the program by 1) increasing the business license fees for fire inspections; 2) a partial city contribution; and 3) a partial Fire District contribution.

3. Harborview / Pioneer Intersection. Mayor Hunter announced that this would be discussed in Executive Session.

PUBLIC COMMENT: None.

MAYOR'S REPORT / COUNCIL COMMENTS:

Narrow Bridge Tolls. Councilmember Young reported that

ANNOUNCEMENT OF OTHER MEETINGS:

1. Jerisich Dock / Skansie Brothers Parks - Comprehensive Park Plan Workstudy: Mon. March 1st at 5:30 p.m.
2. Planning/Building Committee: Fri. Feb 1st at 5:15 p.m.
3. Operations Committee – Thu. Feb 18th at 3:00 p.m.

EXECUTIVE SESSION: For the purpose of discussing real property per RCW 42.30.110(1)(b) and potential litigation per RCW 42.30.110(1)(i).

MOTION: Move to adjourn to Executive Session at 6:27 p.m. for the purpose of discussing real property per RCW 42.30.110(1)(b) and potential litigation per RCW 42.30.110(1)(i) for approximately 30 minutes:
Payne / Franich - unanimously approved.

MOTION: Move to return to regular session at 6:51 p.m.
Franich / Ekberg - unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 6:51p.m.
Franich / Malich - unanimously approved.

CD recorder utilized: Tracks 1001 – 1015

Charles L. Hunter, Mayor

Molly Towslee, City Clerk



GIG HARBOR CITY COUNCIL BUDGET WORKSESSION MINUTES

DATE: November 16, 2009
TIME: 5:34 p.m.
LOCATION: Community Rooms A & B
SCRIBE: Molly Towslee, City Clerk
MEMBERS PRESENT: Mayor Hunter, Councilmembers Kadzik, Payne, Malich, Conan, and Young.
STAFF PRESENT: Rob Karlinsey, Paul Nelson, Judge Dunn, Chief Davis, Lt. Colberg, Barb Tilotta, Jaci Auclair, David Stubchaer, Marco Malich, Darrel Winans, Dick Bower, Tom Dolan and Molly Towslee.

INTRODUCTION

After roll call, Mayor Hunter turned the meeting over to City Administrator Rob Karlinsey.

COURT

Court Administrator Paul Nelson explained that there are no objectives for 2010; nothing outside the normal function of the court.

DISCUSSION POINTS

- Function of the Municipal Court.
- Goal to provide highest level service, and build public confidence and trust.
- Due to lack of funds, will move back to being an operational court without additional services.
- Case load is escalating.
- Collections agency – best service through current.
- Salaries will be reduced due to loss of ½ FTE in April.

ADMINISTRATION

City Administrator Rob Karlinsey gave an overview of the goals and objectives.

DISCUSSION POINTS

- Update Personnel Policies in 2010
- **Economic Development:** Downtown, Mainstreet Program, Chamber of Commerce and the Tacoma/Pierce County Economic Development Board.
- Downtown Parking Strategies.
- Eddon Boatyard Park and Brick House.
- State and Federal Lobbying Efforts: State Grants and Shoreline Bill. Concern that unspent grant funds would jeopardize future state funding. 2010 projects: WSDOT – Frontage Road and Comp Plan Revamp deadline.
- Councilmembers going to Washington D.C. in 2010.
- Boys & Girls Club contribution used to leverage federal aid.
- History Museum Donkey Creek Easement – Phase II Environmental is clean.
- Performance Measures.
- Action Minutes.

RECOMMENDATION / ACTION / FOLLOW-UP

1. Downtown Parking Strategies - move to long range goals.

2. Lobbyist: \$75,000 for Federal; \$36,000 for State.
3. Councilmembers still plan to go to Washington D.C.
4. Use same firm chosen by RFP to do design the Donkey Creek Daylighting and Austin Estuary Development.
5. Make sure recording tracks are linked to minutes before moving to action only format.

FINANCE / INFORMATION SYSTEMS

Finance Director David Rodenbach and IT Manager Kay Johnson gave an overview of the goals and objectives.

DISCUSSION POINTS

- Finance performance measures growing.
- Focus will be on receivables.
- Notices to utility customers regarding payment by credit card.
- Grant accounting and reporting requirements.
- IT costs to be allocated to separate departments.
- Need to replace the Public Works Server.
- Performance measures / efficiencies to be recalculated due to loss of .5 FTE

POLICE DEPARTMENT

Chief Davis first talked about the efforts to obtain the COPS Grant to keep Officer Hicks. He gave a brief overview of the goals and objectives for 2010.

DISCUSSION POINTS

- Effect of losing of Lynn Mock, Community Officer on outreach programs.
- Cushman Trail security.
- Continue to reduce property and violent crimes.
- Budget cuts placed the department at 2006 staffing levels.
- Marine Services is grant funded; officers are on overtime working around their regular schedules.
- Drug Investigations also ancillary duties on overtime and funded by federal and state drug seizure funds.
- Surveillance cameras: good tool, but costly and requires additional staff.
- Red light cameras, maybe in school zones.

PLANNING

Planning Director Tom Dolan gave an overview of the 2010 Objectives.

DISCUSSION POINTS

- Keeping light to focus on 2010 and 2011 Comp Plan Amendments.
- Work on process improvements, efficiencies, and inconsistencies in the municipal code.
- Shoreline Master Program updates.
- Population allocations – rolled into the 2011 Comp Plan Amendments.
- PROS Plan Update – draft to the Parks Commission in February.
- Overview of the reduction in staff and anticipated effects.
- Overview of performance measures.
- Fee reviews.

RECOMMENDATION / ACTION / FOLLOW-UP

1. Move forward with revisions to the Fee Schedule.

BUILDING / FIRE SAFETY

Building / Fire Safety Director Dick Bower gave an overview of the 2010 Objectives.

DISCUSSION POINTS

- Effect of staff reduction to 2001 levels.
- Maintain staff competency in lieu of training cuts.
- Provide fire inspections which affect ratings and insurance. Now provided for free by PCFPD#5 but could be discontinued.
- Fire investigation programs per state law.
- Fee updates.
- Staff reduction is reflection of declining activity. Work together, possible cross-training.
- Contract inspectors very expensive.

RECOMMENDATION / ACTION / FOLLOW-UP

1. Work with Planning on the Fee Schedule updates.

ENGINEERING / OPERATIONS

Public Works Director David Stubchaer gave an overview of the 2010 Goals and Objectives not discussed during the last worksession.

DISCUSSION POINTS

- Major update of the Public Works Standards.

PARKS

DISCUSSION POINTS

- Community Arts Program Funding.
- Seasonal flower baskets and city planters.

RECOMMENDATION / ACTION / FOLLOW-UP

1. Remove the \$20,000 for Arts Programs in 2010; keep the \$80,000 in Capital but direct the Arts Commission that it isn't to be spent.
2. Explore other options for flower baskets to keep costs down.

CITY BUILDINGS

DISCUSSION POINTS

- Staff reduction resulting in one remaining FTE Janitor to maintain both the Civic Center and the Visitors Center.

STREET OPERATING

DISCUSSION POINTS

- Olympic / Pt. Fosdick – use thermo plastic striping.
- Transportation capacity availability report and traffic model to comply with our own code.

- Street sign reflectivity – do some each year to be in compliance by 2013.
- Street maintenance.
- Christmas décor is time consuming. Perhaps keep it to the downtown area. It was recommended to let staff work it out.
- Overview of the matrix illustrating anticipated effects of staffing cuts.
- Anticipated 2010 projects. In-house projects will be reduced.

RECOMMENDATION / ACTION / FOLLOW-UP

1. Add the street sign replacement to Narrative of Goals as a yearly expenditure so it's not forgotten.
2. Remove Street Maintenance items 4 and 5 as they are already covered in Street Capital.
3. Add survey monument replacement.

Rob Karlinsey gave a brief follow-up report from the last Budget Worksession.

1. Harborview Water Line Replacement Project: can do both Stinson and Harborview Drive with the proposed rate increase.
2. The cost for the IJR is going down. He recommended keeping \$75,000 as a placeholder until the cost is know and come back in the first part of 2010 to discuss what to do with the savings.
3. Street Survey Monuments are missing or in disrepair.

RECOMMENDATION / ACTION / FOLLOW-UP

1. Come back after the first of the year with the IJR savings and recommendation on how it should be utilized.

There were no further comments; the worksession adjourned at 8:15 p.m.



Washington State Liquor Control Board

Consent Agenda - 3a
Page 1 of 1

January 20, 2010

MAYOR OF GIG HARBOR

This is to notify you that:

OLYMPIC DRIVE MART
5119 OLYMPIC DR NW
GIG HARBOR, WA 98335-1704
LICENSE #080805 - 1U
UBI 602-604-161-001-0001

discontinued sales and service of liquor at the above location on JANUARY 12, 2010 .

This is for your information and records.

Lori Goodwin
Customer Service Specialist
(360) 664- 1661

cc: TACOMA ENFORCEMENT
FILE



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: 1/22/10

UBI: 601-278-148-001-0002

License: 406002 - U County: 27
Tradename: PARADISE THEATRE
Loc Addr: 9911 BURNHAM DR
GIG HARBOR WA 98332
Mail Addr: PO BOX 4
GIG HARBOR WA 98335-0004
Phone No.: 253-851-7529 VICKI RICHARDS

APPLICANTS:
THE PERFORMANCE CIRCLE
NO PEOPLE REQUIRED FOR THIS LICENSE

Privileges Applied For:
NON-PROFIT ARTS ORGANIZATION

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

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

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE

NOTICE OF LIQUOR LICENSE APPLICATION



RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 1/29/10

TO: MOLLY TOWSLEE, CITY CLERK

RE: APPLICATION IN LIEU OF CURRENT PRIVILEGE

UBI: 602-129-878-001-0001
License: 078190 - 1U County: 27
Tradename: THE GREEN TURTLE
Loc Addr: 2905 HARBORVIEW DR
GIG HARBOR WA 98335
Mail Addr: 2905 HARBORVIEW DR
GIG HARBOR WA 98335-1910
Phone No.: 253-851-3167 KYONG SUE GLENN

APPLICANTS:
THE GREEN TURTLE LLC
GLENN, KYONG SUE
1962-11-03
GLENN JR, NOLAN F
1962-08-07

Privileges Upon Approval:
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.

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Do you approve of applicant ? | <input type="checkbox"/> | <input type="checkbox"/> |
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| (See WAC 314-09-010 for information about this process) | | |
| 4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based. | | |

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

SPIRITS, BEER, WINE Only

Notice to local authorities: The purpose of this attachment is to provide further information to you regarding the type of business being practiced at the proposed location. This is a pilot program still in the testing stage. If you have any questions or concerns, please contact Sharon A. Hendricks, Manager at (360) 664-1619 or e-mail sah@liq.wa.gov.

Liquor License No.: 078190-1U

Trade name: THE GREEN TURTLE

SPIRITS/BEER/WINE RESTAURANT QUESTIONS (do not ask for nightclubs):

- ⚡ What is the primary focus of your business? **Restaurant**
- ⚡ What will your business hours be? **11 – 2 pm lunch closes then reopens for dinner at 4 p.m. – 10 p.m. Tues thru Sunday (operating on winter hours) Summer hours will be Mon-Sun 11 a.m. – 10 p.m.**
- ⚡ During what times/days do you plan on offering full meal service? **all times open**
- ⚡ If you are going to have any entertainment, describe what types of entertainment you are planning to provide? **No**
- ⚡ On what days and times do you intend to provide this entertainment?
- ⚡ Will the entertainment be live or recorded? Will it be amplified?
- ⚡ Will your business have a dance floor, stage or other type of entertainment area?
- ⚡ Will persons under 21 years of age be allowed in the restaurant portion-of your premises?
yes (If minor restriction is requested inform the applicant that: "The minor restriction includes employees as well as customers.")

(If Service Bar wants any added activities their fees will automatically be increased from \$1,000 to \$1,600.)

- ⚡ Do you intend to restrict minors from any portion of your premises? **No** If so, during what times and in what portions of the premises?
- ⚡ Will a cover charge or an admission fee be charged for entry into your business? **No**



Subject: Gig Harbor Historic Waterfront Association (GHHWA) Agreement

Proposed Council Action:

Approve the agreement between the City and the Gig Harbor Historic Waterfront Association (GHHWA) for 2010.

Dept. Origin: Administration

Prepared by: Rob Karlinsey

For Agenda of: February 8, 2010
Exhibits: Agreement

Initial & Date

Concurred by Mayor:

Approved by City Administrator: RJK 1/27/10

Approved as to form by City Atty: VIA EMAIL

Approved by Finance Director: SP 1/27/10

Approved by Department Head: N/A

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

INFORMATION / BACKGROUND

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

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

In the first year of its existence (2008), the GHHWA requested and received a contribution from the City of \$70,000 (\$35,000 of which was a dollar-for-dollar match of contributions from other sources). For 2009, the contribution was reduced to \$35,000. This proposed amount was discussed and approved during the 2010 budget process and workshops. The components of the City's \$35,000 contribution are as follows:

Cash Contribution:	\$29,000
In-Kind Marketing Funded from Lodging Tax:	\$3,000
In-kind Office Space at the Visitor Center:	\$6,000
Total:	\$35,000

As you can see above, the in-kind marketing that was tried in 2009 is not being proposed for 2010. Instead, the cash contribution is proposed to increase by \$3,000 to \$29,000. In return for the City's \$35,000 contribution, the GHHWA will produce specific deliverables as stated in section three of the attached agreement.

FISCAL CONSIDERATION

Sufficient funds are included in the 2010 adopted budget, as stated as part of objective #2 in the Administration Department's Narrative of Objectives (page 66).

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Approve the agreement.

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

THIS AGREEMENT is entered into this ____ day of _____ 2010, by and between the City of Gig Harbor, Washington, an optional code municipal corporation organized under the laws of the state of Washington, hereinafter referred to as the "City" and the Gig Harbor Historic Waterfront Association, a nonprofit corporation organized under the laws of the State of Washington, hereinafter referred to as "GHHWA."

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

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

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

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

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

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

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

TERMS

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

A. Describe the conditions which must occur in order for the city to provide "in-kind" support for the use and maintenance of office and conference space at the Visitor Information Center at 3125 Judson Street, Gig Harbor, WA 98335, until December 31, 2010;

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

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

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

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

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

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

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

B. This agreement is intended to provide to GHHWA "in-kind" lease of office and conference space in the Visitor Information Center at 3125 Judson Street until termination of this agreement.

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

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

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

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

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

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

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

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

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

P. Submit quarterly progress reports due on or before the last day of March, June, September, and December 2010 to the City regarding activities conducted by GHHWA and proposed activities for the remainder of the term of the contract.

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

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

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

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

4. City's Responsibilities.

A. Funding to GHHWA for Services Described in this Agreement: The City will pay \$29,000, in four installments due February 15, 2010, April 1, 2010, July 1, 2010, and October 1, 2010 of \$7,250. Payment will be made within 30 days of receipt of an invoice and progress reports from GHHWA. The progress report for the February 15, 2010 payment is based on the December 31, 2009 report.

B. "In-kind services." In- Kind services include rent and utilities at the Visitor Information Center at 3125 Judson Street Gig Harbor, WA 98335 with 24 hours/day access including utilities, use of restroom facilities, access to the conference room on a sign up basis and building security and to assist GHHWA secure Internet access to the rented room. The in-kind contribution does not include telephone or Internet services. The annualized amount of the in-kind contribution is \$6,000. ~~Additionally, there is a \$3,000 in-kind value for promotional services provided by the City's Marketing Department in support of GHHWA activities. No part of the in-kind services funds can be carried past December 31, 2010, and if not utilized are forfeited.~~

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

D. Provide a link on the City's website gigharborguide.com.

5. Duration of Contract. This Contract will commence on the date it is signed by the duly authorized representatives of both parties, and shall terminate on December 31, 2010, unless sooner terminated as provided herein.

6. Independent Contractor. The parties intend that an independent contractor-client relationship will be created by this Agreement. No agent, employee, representative or sub-consultant of the GHHWA shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the GHHWA is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the GHHWA. The GHHWA will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the

performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the GHHWA performs hereunder.

7. Indemnification and Defense. The GHHWA shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection of the reports described herein, or the City's execution of this Agreement (requiring the GHHWA to provide certain services) shall not be grounds to avoid any of these covenants of indemnification.

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

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

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

8. Insurance.

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

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

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

completed operations, property damage, and employers liability,
and

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

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

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

F. Under this agreement, the GHHWA's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the GHHWA's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

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

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

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

10. Record Keeping and Reporting.

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

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

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

11. Termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF GIG HARBOR

**GIG HARBOR HISTORIC
WATERFRONT ASSOCIATION**

Charles L. Hunter, Mayor

Attest:

Molly Towslee, City Clerk

Approved as to form:

Angela Belbeck, City Attorney



Subject: Wastewater Treatment Plant
On-Call Engineering Services – Consultant
Services Contract

Proposed Council Action: Approve and
authorize the Mayor to execute the contract for
Advanced Industrial Automation Corporation
for the not-to-exceed amount of \$30,310.00.

Dept. Origin: Engineering Division

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

For Agenda of: February 8, 2010

Exhibits: Consultant Services Contract

Initial & Date

Concurred by Mayor:

Approved by City Administrator: *RSK 2/3/10*

Approved as to form by City Atty: *per email 1/29/10*

Approved by Finance Director: *AT Jn DR 2/3/10*

Approved by Department Head: *Stm 1/28/10*

Expenditure	Amount	Appropriation
Required \$30,310.00	Budgeted \$40,000.00	Required 0

INFORMATION / BACKGROUND

Supervisory control and data acquisition (SCADA) improvements and upgrades have been occurring and will continue to occur at the City's Wastewater Treatment Plant. These services have been successfully completed by Advanced Industrial Automation (AIA). This contract provides for their continued assistance within the next year.

FISCAL CONSIDERATION

Sufficient funds exist within the 2010 budget to fund this expenditure.

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to execute the contract with Advanced Industrial Automation Corporation for the On-call Services Contract for the Wastewater Treatment Plant in the amount not-to-exceed Thirty Thousand Three Hundred Ten Dollars and No Cents (\$30,310.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
ADVANCED INDUSTRIAL AUTOMATION CORPORATION**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Advanced Industrial Automation Corporation, a corporation organized under the laws of the State of Washington and doing business at 6855 176th Ave. NE, Ste. 235, Redmond, WA 98052-5243 (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in On-Call Engineering Services at the Wastewater Treatment Plant and desires that the Consultant perform services necessary to provide the following consultation services; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated January 20, 2010, including any addenda thereto as of the effective date of this Agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein;

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

TERMS

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

2. **Payment.**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Thirty Thousand Three Hundred Ten Dollars and Zero Cents (\$30,310.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit A – Scope of Work**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**, unless the parties agree to a modification of this Contract, pursuant to Section 18 herein.

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

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

4. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2010; provided however, that additional time shall be granted by the City for excusable days or extra work.

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

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

{ASB714519.DOC;1/00008.9000000/}

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

7. Indemnification.

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

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

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

B. It is further specifically and expressly understood that the indemnification provided herein constitutes the consultant's waiver of immunity under industrial insurance, title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The consultant's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the consultant's employees directly against the consultant.

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

8. Insurance.

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

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

1. Business auto coverage for any auto no less than a \$1,000,000 per accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverages shall be on a claims made basis.

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

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

E. Under this Agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

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

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

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

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

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

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

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

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

A. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations shall also decide all

questions which may arise between the parties relative to the actual services provided and the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Public Works Director determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

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


CONSULTANT:	City of Gig Harbor
Advanced Industrial Automation Corporation	ATTN: Stephen Misiurak, P.E.
ATTN: Jon Mathison, P.E.	City Engineer
6855 176 th Ave. NE, Ste. 235	3510 Grandview Street
Redmond, WA 98052-5243	Gig Harbor, WA 98335
(425) 836-3386 FAX (425) 642-8282	(253) 851-6170

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

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

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

CONSULTANT

By: 
Its: President

CITY OF GIG HARBOR

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A – Scope of Work

Advanced Industrial Automation Corp

6855 176th Avenue NE
Suite 235
Redmond WA 98052-5243

Date	Estimate #
1/20/2010	137

Name / Address
Darrell Winans - City of Gig Harbor Waste Water Treatment Plant Supervisor Public Works Department 3510 Grandview Street Gig Harbor, WA 98335

Project			
2010 On-Call Professional Services			
Description	Qty	Cost	Total
Provide on-call SCADA control and electrical engineering services to the City of Gig Harbor as requested by the city. The SCADA and electrical engineering services are as summarized below.			
Electrical Engineering	100	120.00	12,000.00T
Provide Integration services.	100	110.00	11,000.00T
AutoCAD drafting services	50	90.00	4,500.00T
Mileage allowance per IRS standard rate.	1,000	0.50	500.00
SCOPE OF WORK			
Background: City of Gig Harbor On-call Engineering Services			
Communication, instrumentation, control, and low voltage electrical is critical to the Gig Harbor waste water collection and treatment systems. The existing SCADA (Supervisory Control and Data Acquisition) System and Siemens controllers need to be supported 24/7. Proposed Consultant has extensive experience with SCADA system, instrumentation, communications, and Siemens PLC. Using the consultant for this task will be cost effective solution in supporting city operations.			
Task 1 -Provide engineering support for Gig Harbor communications, instrumentation, control, and low voltage systems. AIA will provide engineering support and maintenance recommendations of the Gig Harbor existing SCADA System. This task will include the following:			
·Twenty-four hour, seven days per week on-site maintenance and engineering support for the computer system equipment. This			
Client Signature _____		Total	
Date _____			

tax-able

Phone #	Fax #	E-mail	Web Site
425-836-3386	425-642-8282	christine@mathisonengineering.com	www.advancedia.com

**Exhibit A – Scope of Work
(cont'd)**

Advanced Industrial Automation Corp

6855 176th Avenue NE
Suite 235
Redmond WA 98052-5243

Date	Estimate #
1/20/2010	137

Name / Address
Darrell Winans - City of Gig Harbor Waste Water Treatment Plant Supervisor Public Works Department 3510 Grandview Street Gig Harbor, WA 98335

Project			
2010 On-Call Professional Services			
Description	Qty	Cost	Total
includes the PLC, workstations, monitors, bulk storage devices, instrumentation, communication devices, and peripheral equipment. · Field change orders and/or updates recommended by the manufacturer shall be installed · Upgrades, modifications and enhancements. · Support for Siemens programmable logic controllers in Gig Harbor control area · On site operator training as needed · Key assumptions: Cost estimate assumes one-day trip to the Gig Harbor facility every two weeks to perform necessary update and troubleshooting tasks, including emergency calls for the duration of the contract. · Deliverables: Reliable secure 24/7 operations of SCADA system at Gig Harbor Control Area. Emergency services as required. Plans and specifications to update and upgrade the systems in a manner consistent with city requirements. · Schedule: 1 year. Emergency services as needed. Gig Harbor Sales Tax rate		8.40%	2,310.00

Client Signature _____ Date _____	Total \$30,310.00
--------------------------------------	-----------------------------

Phone #	Fax #	E-mail	Web Site
425-836-3386	425-642-8282	christine@mathisonengineering.com	www.advancedia.com

Subject: Extension of Voluntary Furlough Policy

Proposed Council Action:

Adopt a resolution extending the Voluntary Furlough Policy

Dept. Origin: Administration

Prepared by: Rob Karlinsey

For Agenda of: February 8, 2010

Exhibits: Resolution & Policy

Initial & Date

Concurred by Mayor: _____

Approved by City Administrator: Rob Karlinsey 2/3

Approved as to form by City Atty: S. Snyder BY EMAIL

Approved by Finance Director: [Signature]

Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required \$0	Budgeted N/A	Required N/A

INFORMATION / BACKGROUND

In June of 2009, the City adopted a voluntary furlough policy that expired on December 31, 2009. Throughout the remainder of 2009, several employees voluntarily furloughed themselves (in addition to the mandatory furloughs), which resulted in financial savings to the City.

Two employees have expressed an interest in extending the voluntary furlough policy into 2010, and the employee and supervisor guild representatives concur with extending it. The city administrator recommends doing so to achieve additional savings to the budget—while the City has adopted a balanced budget for 2010, economic conditions are still far from predictable, and it behooves the City to continue to find savings wherever possible.

The attached resolution extends the policy for voluntary furloughs through December 31, 2010. Limitations and restrictions are included in the policy. The attached policy continues to state that neither health insurance nor leave accruals will be affected (i.e., not prorated) by voluntary furloughs, unless the employee is in unpaid status for more than 30 consecutive days.

The policy extension will go into effect on February 9th, 2010 and will expire on December 31, 2010.

FISCAL CONSIDERATION

It is unknown whether any employees will volunteer for furlough days, although a two employees have expressed interest. Therefore, it is difficult at this time to estimate the cost savings of extending this policy to the end of 2010.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt a resolution extending the Voluntary Furlough Policy through December 31, 2010.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF GIG HARBOR,
WASHINGTON, EXTENDING CERTAIN POLICIES
REGARDING VOLUNTARY EMPLOYEE FURLOUGHS AS
CLARIFICATION OF THE CITY'S ANNUAL SALARY
ORDINANCE.**

WHEREAS, due both to the economy and to the limited revenue sources available to local governments in the state of Washington, the City of Gig Harbor has experienced budget shortfalls and limitations; and

WHEREAS, the Mayor and City Administrator have implemented layoffs in accordance with the 2009 and 2010 adopted budgets to help address that budget shortfall; and

WHEREAS, in 2009, the City Council deemed it appropriate to create, as an interpretation of the annual salary ordinance, the potential for voluntary furloughs by City employees; and

WHEREAS, the voluntary furlough policy expired on December 31, 2009; and

WHEREAS, there is some employee interest to continue the voluntary furlough policy into 2010, and the employee and supervisor guilds concur with extending the voluntary furlough policy; and

WHEREAS, the financial savings from voluntary furloughs would benefit the City; and

WHEREAS, voluntary furloughs, if the policy is extended, would not result in additional overtime or compensatory time costs and would require the approval of the city administrator prior to being taken; Now, therefore,

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

Section 1. The attached policies shown as Exhibit A to this resolution, promulgated by the Mayor and City Administrator, extend the opportunity but not the obligation for voluntary furlough under the terms and conditions set forth in the policies through December 31, 2010. These policies are hereby approved and acknowledged by the City Council as appropriate interpretations of and supplements to the annual salary ordinance.

Section 2. The City Council acknowledges that these policies have been adopted in order to address unanticipated economic shortfalls and as such, these voluntary furloughs will constitute budget related furloughs within the meaning of 29 C.F.R. §541.710 and are an integral part of the City's expenditure reduction efforts within the meaning of Chapter 430, Washington Session Laws of 2009.

RESOLVED this _____ day of _____, 2010.

CITY OF GIG HARBOR

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

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

CITY OF GIG HARBOR

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

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

Exhibit A

CITY OF GIG HARBOR

VOLUNTARY FURLOUGH POLICY AND PROCEDURE

Effective: February 9, 2010 **Expiration:** This policy shall expire on December 31, 2010.

The City reserves the right to revise, supplement, clarify or rescind any policy or portion of a policy when deemed appropriate by the Mayor or City Administrator.

1.0 OVERVIEW

- 1.1 INTENT OF POLICY - This policy is adopted to allow voluntary furloughs and is in addition to the City of Gig Harbor Personnel Policies and serves as a general guide to the City's employment practices and procedures. This policy is not intended to be a contract, express or implied, or any type of promise or guarantee of specific treatment upon which you may rely, or as a guarantee of employment for any specific duration.

Employees who are exempt from collective bargaining representation or otherwise deemed executive, managerial, or confidential by the City are considered at-will employees and may be terminated from City employment at any time with or without cause and with or without notice. All other employees' employment status shall be governed by the personal employment contract, collective bargaining agreement, civil service rules, City Personnel Policies, or other written document applicable to the individual case.

- 1.2. SCOPE OF POLICY AND PROCESS- In cases where this policy conflicts with any City ordinance, Civil Service rule and regulation, the provision of a collective bargaining agreement, state or federal law, the terms of the law or agreement prevail. In all other cases, this policy applies.

~~In addition, the~~ The City Administrator may approve voluntary furloughs upon application by individual employees. At his sole discretion, the City Administrator reserves the right to approve or deny voluntary furlough requests, based on the business needs of the City. Under this policy, voluntary furloughs are purely voluntary on the employee's part, and the City cannot mandate that any employee take voluntary furlough days. Employees requesting voluntary furlough days should provide a written request, with department head concurrence, to the City Administrator at least one week before the requested furlough day(s). While there is no limit to the number of voluntary furlough days that an employee can request, the City Administrator reserves the right, at his sole discretion, to limit or reduce the number of days being requested, based on the business needs of the City.

- 1.4 DEFINITIONS - The following definitions are meant to clarify the language used in this policy in reference to furlough process and eligibility.

Delayed Furlough Day – A day off without pay taken in place of a designated furlough day.

Furlough –The placement of employees in a temporary status without duties and without pay. Furloughs will temporarily be administered as follows:

1. Approval of furlough is to be processed in writing when possible.
2. During a furlough day, furloughed employees remain City employees.
3. Outside employment for furloughed employees remains subject to the City's policies, procedures, collective bargaining agreements, civil service rules and regulations, and other established guidelines.
4. Furloughed employees may not volunteer to do what the City otherwise pays employees to do.
5. Health insurance will continue in full for a furloughed benefit-eligible employee unless the employee is on unpaid leave more than 30 consecutive days.

FLSA-Exempt Employee – An individual designated by the City Administrator as being employed in a bona fide executive, administrative, or professional capacity, as defined by the Fair Labor Standards Act (FLSA) or the Washington Minimum Wage Act (WMWA), and who is therefore exempt from the overtime pay and minimum wage requirements of the FLSA or the WMWA.

Furlough Day – Any day in which a furloughed employee is placed in a temporary status without duties and without pay due to a financial need to reduce expenditures caused by declining revenues.

Furlough-Eligible / Must Report Person – Any position that has been identified as furlough eligible, however, due to job necessity, the employee is required to work on a designated furlough day. In this situation, the employee may take a replacement furlough day at an agreed upon later date.

Furlough-Ineligible Positions – Positions with assigned duties which cannot, in the judgment of the City Administrator, take part in furlough days due to public health, safety, and/or workload demands. These positions may change throughout the furlough process.

Furloughed Employee – Any employee who is voluntarily placed in a temporary status without duties and without pay due to a financial need to reduce expenditures caused by declining revenues.

Hourly – An employee who is entitled to be paid for all actual hours that he/she is required or permitted to work at either the straight time regular hourly rate for hours

worked up to and including forty (40) in the workweek or overtime hourly rate at one and one-half times the hourly employee's regular rate of pay for each hour worked in excess of forty (40) in the workweek.

Voluntary Furlough -- A furlough day or days, initiated at the request of an employee in which the employee is in a temporary status without duties and without pay due to a financial need to reduce expenditures caused by declining revenues.

Workweek – A fixed and regularly recurring period of 168 hours during seven consecutive twenty-four hour periods.

2.0 CLASSIFICATION

- 2.1 FLSA-Exempt Employees – All employees, including FLSA-exempt employees, who are identified as furlough-eligible, will be strictly prohibited from working on furlough days. During weeks in which a furlough occurs, FLSA-exempt employees will be converted to hourly status. FLSA-exempt employees will be required to track their hours consistent with the standard hourly tracking practices used in their home department. During the period when FLSA-exempt employees are converted to hourly, they must subscribe to standard working hours and all other rules (e.g., rest periods and meal periods) which are required in their home department. For example, partial day absences due to medical appointments must be requested in advance and deducted from the employee's sick leave accrual balance.

During weeks in which FLSA-exempt employees are converted to an hourly status, care must be taken to ensure that hourly rules are observed. FLSA-exempt employees converted to an hourly status in a week in which a furlough occurs are specifically directed not to work hours in excess of a standard schedule without the specific authorization of their supervisor or manager. FLSA-exempt employees must observe the agreed upon starting and ending times to each work day. Such work includes being physically present in the office, working at home, working online, working on the telephone, "working lunches", working on a blackberry or working on a cell phone. All work in service of the City for which an individual does not receive compensation through the approval process, including overtime, is prohibited. Attendance at off-hour meetings such as public hearings is compensable and must be recorded during furlough-affected weeks. During weeks in which FLSA-exempt employees are converted to hourly status, they may flex their work schedules, on an hour-for-hour basis within the work week, to make up for time worked off-hours (evening meetings, for example).

FLSA-exempt employees who are otherwise furlough-eligible but who submit an "Intent to Retire" form will not be converted to an hourly status during weeks in which a furlough occurs.

- 2.2 Regular Part Time / Hourly– Regular part-time and hourly employees will take the furlough days as scheduled. If a regular part-time or hourly employee is working an alternative workweek which provides for a regularly scheduled day off on a scheduled

furlough day, an alternate unpaid furlough day will be scheduled preferably within the same week as the standard furlough day. Regular part-time and hourly employees will not be used to substitute for regular full-time employees who are on furlough days.

3.0 PAY AND BENEFITS

Unless otherwise provided for in an applicable collective bargaining agreement, the following applies:

- 3.1 Adjusted Service Date: An employee's adjusted service date (for leave accrual, seniority, and other purposes) shall not be changed due to unpaid furlough days.
- 3.2 Probationary Periods: Probationary periods are generally six (6) months in length. With the institution of furloughs, probationary periods will continue to be six months. Unless an employee is on more than fifteen (15) furlough days during the probationary period, Furlough days will not be considered as a reason to extend a standard probationary period.
- 3.3 Meal/Rest Periods: There will be no change in meal and rest periods due to furlough days being observed in any work week
- 3.4 Workweek: The definition of "workweek" will consist of seven consecutive 24 hour periods or 168 consecutive hours. The Department Heads will be responsible for administering workweeks affected by the furlough program.
- 3.5 Recordkeeping Requirements: Under the FLSA, the City is required to keep records on employee time. For FLSA overtime-eligible employees, this means that records must be kept for hours worked each day and the total hours worked each workweek. Recordkeeping requirements also apply to FLSA-exempt employees who are identified as furlough-eligible because they are converted to hourly employees in a week in which a furlough day occurs. During such weeks, FLSA-exempt employees will be required to conform to all of the policies normally observed by hourly employees. Attendance at off-hour meetings, such as public hearings, are compensable and must be recorded during furlough affected weeks.
- 3.6 Overtime / Compensatory Time: Those terms and conditions describing overtime and compensatory time contained in collective bargaining agreements, City policy, ordinance, or any other recognized guideline will continue to apply. When FLSA-exempt employees are converted to an hourly status during a week when a furlough occurs, hourly terms and conditions will apply to them. For example, an FLSA-exempt employee who, due to business conditions such as an emergency call out, works more than forty (40) hours in a week while in an hourly status will earn overtime payment or compensatory time.

Compensatory time accrual for FLSA-exempt staff converted to hourly during furlough affected weeks will only be approved in rare and unusual circumstances. Managers must consult with the City Administrator prior to making such approvals.

Unpaid leave (furloughs) will not count as hours worked toward the overtime threshold.

3.7 Medical, Dental, Vision Benefits: Medical, dental, vision, EAP and other insurance benefits (with the exception of life and disability insurance which is calculated based on salary) will be unaffected by the furlough except when an employee is on unpaid status for 30 consecutive days or more.

3.8 401(a) and 457 Retirement Plan Contributions: The City's 401(a) defined contribution retirement plan is based on earnings. Furloughs will reduce earnings and therefore reduce the City's and the employee's contribution to the 401(a) plan. Employee participation in other plans such as the 457 deferred compensation plan which are contributed as a percentage of income will also be reduced accordingly.

4.0 ALTERNATIVE WORK ARRANGEMENTS

4.1 Alternate Workweeks: Individuals working a compressed workweek (e.g., 9/80 or 4/10 hour workweeks) may take unpaid furlough days. Individuals working an alternative workweek who have a normal day off on a scheduled unpaid furlough day may schedule and observe an alternate unpaid furlough day within that same pay period.

4.2 Timekeeping: Each department is responsible for establishing methods to ensure voluntary furlough days are observed by each furlough-eligible employee.

5.0 LEAVE ADMINISTRATION:

5.1 Vacation and Leave Accruals: The accrual of vacation and sick leave will not be affected by the 2009 furlough days, unless the employee is in unpaid status for 30 consecutive days or more.

5.2 Vacation. Employees may not use their paid vacation benefit on a day they would not normally be paid. Furlough days are not paid.

5.3 Vacation Carryover. Failure to use vacation leave beyond the maximum accrual amount results in forfeiture of the vacation leave unless specific "carryover" authorization has been provided by the City Administrator. This authorization will generally be granted in instances where, due to the direct result of the voluntary furlough, vacation use was either denied or, due to the furlough, no opportunity was available to schedule or reschedule before the end of the year. It is the responsibility of employees and managers to plan their vacations and workload during the year in order to avoid maximum vacation accrual issues. Departments have the obligation to ensure that the necessary adjustments to employee schedules are made prior to the end of year.

5.4 Family Medical Leave (FMLA). Employees will continue to have 12 weeks of protected Family Medical Leave as allowed under the Family Medical Leave Act (FMLA). Employees will not have a right to be paid on any day for which they would not normally

be paid. In other words, employees on FMLA are not entitled to a paid day on a furlough day. Employees on FMLA leave will have the equivalent number of protected days for each furlough day added to the end of the 12 weeks of protected FMLA leave.

Eligibility. A furlough day is considered to be a regular day off and should not be counted when calculating leave eligibility. For example, when calculating whether the employee worked 1,250 hours in the previous 12 month period under FMLA, one would not count any furlough days as earned or hours worked.

- 5.5 Military Leave. The Washington State Legislature changed the number of paid military leave days from 15 to 21 in 2008. Managers and supervisors will continue to grant military leaves in accordance with the law. The annual leave periods are not to exceed 21 work days during each year. Such leaves are made with pay to employees eligible for leave benefits for the purpose of taking part in active duty or military training. Employees are not eligible to be paid for military leave on days when they would not normally be paid. Unless identified as “furlough-ineligible,” employees on military leave are not paid on furlough days. Persons taking military leave will continue to receive 21 paid work days per year to take part in active duty or military training. The requirements to submit a written request for military leave to the employee’s supervisor and attach copies of military documents that order the active duty will continue to be required.
- 5.6 Active Military Duty. USERRA provides that employees on a furlough or a leave of absence are to be given the same rights of employees on other types of leave. In the case of a furlough, active military employees do not have any more rights than other employees to use paid leave accruals while on leave for military service. For employees receiving supplemental military pay, furloughs will impact their regular differential pay. Employees will not receive supplemental pay for furlough days.
- 5.7 Domestic Violence Leave. Effective April 1, 2008, under Washington State law, employees who are victims or who are family members of victims of domestic violence, sexual assault or stalking may take a reasonable period of leave to receive medical treatment, attend legal proceedings or address safety concerns. The employee may elect to use sick leave, other paid time off, compensatory time or unpaid leave time. Managers and supervisors must continue to approve paid or unpaid leave time for domestic violence leave; however, they may not approve the use of paid leave time for those days for which an employee would not normally be paid. Managers and supervisors may not approve the use of paid domestic violence leave for scheduled unpaid furlough days.
- 5.8 Bereavement Leave. Employees are not eligible to be paid for bereavement leave on days when they would not normally be paid. Managers or supervisors will continue to approve bereavement leave within the limitations established. Managers or supervisors may not approve the payment of bereavement days for scheduled unpaid furlough days.
- 5.9 Jury Duty. Employees are not eligible to be paid for jury duty on days when they would not normally be paid. Employees called to jury duty during a furlough day would not be eligible to receive their regular compensation on that day but may be eligible to keep

their court provided jury duty pay for that day which would otherwise be returned to the City.

- 5.10 Washington Family Care Act (WFCA). The furloughs should have no impact to WFCA leaves of absence. The WFCA provides that an employee may use paid leave accruals when caring for a qualifying family member with a serious health condition. The WFCA does not overrule a collective bargaining agreement or employer policies regarding the use of paid leaves. As a result, employees are not entitled to paid leave under the WFCA on a furlough day.
- 5.11 Pregnancy, Childbirth or Pregnancy Related Conditions (PCPRC). Furlough days do not impact PCPRC leave. The City will continue to treat female employees on PCPRC in the same manner as other employees on leave for sickness or other temporary disabilities. PCPRC may be taken the day before and the day following an unpaid furlough day but not on the unpaid furlough day.
- 5.12 Sick Leave Use. Employees may not use sick leave for furlough days. Employees may use paid leave benefits only on those days they are normally scheduled to work. Employees are not eligible to be paid for sick leave on days when they would not normally be paid.
- 5.13 Compensatory Time. Employees are not eligible to be paid for compensatory time on days when they would not normally be paid. Compensatory time will not be used in place of designated unpaid furlough days.

FLSA-exempt employees who are permitted to earn compensatory time during a furlough week in which they are designated as hourly must also use compensatory time during a furlough week in which they are designated as hourly. Managers and supervisors must consider very carefully (in advance) whether compensatory time will be approved in lieu of overtime payments. The recommended approach is that all hourly employees work within the forty (40) hour workweek structure and not incur compensatory time or overtime during a designated furlough week. Any furlough-eligible employee incurring unapproved compensatory time or overtime during a designated furlough week will be subject to discipline.

- 5.14 Holiday Pay. The requirement to be in paid status the day before and the day after a holiday in order to be paid for the holiday will be waived in those circumstances where the unpaid day is a furlough day. If an individual is in an unpaid status on a day before or a day following a holiday not caused by a furlough day, the employee will not be paid for the holiday. If a scheduled furlough day falls on a paid holiday, the employee will receive holiday pay for that day.

6.0 RESCISSION OF APPROVED LEAVES. (Not applicable under voluntary furloughs)

7.0 RETIREMENT

In accordance with the provisions of the recently enacted SB 6157, any compensation foregone by a member of the State Retirement System applicable to municipal employees shall include any compensation foregone by a member during the 2009 to 2011 fiscal biennium as a result of reduced work hours, voluntary leave without pay or temporary furloughs. These rules shall be interpreted in accordance with the state of Washington's DRS rules which are anticipated to be issued on or about July 1, 2009.

8.0 COMMUNICATION.

8.1 New Hires. (not applicable under voluntary furloughs)

9.0 ADDITIONAL.

9.1 Grievance Procedures/Timelines. Grievance procedures typically specify the number of days for each step of a grievance. The number of days are typically specified as "days," "calendar days," or "business days." The terms and conditions of all collective bargaining agreements will be observed unless specifically overridden by a Memorandum of Understanding. Where a collective bargaining agreement specifies "calendar days," furlough days will generally be considered calendar days. Where the collective bargaining agreement specifies "business days," furlough days will be considered business days if the employee is furlough-ineligible and non-business days if the employee is furlough-eligible. Where the collective bargaining agreement specifies "days," the parties will agree on the meaning of the term upon notification of the grievance.

There is no property right to scheduled or substituted furlough days. There is no requirement to hold Loudermill hearings on furloughs for employees who are identified as furlough-eligible.

9.2 Unemployment Compensation. Eligibility is determined by the Washington State Department of Employment Security.

9.3 Emergency Procedure. In those cases where an emergency call out occurs on a furlough day or during a furlough week, employees may be called back to work. Such employees are compensated in accordance with standard compensation procedures and in conformance with the applicable collective bargaining agreement. FLSA-exempt employees may be called back to work on a furlough day. FLSA-exempt employees are compensated on an hourly basis for all time worked within a furlough affected week. FLSA-exempt employees are required to track their time during a furlough affected week consistent with the practices in their department. Overtime pay is paid to such non-represented employees for all hours worked in excess of forty (40) hours within that week including weekend days within the same week. If such employees are represented, they are paid in accordance with their collective bargaining agreements for calculation of overtime.

In the case of an employee being called to work on an unpaid furlough day due to emergency situations, the employee is not required to make up the furlough day at a later date.

10.0 PUBLIC DISCLOSURE ACT.

The term “business day” is not defined under the Public Records Act. When considering whether one should count a furlough day as a business day, one should keep in mind that the act is to be liberally construed. Recognizing that some parts of the city will be open on furlough days, the recommended course of action is to regard all furlough days as business days for public disclosure request purposes.



**Subject: USDA Rural Development
Loan Application**

Proposed Council Action:

**Authorize USDA Loan
Application**

Dept. Origin: Administration

Prepared by: Rob Karlinsey

For Agenda of: February 8, 2010

Exhibits: Loan Application

Initial & Date

Concurred by Mayor: _____

Approved by City Administrator: RBK

Approved as to form by City Atty: N/A

Approved by Finance Director: RBK for DR

Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required \$7.44 million	Budgeted \$7.44 million	Required \$0

INFORMATION / BACKGROUND

The US Department of Agriculture offers low interest loans through its Rural Development program. As a small city, Gig Harbor qualifies for these loans for its water and sewer projects. Because National Environmental Policy Act (NEPA) review has been completed on the City's wastewater marine outfall project, the City's \$7,444,803 USDA loan application will be used to fund the construction of this project.

Although it is unknown at this time what the interest rate will be, this type of loan is consistently one to two percentage points lower than revenue bonds offered on the open market, saving anywhere from \$75,000 to \$150,000 per year on the debt service in the initial years (annual debt service savings would decline in future years as principal on the debt is paid down).

The term of the loan, if approved by USDA, would be up to 40 years or the useful life of the improvement, whichever is less (staff will most likely be recommending a term of less than 40 years).

The City Council is not being asked to approve the final terms of the loan at this time; the city administrator is asking for the Council's approval to *apply* for the loan because the USDA requests documentation that the elected body is informed of and has directed the application for the loan. If the USDA approves the loan, then the final terms and conditions of the loan will be brought forward for City Council approval.

The City's other wastewater and water projects are/will be financed via grants, State PWTF loans, and revenue bonds.

FISCAL CONSIDERATION

See above

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize USDA the attached USDA Rural Development Loan Application

Application for Federal Assistance SF-424	
*1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	
*2. Type of Application * If Revision, select appropriate letter(s) <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation *Other (Specify) _____ <input type="checkbox"/> Revision	
3. Date Received: 4. Applicant Identifier:	
5a. Federal Entity Identifier: *5b. Federal Award Identifier:	
State Use Only:	
6. Date Received by State: 7. State Application Identifier:	
8. APPLICANT INFORMATION:	
*a. Legal Name: City of Gig Harbor	
*b. Employer/Taxpayer Identification Number (EIN/TIN): 91-6001435	
*c. Organizational DUNS: 014365621	
d. Address:	
*Street 1: <u>3510 Grandview Street</u>	
Street 2: _____	
*City: <u>Gig Harbor</u>	
County: <u>Pierce</u>	
*State: <u>WA</u>	
Province: _____	
*Country: <u>USA</u>	
*Zip / Postal Code <u>98335</u>	
e. Organizational Unit:	
Department Name: Division Name: Public Works Engineering	
f. Name and contact information of person to be contacted on matters involving this application:	
Prefix: <u>Mr</u> *First Name: <u>Steve</u>	
Middle Name: _____	
*Last Name: <u>Misiurak</u>	
Suffix: _____	
Title: <u>City Engineer</u>	
Organizational Affiliation:	
*Telephone Number: 2538518136 Fax Number: 2538518563	
*Email: <u>misiuraks@cityofgigharbor.net</u>	

Application for Federal Assistance SF-424

***9. Type of Applicant 1: Select Applicant Type:**

C. City or Township Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

*Other (Specify)

***10 Name of Federal Agency:**

US Department of Agriculture Rural Development

11. Catalog of Federal Domestic Assistance Number:

10.760

CFDA Title:

Water & Wastewater Loans & Grants

***12 Funding Opportunity Number:**

*Title:

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Gig Harbor, Pierce County, Washington

***15. Descriptive Title of Applicant's Project:**

Wastewater Outfall Extension and Expansion

Application for Federal Assistance SF-424

16. Congressional Districts Of:

*a. Applicant: 6

*b. Program/Project:

17. Proposed Project:

*a. Start Date: January 2010

*b. End Date: May 31, 2011

18. Estimated Funding (\$):

*a. Federal	_____	7444803
*b. Applicant	_____	855197
*c. State	_____	
*d. Local	_____	
*e. Other	_____	
*f. Program Income	_____	
*g. TOTAL	_____	8300000

*19. Is Application Subject to Review By State Under Executive Order 12372 Process?

- a. This application was made available to the State under the Executive Order 12372 Process for review on _____
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E. O. 12372

*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)

- Yes No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U. S. Code, Title 218, Section 1001)

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions

Authorized Representative:

Prefix: _____ *First Name: Robert _____

Middle Name: Greer _____

*Last Name: Karlinsey _____

Suffix: _____

*Title: City Administrator

*Telephone Number: 253-851-6127

Fax Number: 253-851-8563

* Email: karlinseyr@cityofgigharbor.net

*Signature of Authorized Representative: 

*Date Signed: 01/22/2010

Application for Federal Assistance SF-424

***Applicant Federal Debt Delinquency Explanation**

The following should contain an explanation if the Applicant organization is delinquent of any Federal Debt.

Public reporting burden for this collection of information is estimated to average 80 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0548-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form (including the continuation sheet) required for use as a cover sheet for submission of preapplications and applications and related information under discretionary programs. Some of the items are required and some are optional at the discretion of the applicant or the Federal agency (agency). Required items are identified with an asterisk on the form and are specified in the instructions below. In addition to the instructions provided below, applicants must consult agency instructions to determine specific requirements.

Item	Entry:	Item	Entry:
1.	<p>Type of Submission: (Required): Select one type of submission in accordance with agency instructions.</p> <ul style="list-style-type: none"> • Preapplication • Application • Changed/Corrected Application – If requested by the agency, check if this submission is to change or correct a previously submitted application. Unless requested by the agency, applicants may not use this to submit changes after the closing date. 	10.	<p>Name Of Federal Agency: (Required) Enter the name of the Federal agency from which assistance is being requested with this application.</p>
		11.	<p>Catalog Of Federal Domestic Assistance Number/Title: Enter the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested, as found in the program announcement, if applicable.</p>
2.	<p>Type of Application: (Required) Select one type of application in accordance with agency instructions.</p> <ul style="list-style-type: none"> • New – An application that is being submitted to an agency for the first time. • Continuation - An extension for an additional funding/budget period for a project with a projected completion date. This can include renewals. • Revision - Any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision, enter the appropriate letter(s). More than one may be selected. If "Other" is selected, please specify in text box provided. A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration E. Other (specify) 	12.	<p>Funding Opportunity Number/Title: (Required) Enter the Funding Opportunity Number and title of the opportunity under which assistance is requested, as found in the program announcement.</p>
		13.	<p>Competition Identification Number/Title: Enter the Competition Identification Number and title of the competition under which assistance is requested, if applicable.</p>
		14.	<p>Areas Affected By Project: List the areas or entities using the categories (e.g., cities, counties, states, etc.) specified in agency instructions. Use the continuation sheet to enter additional areas, if needed.</p>
3.	<p>Date Received: Leave this field blank. This date will be assigned by the Federal agency.</p>	15.	<p>Descriptive Title of Applicant's Project: (Required) Enter a brief descriptive title of the project. If appropriate, attach a map showing project location (e.g., construction or real property projects). For preapplications, attach a summary description of the project.</p>
4.	<p>Applicant Identifier: Enter the entity identifier assigned by the Federal agency, if any, or applicant's control number, if applicable.</p>		
5a.	<p>Federal Entity Identifier: Enter the number assigned to your organization by the Federal Agency, if any.</p>	16.	<p>Congressional Districts Of: (Required) 16a. Enter the applicant's Congressional District, and 16b. Enter all District(s) affected by the program or project. Enter in the format: 2 characters State Abbreviation – 3 characters District Number, e.g., CA-065 for California 5th district, CA-012 for California 12th district, NC-103 for North Carolina's 103rd district.</p> <ul style="list-style-type: none"> • If all congressional districts in a state are affected, enter "all" for the district number, e.g., MD-all for all congressional districts in Maryland. • If nationwide, (i.e. all districts within all states are affected), enter US-all. • If the program/project is outside the US, enter 00-000.
5b.	<p>Federal Award Identifier: For new applications leave blank. For a continuation or revision to an existing award, enter the previously assigned Federal award identifier number. If a changed/corrected application, enter the Federal Identifier in accordance with agency instructions.</p>		
6.	<p>Date Received by State: Leave this field blank. This date will be assigned by the State, if applicable.</p>	17.	<p>Proposed Project Start and End Dates: (Required) Enter the proposed start date and end date of the project.</p>
7.	<p>State Application Identifier: Leave this field blank. This identifier will be assigned by the State, if applicable.</p>	18.	<p>Estimated Funding: (Required) Enter the amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines, as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses.</p>
8.	<p>Applicant Information: Enter the following in accordance with agency instructions:</p> <p>a. Legal Name: (Required): Enter the legal name of applicant that will undertake the assistance activity. This is the name that the organization has registered with the Central Contractor Registry. Information on registering with CCR may be obtained by visiting the Grants.gov website.</p> <p>b. Employer/Taxpayer Number (EIN/TIN): (Required): Enter the Employer or Taxpayer Identification Number (EIN or TIN) as assigned by the Internal Revenue Service. If your organization is not in the US, enter 44-4444444.</p> <p>c. Organizational DUNS: (Required) Enter the organization's DUNS or DUNS+4 number received from Dun and Bradstreet. Information on obtaining a DUNS number may be obtained by visiting the Grants.gov website.</p> <p>d. Address: Enter the complete address as follows: Street address (Line 1 required), City (Required), County, State (Required, if country is US), Province, Country (Required), Zip/Postal Code (Required, if country is US).</p> <p>e. Organizational Unit: Enter the name of the primary organizational unit (and department or division, if applicable) that will undertake the</p>	19.	<p>Is Application Subject to Review by State Under Executive Order 12372 Process? Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the</p>

	<p>assistance activity, if applicable.</p> <p>f. Name and contact information of person to be contacted on matters involving this application: Enter the name (First and last name required), organizational affiliation (if affiliated with an organization other than the applicant organization), telephone number (Required), fax number, and email address (Required) of the person to contact on matters related to this application.</p>	<p>State intergovernmental review process. Select the appropriate box. If "a." is selected, enter the date the application was submitted to the State.</p> <p>20. Is the Applicant Delinquent on any Federal Debt? (Required) Select the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.</p> <p>If yes, include an explanation on the continuation sheet.</p>		
<p>2.</p>	<p>Type of Applicant: (Required) Select up to three applicant type(s) in accordance with agency instructions.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>A. State Government</p> <p>B. County Government</p> <p>C. City or Township Government</p> <p>D. Special District Government</p> <p>E. Regional Organization</p> <p>F. U.S. Territory or Possession</p> <p>G. Independent School District</p> <p>H. Public/State Controlled Institution of Higher Education</p> <p>I. Indian/Native American Tribal Government (Federally Recognized)</p> <p>J. Indian/Native American Tribal Government (Other than Federally Recognized)</p> <p>K. Indian/Native American Tribally Designated Organization</p> <p>L. Public/Indian Housing Authority</p> </td> <td style="width: 50%; vertical-align: top;"> <p>M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)</p> <p>N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)</p> <p>O. Private Institution of Higher Education</p> <p>P. Individual</p> <p>Q. For-Profit Organization (Other than Small Business)</p> <p>R. Small Business</p> <p>S. Hispanic-serving Institution</p> <p>T. Historically Black Colleges and Universities (HBCUs)</p> <p>U. Tribally Controlled Colleges and Universities (TCCUs)</p> <p>V. Alaska Native and Native Hawaiian Serving Institutions</p> <p>W. Non-domestic (non-US) Entity</p> <p>X. Other (specify)</p> </td> </tr> </table>	<p>A. State Government</p> <p>B. County Government</p> <p>C. City or Township Government</p> <p>D. Special District Government</p> <p>E. Regional Organization</p> <p>F. U.S. Territory or Possession</p> <p>G. Independent School District</p> <p>H. Public/State Controlled Institution of Higher Education</p> <p>I. Indian/Native American Tribal Government (Federally Recognized)</p> <p>J. Indian/Native American Tribal Government (Other than Federally Recognized)</p> <p>K. Indian/Native American Tribally Designated Organization</p> <p>L. Public/Indian Housing Authority</p>	<p>M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)</p> <p>N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)</p> <p>O. Private Institution of Higher Education</p> <p>P. Individual</p> <p>Q. For-Profit Organization (Other than Small Business)</p> <p>R. Small Business</p> <p>S. Hispanic-serving Institution</p> <p>T. Historically Black Colleges and Universities (HBCUs)</p> <p>U. Tribally Controlled Colleges and Universities (TCCUs)</p> <p>V. Alaska Native and Native Hawaiian Serving Institutions</p> <p>W. Non-domestic (non-US) Entity</p> <p>X. Other (specify)</p>	<p>21. Authorized Representative: (Required) To be signed and dated by the authorized representative of the applicant organization. Enter the name (First and last name required) title (Required), telephone number (Required), fax number, and email address (Required) of the person authorized to sign for the applicant.</p> <p>A copy of the governing body's authorization for you to sign this application as the official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)</p>
<p>A. State Government</p> <p>B. County Government</p> <p>C. City or Township Government</p> <p>D. Special District Government</p> <p>E. Regional Organization</p> <p>F. U.S. Territory or Possession</p> <p>G. Independent School District</p> <p>H. Public/State Controlled Institution of Higher Education</p> <p>I. Indian/Native American Tribal Government (Federally Recognized)</p> <p>J. Indian/Native American Tribal Government (Other than Federally Recognized)</p> <p>K. Indian/Native American Tribally Designated Organization</p> <p>L. Public/Indian Housing Authority</p>	<p>M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)</p> <p>N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)</p> <p>O. Private Institution of Higher Education</p> <p>P. Individual</p> <p>Q. For-Profit Organization (Other than Small Business)</p> <p>R. Small Business</p> <p>S. Hispanic-serving Institution</p> <p>T. Historically Black Colleges and Universities (HBCUs)</p> <p>U. Tribally Controlled Colleges and Universities (TCCUs)</p> <p>V. Alaska Native and Native Hawaiian Serving Institutions</p> <p>W. Non-domestic (non-US) Entity</p> <p>X. Other (specify)</p>			

BUDGET INFORMATION - Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case, you will be notified.

COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Columns a-b)
1. Administrative and legal expenses	\$.00	.00	.00
2. Land, structures, rights-of-way, appraisals, etc.	\$.00	.00	.00
3. Relocation expenses and payments	\$.00	.00	.00
4. Architectural and engineering fees	\$ 1,102,745	760,446	342,299
5. Other architectural and engineering fees	\$ 75,000	75,000	0
6. Project inspection fees	\$ 50,000	.00	50,000
7. Site work	\$.00	.00	.00
8. Demolition and removal	\$.00	.00	.00
9. Construction	\$ 6,157,955	.00	6,157,955
10. Equipment	\$.00	.00	.00
11. Miscellaneous	\$ 69,526	19,751	49,775
12. SUBTOTAL (sum of lines 1-11)	\$ 7,455,226	855,197	6,600,029
13. Contingencies	\$ 844,774	.00	844,774
14. SUBTOTAL	\$ 8,300,000	855,197	7,444,803
15. Project (program) income	\$.00	.00	.00
16. TOTAL PROJECT COSTS (subtract #15 from #14)	\$ 8,300,000	855,197	7,444,803
FEDERAL FUNDING			

17. Federal assistance requested, calculate as follows:
(Consult Federal agency for Federal percentage share.)
Enter the resulting Federal share.

Enter eligible costs from line 16c Multiply X _____ %

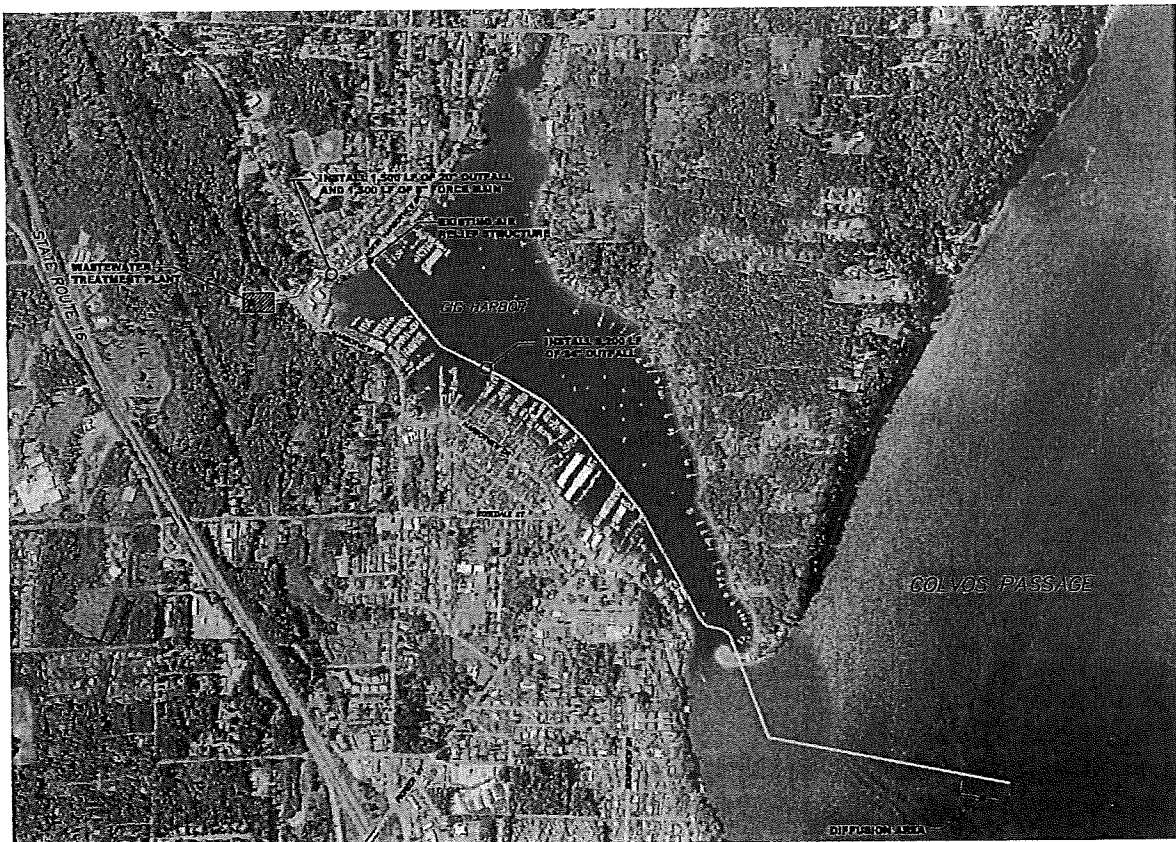
\$ 7,444,803



**City of Gig Harbor
Wastewater System Marine Outfall Extension
USDA Rural Development Loan Application**

Project Narrative

The City of Gig Harbor is requesting a USDA Rural Development loan to finance its wastewater system marine outfall project. Currently, the City's main effluent line for its wastewater system diffuses treated wastewater into Gig Harbor Bay. For capacity and environmental reasons, the City needs to expand the diameter of the line from 10 inches to 24 inches, and the City also needs to extend the line approximately 9,200 feet from the Ruth M. Bogue View Park at the Head of Gig Harbor Bay out into Colvos Passage of the Puget Sound, as shown here:



The “onshore” portion of the outfall between the treatment plant and the shoreline at the view park was constructed and installed in 2008. When near the shoreline and tideland areas, the pipe will be buried under ground; further out from shore, the pipe will lay directly on top of the seabed. The project also includes a directional bore under the sand spit at the mouth of Gig Harbor. The diffuser pipe inside Colvos Passage will be 540 feet long with eleven ports, and will be installed at a depth of approximately 50 meters.

This project is being required by the State of Washington Department of Ecology to meet State of Washington wastewater treatment plant operating permit conditions. In addition to regulatory compliance, this project will be beneficial both for the City and the region for the following reasons:

- Economic. Increasing the diameter of the line and extending it will play a major role in increasing the capacity of the City’s wastewater treatment system and thereby allowing for future growth and economic development in the region. In addition, at the completion of this project, the geoduck shellfish closure area near the mouth of the harbor will be reopened for harvesting.
- Environmental. Extending the diffuser from the harbor out into Colvos Passage will bring the City into environmental compliance for the next phase of the wastewater treatment plant expansion. The outfall extension will move the outfall’s main diffuser out into the Puget Sound where more tidal action can disperse the effluent (treated water) more rapidly. Recent modeling shows that the Harbor flushes approximately once every two days, whereas the new discharge location in Colvos Passage will flush in a matter of minutes or hours, depending on the tidal cycle.

The City’s effluent (treated water) is frequently sampled and tested and is found to be well within state and federal discharge standards. With significant growth over the last 15-20 years, recent tests show that oxygen-depleting compounds such ammonia concentrations have steadily increased over the years; extension of the outfall into Colvos Passage will return Gig Harbor Bay to pre-1973 ammonia concentrations, or levels on the order of 0.01 mg/L. With additional growth coming, moving the effluent diffuser out of the Harbor is the environmentally responsible (and required) course of action.

Existing Debts in the Utility Funds

The City's Water and Stormwater Utility Funds currently have no outstanding debts.

Wastewater Utility Fund debts as of 12/31/09 are as follows:

<u>Debt Issue</u>	<u>Amount Owning</u>	<u>Maturity Date</u>
2001 Pump Station 3A	\$630,000	2013
State PWTF Loan for WWTP Design & Engineering	\$573,750	2012
State PWTF Loan for WWTP Construction	\$7 million	2031

Other Funding Pending/Committed/Applied For

The City has also applied for a \$7.2 million low interest SRF loan to the Washington State Department of Ecology for this same Wastewater Marine Outfall Project. The City expects to learn of its approval or denial for this loan in mid to late February of this year.

Construction on a separate project, the City's wastewater treatment plant expansion, is underway, and the City expects to fund the remainder of this project via additional State PTWF loan funds and revenue bonds.

Proposed Security for the Loan: Water-Sewer Utility Revenues

MEMORANDUM

TO: City Council

FROM: Laureen Lund, lundl@cityofgigharbor.net

Date: February 3, 2010

RE: City Marketing Plan for 2010 Amateur

The City of Gig Harbor Marketing Office has been working with Chambers Bay on promotional opportunities for Gig Harbor at the upcoming 2010 Amateur in August of this year.

Beginning a year ago, myself, Mayor Hunter, Rob Karlinsey and Tim Payne met with Kathleen Pope, Championship Coordinator for the 2010 Amateur for Kemper Sports and the Chambers Bay Golf Club. Kathleen and I have stayed in touch as the plans have come into place. The official Amateur 2010 Website includes the www.gigharborguide.com website as the official link to learn about Gig Harbor.

In November of last year, I began communicating with Brian Simpson, Director of Championship Sales and Client Services on promotional opportunities for Gig Harbor at the Amateur 2010. Currently I am working with Brian on a promotional package with a cost of \$6000 which provides significant exposure and advertising opportunities for Gig Harbor. John Hogan from Uptown has agreed to partner with us and I am now waiting for a similar partnership with either the Gig Harbor Historic Waterfront Association or from the Gig Harbor Chamber of Commerce. Having a three-way partnership significantly decreases our costs while still providing the exposure we desire.

In addition I have explored the idea of aerial advertising during the Amateur (an idea floated by Mayor Hunter) and am still working on this as a possible option. Nothing more to report on that yet.

The City Marketing office will be using our own website, Facebook, Twitter, blog and our relationship with local media to work to gain as much exposure as possible for our region as part of the overall plan for this event.

Additionally, the week before the Amateur Event another event, associated with the Amateur, will be taking place at Canterwood. We expect this opportunity will provide us significant heads in beds as well as positive economic impact to our businesses.

Larry Gilhuly will be presenting to you at the February 8th council meeting. Larry is a Turf Grass Consultant for the USGA and lives in Gig Harbor. His presentation is to provide you information about what the 2010 Amateur is and even more importantly what the 2015 US Open is and how these two events being held at Chambers Bay will impact the Gig Harbor community.

If you have any questions, ideas or concerns regarding our plan for the 2010 Amateur I encourage you to contact me at your earliest convenience.

Thank you.



Subject: 2010 Comprehensive Plan amendment annual review docket

Proposed Council Action: Pass resolution repealing Resolution No. 805 and including the 96th Street LLC land use map amendment (COMP 10-0003) on the 2010 annual review docket.

Dept. Origin: Planning

Prepared by: Jennifer Kester
Senior Planner

For Agenda of: February 8, 2010

Exhibits: Resolution

Initial & Date

Concurred by Mayor:

Approved by City Administrator: RJK 2/3

Approved as to form by City Atty: R-mcgr 2/2

Approved by Finance Director: N/A

Approved by Department Head: TD 2/3/10

Expenditure		Amount		Appropriation	
Required	0	Budgeted	0	Required	0

INFORMATION / BACKGROUND

In order for the City to be consistent with requirements of the State, Puget Sound Regional Council and Pierce County, a major update to the Comprehensive plan is currently required in 2011. In anticipation of the staff time needed to complete that major update, the Council passed Resolution No. 805 on October 13, 2009. Resolution No. 805 stated that the city will process only city-initiated applications in the 2010 annual review period and all complete private applications submitted by the deadlines for the 2010 annual review cycle will be moved to the 2011 annual review cycle.

On December 9, 2009, the Governor's 2010 Supplemental Budget eliminated the grant funding to cities for the 2011 GMA mandated update. In response to the funding reduction, three bills have been introduced in the 2010 Washington State legislative session to extend the 2011GMA mandated update to 2014. All indications point to the extension passing.

The City received three complete comprehensive plan amendment applications by the December 18, 2009 deadline for 2010 amendments. Only one of those applications received was a private application: 96th Street LLC land use map amendment (COMP-10-0003).

Assuming legislation is passed to extend the 2011 GMA mandated update to 2014 and given the reduced number of amendment applications compared to past years; the Planning Department believes staff time is available to include the 96th Street LLC land use map amendment on the 2010 annual review docket. If this resolution is approved, the City Council

will have the opportunity to consider whether to move this application forward after the hearing on the docket.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

None

RECOMMENDATION / MOTION

Move to: Pass resolution repealing Resolution No. 805 and including the 96th Street LLC land use map amendment (COMP 10-0003) on the 2010 annual review docket.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, INCLUDING THE 96TH STREET LLC COMPREHENSIVE PLAN LAND USE MAP AMENDMENT APPLICATION (COMP 10-0003) ON THE 2010 ANNUAL REVIEW DOCKET; REPEALING RESOLUTION NO. 805

WHEREAS, under current law the City of Gig Harbor is required by the State Growth Management Act to amend our Comprehensive Plan every seven years; and

WHEREAS, the State mandated revision is due in 2011; and

WHEREAS, to be consistent with the Puget Sound Regional Council's VISION 2040 and the Pierce County CountyWide Planning Policies a major update to the City's Comprehensive Plan is required; and

WHEREAS, on October 13, 2009, the city passed Resolution No. 805 which stated that the city will process only city-initiated applications in the 2010 annual review period and all complete private applications submitted by the deadlines for the 2010 annual review cycle will be moved to the 2011 annual review cycle due to the need to allocate staff resources in 2010 to the 2011 GMA mandated update; and

WHEREAS, on December 9, 2009, the Governor's 2010 Supplemental Budget eliminated the grant funding to cities for the 2011 GMA mandated update and proposed legislation to extend the GMA mandated update deadlines; and

WHEREAS, three bills have been introduced in the 2010 Washington State legislative session to extend the 2011 GMA mandated update to 2014; and

WHEREAS, the City received three complete comprehensive plan amendment applications in time for the 2010 annual review cycle; and

WHEREAS, only one of the applications received was a private application: 96th Street LLC land use map amendment (COMP-10-0003); and

WHEREAS, the staff time available to work on 2010 Comprehensive Plan amendment applications has increased, assuming legislation is passed to extend the 2011 GMA mandated update to 2014;

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

Section 1. Resolution No. 805 is hereby repealed.

Section 2. The 96th Street LLC Comprehensive Plan land use map amendment application (COMP 10-0003) is hereby placed on the 2010 annual review docket.

RESOLVED by the City Council this ____ day of _____, 2010.

APPROVED:

Charles L. Hunter, Mayor

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

By: _____



Subject: Resolution Rejecting "Canterwood" Annexation (ANX 08-0002)

Proposed Council Action:

Adopt Resolution No. _____
rejecting the Canterwood Annexation

Dept. Origin: Planning Department

Prepared by: Tom Dolan *TD*
Planning Director

For Agenda of: February 8, 2010

Exhibits: Resolution

Initial & Date

Concurred by Mayor:

Approved by City Administrator: *POK 2/1/10*

Approved as to form by City Atty: *by e-mail*

Approved by Finance Director: *DF 2/2/10*

Approved by Department Head: *TD 2/1/10*

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

INFORMATION / BACKGROUND

In 2008 the City received a Notice of Intention to Commence Annexation Proceedings for Canterwood. The proposed annexation consisted of 714 acres located between Canterwood Blvd/54th Ave NW and Peacock Hill Avenue south of 140th Street NW (extended), contiguous to city limits, and within the City's Urban Growth Area (UGA).

By law, the City Council was required to meet with the proponents, the Canterwood Homeowners Association Annexation Committee. The meeting occurred on October 13, 2008. The Council also discussed the annexation on October 27, 2008 and in January of 2009.

During 2009 it has become apparent that the proposed annexation is premature at this time. The City approved two large annexations (Burnham/Sehmel and 96th Street) in 2009 with a combined area of over 700 acres. The full impact of those two annexations on the workload of City Staff is uncertain at this point. Due to revenue reductions, the City has reduced the number of employees available to maintain streets and utilities and issue development permits. In addition, the City does not currently have a zoning classification that is appropriate for the Canterwood area. Development of an appropriate zoning classification would adversely affect the workload of the Planning Commission and the Planning Department staff.

BOARD OR COMMITTEE RECOMMENDATION

None

RECOMMENDATION / MOTION

Move to:

Reject the request of the Canterwood Homeowners Association to consider the Canterwood Annexation.

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR,
WASHINGTON, DENYING AN APPLICATION FOR ANNEXATION BY THE
CANTERWOOD HOMEOWNERS ASSOCIATION (ANX 08-0002).**

WHEREAS, by letter dated July 24, 2008 the Canterwood Homeowners Association submitted a Notice of Intent to annex the Canterwood neighborhood to the City of Gig Harbor; and

WHEREAS, the City Council considered the Canterwood annexation on their October 23, 2008 and January 26, 2009 City Council Meetings; and

WHEREAS, the City approved two large annexations in 2009 with a combined area of over 700 acres; and

WHEREAS, the full impacts of those annexations upon the workload of City personnel is still uncertain; and

WHEREAS, the City has been severely impacted by the recent recession and has experienced a significant reduction in revenue with resulting reductions in City personnel; and

WHEREAS, annexing Canterwood would impact City forces that maintain existing roads and utilities; and

WHEREAS, annexing Canterwood would necessitate the development of a new zoning district which would adversely affect the workload of the City's Planning Commission and Planning Department; NOW THEREFORE,

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

Section 1. After considering the Notice of Intent, comments received at public meetings, and the circumstances set forth in the WHEREAS clauses above, the City Council hereby rejects the request by the Canterwood Homeowners Association to consider the Canterwood Annexation.

RESOLVED by the City Council this 8th day of February, 2010.

APPROVED:

MAYOR, CHARLES HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____

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

Karlinsey, Rob

From: Dolan, Tom
Sent: Wednesday, February 03, 2010 7:58 AM
To: 'russell@canterwood.com'
Cc: Karlinsey, Rob
Subject: Canterwood Annexation

Mr. Tanner – As we had discussed last month, the City Council will consider a resolution to reject the Canterwood Annexation. The Council will vote on this at their next meeting on 2/8/10. It is on the consent agenda. Please feel free to contact me if you have any questions.

Tom Dolan
Planning Director
City of Gig Harbor
3510 Grandview St.
Gig Harbor, WA 98335
253-853-7615 phone
253-858-6408 fax

Minutes from Sept. 25, 2009 Council Retreat

8. PROS Plan. *In progress.*
9. Development agreement with OPG/ GH North Visioning. Tom reported that they will begin working on a development agreement for the 800 unit residential development.
10. UGA Line in Gid Harbor Bay. *Resolves jurisdictional issue.*
10. Carterwood Annexation Analysis. Because this is such a huge undertaking and the staff's workload, after discussion Council recommended that this be moved to 2011 and to check with legal counsel to determine how to respond to the 10% annexation petition.

Tom was asked if staff needed direction on the Boss Amendment. He responded that an application has been submitted and it's on the list for Council's consideration. Rob pointed out that there is a recommendation for no Planning Commission meetings in November, December or January. Tom explained that the schedule was full this spring in anticipation of the Shoreline Update. Now the consultants have been asked to postpone work to save money; the cancelled meetings will allow staff to catch up with the current workload which has been affected by the 2009 furloughs and the elimination of overtime and comp time.

11. Permitting in the UGA. *Major issues resolved.*
12. Annexation Sequencing Strategy. *No new annexations anticipated in near future.*
13. Fee Discount / Waiver for Low Income Housing, including impact/connection fees. *Recommend delaying due to furloughs.*
14. City / County Coordination of Cross-Boundary Impacts. *Delete as it is similar to 11 above.*

Police

1. Drug Dog and accompanying training, supplies and equipment. Chief Davis reported this was implemented in 2009 and will be re-evaluated in 2010. This program is funded with drug seizure money.
2. Policy Manual. *On-going.*
3. Evidence on Q. This computerized scanning program for the property room is funded by the Memorandum of Understanding with Property.com where surplus items are sent out to be sold.
4. EOC Trailer (moved from Building). The department will work with Dick Bower to accomplish this with the grant money.

Chief Davis said he has been getting inquiries on the pan-handling and asked if Council was interested in drafting an ordinance to address this, which comes with a legal cost. He said there is a citizens group interested in helping out with any program. After discussion Council agreed that, until they become aggressive it would be best addressed through outreach and education, and perhaps to engage the local volunteer citizens group to contact. A comment was made about the firemen's "Fill the Boot" program, which is more intimidating and dangerous.

Chief Davis then reported that the COPS hiring recovery grant. With two positions gone, it changes the information he submitted on the application. He is working with the grant administrator and will keep Council advised.

Chief responded to a question about the take-home car program by saying that it is working well and has given the officers the ability to be ready at the start of shift. The fuel cost has increased slightly and the lifespan of the vehicles is on track at eight years before replacement is

Subject: Cemeteries as conditional uses in the R-1 zone

Proposed Council Action: Discuss amendment and determine if amendment should be City-sponsored

Dept. Origin: Planning

Prepared by: Jennifer Kester
Senior Planner *JK*

For Agenda of: February 8, 2010

Exhibits:

Initial & Date

Concurred by Mayor:

Approved by City Administrator: *RJK 2/4/10*

Approved as to form by City Atty: *by e-mail*

Approved by Finance Director:

Approved by Department Head: *TD 2/4/10*

Expenditure	Amount	Appropriation
Required \$100 - \$300*	Budgeted 0	Required 0

INFORMATION / BACKGROUND

Haven of Rest Cemetery has asked the City to consider a text amendment to allow cemeteries as conditional uses in the R-1 zoning district. Haven of Rest owns 3.4 acres of property along Rosedale within the R-1 zone. In 2009, they submitted an application to change that property from the RL to RM designation in order to rezone the property to R-2 – the only zone which currently allows cemeteries. That application was denied. During your deliberation, the Council indicated that perhaps a text amendment should be proposed which would allow cemeteries in the R-1 zoning district, thus avoiding any increase in residential density.

Councilmember Kadzik has requested the City sponsor this amendment and waive fees for Haven of Rest due to the costs already incurred. The Planning and Building Committee reviewed that request and suggested that the City Council decide if this amendment should be city-sponsored. In addition, the Planning and Building Committee has requested the Planning Commission consider allowing this amendment be considered directly by the Council.

FISCAL CONSIDERATION

A private applicant text amendment application would incur \$3,575 in permits fees and \$100 to \$300* in newspaper noticing costs.

BOARD OR COMMITTEE RECOMMENDATION

The Planning Commission will be reviewing the request for direct consideration by the Council at their February 4th meeting.

RECOMMENDATION / MOTION

Discuss amendment and determine if amendment should be City-sponsored

David McGoldrick

From: David McGoldrick
Sent: Wednesday, December 16, 2009 12:32 PM
To: 'abelback@omwlaw.com'
Subject: FW: Emailing: Gig Harbor, Washington.htm
Attachments: Gig Harbor, Washington.htm

From: David McGoldrick
Sent: Wednesday, December 16, 2009 12:27 PM
To: 'abeleck@omwlaw.com'
Cc: Kathleen E. Pierce; 'karlinsey@cityofgigharbor.net'
Subject: Emailing: Gig Harbor, Washington.htm

Dear Angela,

I represent a property owner affected by Gig Harbor's effective vacation of Thurston Lane. We talked several weeks ago. I have copied you with a letter to the Mayor and City Council members urging them to enforce their rights in keeping the street open.

In this morning's meeting with the City Administrator and other City officials the affected property owners who attended were advised that the City Council and Mayor, without notice to those affected property owners, determined not to proceed against the property owner who purchased the property from the City and who is now attempting to close down Thurston Lane as a public right of way. We hope to reverse that decision.

In my letter to the Mayor I am citing Washington law regarding our courts adoption of the "Common Law Street dedication" doctrine. I had not previously discussed this legal principle with you. From the facts discussed in the various cases, the doctrine would seem to apply in our case. If you look at 33 Wash 2d 496, it should lead you into the case law.

In this morning's meeting I first learned that the City adopted an ordinance in 1979 specifically stating that Thurston Lane is a "one way street". That ordinance is attached above to this e-mail. This fits squarely in the doctrine and further substantiates that Thurston Lane is a common law dedicated street.

The property owners want to work with the City in restoring Thurston Lane as a necessary access to their properties and to provide necessary access to its fire hydrant. I understand that the decision of whether to take action to re-open Thurston Lane is not yours, but I hope that you may now realize that legally it may be a lot easier than you may have originally anticipated. In fact, it is probably the cheapest and quickest way to resolve this difficult issue.

I can be reached at the number below if you wish to discuss the matter.....Dave McGoldrick

Chapter 10.20 ONE-WAY STREETS

Sections:

- 10.20.010 Designated.
- 10.20.020 Violation – Penalty.

10.20.010 Designated.

A. Thurston Lane shall be a one-way street between Judson Street and Adams Street and vehicles shall only transit Thurston Lane in the direction of Adams Street from Judson Street.

B. Adams Street shall be a one-way street between Thurston Lane and Gilich Street and vehicles shall only transit Adams Street in the direction of Gilich Street from Thurston Lane. (Ord. 306, 1979).

10.20.020 Violation – Penalty.

Violation of any portion of this chapter is an infraction and subject to a penalty of \$100.00 as provided in GHMC 1.16.010D. (Ord. 460 § 4, 1985; Ord. 306, 1979).

This page of the Gig Harbor Municipal Code is current through Ordinance 1177, passed September 28, 2009.

Disclaimer: The City Clerk's Office has the official version of the Gig Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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December 15, 2009

CERTIFIED MAIL-RETURN
RECEIPT REQUESTED

Mayor Chuck Hunter
Council Members
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335

Re: Thurston Lane, Gig Harbor, Washington

Dear Mr. Mayor and Council Members:

We represent the owners of real property located in downtown Gig Harbor along Adams Street (Pierce County Parcel Nos. 0221082072, 2115000110 and 2115000120). Our client's property abuts to the North of Adams Street (a one way street which heads East). Adams Street is connected to Gilich Street on the East and Thurston Lane on the West. The issue is whether Thurston Lane is a public right-of-way. Our client's plans to develop its property has been blocked because the property owner of 3105 Judson Street (Pierce County Tax Parcel No. 0221082331) who purchased this property from the City of Gig Harbor, contends that Thurston Lane is a private driveway which serves only his property. As such, the City is denied access to its fire hydrant at the West end of Adams Street, thus blocking our client's planned development and denying fire protection services and access to other property owners in the area.

Keeping Thurston Lane open as access to the fire hydrant is an important public safety issue for the residents nearby. If Thurston Lane is not recognized as a public street, Adams Street becomes the private parking lot for the owner of the property at 3105 Judson Street (Pierce County Tax Parcel No. 0221082331).

As a result of the plans to develop their property, our client has learned that when the City sold the parcel of property located at 3105 Judson Street (Parcel No. 0221082231) to ETC Real Estate Investments, LLC, it failed to expressly reserved Thurston Lane as a public road and to preserve the public access to its own fire hydrant, although the City's Deed to ETC Real Estate contained a reservations of "all roads".

Recently, both the City and the new owner of the property have taken the position that Thurston Lane is not a public street, but rather a private driveway. In fact, the new owner has painted on the pavement the words "Private Driveway". It is our position, however, that Thurston Lane has always been and continues to be a public right-of-way under the common law doctrine of implied dedication. The elements of an implied common-law dedication are (1) an unequivocal act by the owner of the property establishing his intention to dedicate, and (2) reliance on the act by the public, indicating a public acceptance thereof. The distinction between a statutory dedication and a common-law dedication is that the former proceeds from a grant whilst the latter operates by way of an estoppel in pais. There is not particular form or ceremony necessary in the dedication of land to a public use. An implied common-law dedication arises from some act or course of conduct from which the law will imply an intention, on the part of the owner of the property, to dedicate it to the public use.

In the case of Thurston Lane, there was clearly an intention by the City of Gig Harbor to dedicate the area for public use. The area was paved and City signs directed its use as the only proper access to Adams Street. It is shown on the assessor's map as a street. The street has been used by the public at large as a right-of-way for more than 50 years and it has served as the only access to a critical fire hydrant for surrounding buildings and as necessary access to the back of a building fronting on Harbor View, since the operation of the old Gig Harbor Hotel. Use is not required for any specific period of time, however, since it is not a matter of prescription, but one of an acceptance of the grant. Further, limitations affecting the application of the doctrine of prescriptive easements against public entities, such as the City of Gig Harbor, do not apply.

A dedication and acceptance may be implied from general and long-continued use by the public as of right. Making repairs and improvements, the installation of the fire hydrant, and inviting the public to travel on the road way, may be considered as evidence of the adoption of the street by a municipality, and it may be thereby estopped to deny that the way is a public one and under its control. Here the City of Gig Harbor placed a directional sign that specifically invited and directed the public to travel on Thurston Lane as the only proper access to Adams Street. Perhaps the strongest evidence of the City's dedication of Thurston Way as a public right-of-way is its maintaining Adams as a one way street which would be inaccessible, but for public access through Thurston Lane. The City of Gig Harbor has designated parking along Adams Street in a fashion to maximize the number of parking stalls and to restrict travel to one direction with access only along Thurston Lane. Further, we have reason to believe that the City of Gig Harbor has historically maintained Thurston Lane.

Although the current owner of the property at 3105 Judson Street, across which Thurston Lane runs, might claim that the lack of a recorded easement renders him a bona fide purchaser without notice of the public encumbrance, the existence of this road for such a long period of time and its obvious historic use by the public place him adequately on notice of its existence. The dedication of the public street can be inferred from the condition of the property and where it so appears, the purchaser is put on notice and cannot defeat the right of the public therein, should such right in fact exist, regardless of the state of the record titled or of the recitals in the deed.

The property over which the roadway exists does not appear to be able to be developed by the owner beyond its present use as a driveway in that access to the fire hydrant is necessary to provide fire suppressant to its property and there are several height restrictions affecting the property. The continued use by the public would have little to no adverse affect upon the owner's use of the property.

We request that the City of Gig Harbor take action to ensure that Thurston Lane be preserved as a public right of way providing access to Adams Street and to the fire hydrant located on it.

We request that the City initiate an action in the alternative to either declare Thurston Lane to be a public right-of-way or, if failing that, to exercise its power of eminent domain to condemn the right-of-way for the purpose of protecting street access and necessary access to its fire hydrant.

In failing to do so, the City, in effect, is vacating Adams Street as there will no longer be access to it along Thurston Lane. A vacation would vest title to the center of Adams Street in the adjoining property owners. If there was no implied vacation, alternative access to Adams would have to be made available by Gilich Street. However, in order for Adams to be accessible, it would have to be change to be a two-way dead end street and significant parking would be eliminated.

We urge the City of Gig Harbor to maintain the status quo and protect the existing right of way, created by virtue of the common law doctrine of implied dedication or, if necessary, exercise its right of eminent domain. This will allow Adams to remain a one way street and allow all property owners in the vicinity to have access to the fire hydrant on Thurston Lane.

Thank you for your consideration of this issue. May we receive your response within the next two (2) weeks?

Very truly yours,

David McGoldrick

DM/mn

cc: Angela Belbeck, City Attorney
David Stubchaer, Public Works Director
Client