

Gig Harbor City Council Meeting

**February 22, 2010
5:30 p.m.**



**REVISED AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
Monday, February 22, 2010 – 5:30 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of February 8, 2010.
2. Receive and File: a) 2009 Fourth Quarter Finance Report.
3. Dept. of Licensing - Renewal of Interlocal Agreement for Business Licensing.
4. Appointment to the Parks Commission.
5. Pierce County Dept. of Emergency Management Communications Agreement.
6. Paladin Interlocking Web Portal and Dashboard Interface Contract.
7. Pierce County GIS Orthophotography Services Agreement Renewal.
8. Washington State Historical Society Agreement for the Reconstruction of the Eddon Boat Dock.
9. 56th & Pt. Fosdick Frontage Road Improvement Project – Cultural Resources Assessment.
10. Harborview Dr. & Stinson Ave. Water Main Replacement Project / Consultant Services Contract.
11. Approval of Payment of Bills for February 22, 2010: Checks #62945 through #63039 in the amount of \$691,424.71.

PRESENTATIONS:

Pierce Transit Update on the System Redesign Lind Simonsen.

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. Public Hearing and Resolution - Development Agreement for the RITA Plat.
2. First Reading of Ordinance – Water/Sewer Revenue Bonds.
3. WWTP Clarifier No. 2 - Plans, Specifications and Engineering Contract.

STAFF REPORT:

1. Title 15 Building Code Update – Building / Fire Safety Manager, Dick Bower.
2. Street Latecomer's Ordinance – Senior Engineer Emily Appleton.

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

Board of Commissioners for Pierce Transit - Nomination.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Joint Council / Parks / ~~Maritime Pier~~ Skansie/Jerisich Ad Hoc Workstudy Session – Mon. Mar 1st at 5:30 p.m.

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

ADJOURN:

DRAFT

MINUTES OF GIG HARBOR CITY COUNCIL MEETING – FEBRUARY 8, 2010

PRESENT: Councilmembers Ekberg, Young, Franich, Malich, Payne, Kadzik and Mayor Hunter. Councilmember Conan came at 5:40 p.m.

CALL TO ORDER: 5:32 p.m.

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. Resolution - 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.

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

PRESENTATIONS:

1. 2010 Amateur Golf Open Presentation. Gig Harbor Historic Waterfront Association / Harbor History Museum Board Member Jack Sutton introduced Larry Gilhuly, USGA Northwest Region Director, who presented information on the upcoming 2010 Amateur Gold Open to be held this August at Chambers Bay Golf Course. He described how this precursor to the 2015 US Open is going to benefit Gig Harbor.

Councilmembers Payne and Kadzik agreed on the need to be prepared for these events.

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. Resolution - 2010 Comprehensive Plan Amendment Annual Review docket. Planning Director Tom Dolan presented the background information for this resolution to include a private application in the 2010 review cycle. In response to questions, Mr.

Dolan described the application to change the land use map for property currently designated as Mixed-Use Overlay District to Employment District, saying staff anticipates this to be a relatively minor amendment. He said that other applicants may have delayed submission of an application, but it would require an ordinance to open this review period back up and there wouldn't be sufficient time to process them this year.

City Attorney Angela Belbeck said that she has no concerns with allowing this application to be reviewed; the application was submitted prior to the adoption of the resolution limiting the applications.

MOTION: Move to adopt Resolution No. 823 repealing Resolution No. 805 and include the 96th Street LLC land use map amendment (COMP 10-0003) on the 2010 annual review docket.

Kadzik / Conan – six voted in favor. Councilmember Malich voted no.

2. Resolution - Canterwood Annexation Denial. Tom Dolan presented the background for this action to deny the application to annex 714 acres. He explained that due to the impact of the two recent annexations and staff reductions, this annexation is premature. Angela Belbeck recommended denying the application rather than allowing it to languish.

Councilmembers and staff discussed several of the issues involved with this annexation.

Russell Tanner – Canterwood Development Company and Homeowners Association.

Mr. Tanner voiced concern that there are 25 undeveloped residential lots in Canterwood but at this time there is no sewer capacity unless you are part of the city. He asked if this could be addressed administratively. He further explained that several of the properties don't have the ability to utilize a septic drain field.

Staff was directed to look into these concerns.

MOTION: Move to adopt Resolution No. 824 rejecting the Canterwood Annexation.

Ekberg / Franich - six voted in favor. Councilmember Malich voted no.

MOTION: Move to direct staff to come back with proposed solutions to the sewer connection concern.

Ekberg / Young – unanimously approved.

3. Cemeteries as conditional uses in the R-1 zone. Tom Dolan presented this request by Haven of Rest Cemetery for a text amendment to expand existing cemeteries as a conditional use in the R-1 zoning district. Mr. Dolan explained that the Planning and Building Committee has suggested that the full Council should decide if the amendment should be city-sponsored. He noted that the Planning Commission is recommending that the City Council have direct consideration to amend the ordinance rather than moving through the Planning Commission review process.

Councilmembers deliberated the issue of sponsoring this amendment.

Katherine Jerkovich – Haven of Rest. Ms. Jerkovich asked Council to keep in mind that when Haven of Rest was annexed, a portion of this property was already in the city and had R-1 zoning; the balance was annexed as R-2. Staff made it clear that cemeteries would only be allowed in the R-2 zone. This could have been avoided if the code had been amended to include cemeteries in the R-1 zone. She said that the request for the amendment to be city sponsored is a result from comments made by Council during the unsuccessful comp plan amendment.

Mark Hoppen – 8133 Shirley Avenue. Mr. Hoppen commented that the applicant made the choice to apply for a Comprehensive Plan Amendment to rezone the property to R-2 to gain expansion of rights on the property. He said it would be prudent for the city to treat this text amendment as a new application.

MOTION: Move that this text amendment not be city-sponsored.

Ekberg / Malich – roll call vote:

Ekberg – yes; Young – yes; Franich – yes; Conan – no; Malich – yes; Payne – no; Kadzik – no. Motion carried four to three.

4. Outdoor Gallery Program Proposal – Gig Harbor Arts Commission. Commissioner Dale Strickland presented information on a proposal to place rotating art in four outdoor locations throughout the city. He passed out a brochure with examples of the types of pedestals, and explained that the Arts Commission will solicit funding for placement of the four structures after the sites are approved. He asked for Council support to move forward with this proposal.

MOTION: Move to support the outdoor gallery proposal by the Gig Harbor Arts Commission.

Payne / Malich – unanimously approved.

STAFF REPORT:

1. Narrows Bridge Tolls. City Administrator Rob Karlinsey announced the Citizen Advisory Committee meeting to be held at the Civic Center tomorrow, February 9th at 5:00 p.m. He explained that the vote taken by the Washington State Transportation Commission to raise tolls goes back to the CAC. Whatever they come back with is forwarded to the Transportation Commission, then on to the State Legislature. He described the effort to get the word out, saying that a large crowd is expected.

Councilmember Young added that the letter from the city has just been signed by all the Councilmembers. He said he also has letters from the County Executive, County Councilmembers, Mayors of Tacoma, Lakewood and University Place and Kitsap County Councilmembers to submit to the Transportation Commission.

2. Direct Consideration – Portal Signs. Planning Director Tom Dolan explained that the Planning Commission voted to allow the City Council to have direct consideration on a proposal for portal signs at Jerisich Dock. The proposal will be submitted to Council in conjunction with the park improvement proposal from the Gig Harbor Historic Waterfront Association in the next few months.

PUBLIC COMMENT:

David McGoldrick – 820 “A” Street, Tacoma. Mr. McGoldrick, Law Firm of Morton McGoldrick, explained that he represents downtown property owners who are concerned with the possibility of Thurston Lane being closed to public travel by the adjacent property owner. He described the effect of a closure and offered possible solutions. Mr. McGoldrick asked that the city reconsider their position and join in their effort to keep Thurston Lane a public right of way.

MAYOR'S REPORT / COUNCIL COMMENTS:

Councilmember Malich commented that there seems to be more signs in the city right of way and asked about enforcement of the sign code. He then asked when parking stall size is going to be addressed. Planning Director Tom Dolan first responded that staff is working on sign code enforcement. He then said that the Planning Commission has parking listed in their long-term work program; work on shoreline matters must be completed first.

Councilmember Young presented an update on the effort by the Pierce Council Regional Council to distribute the remainder of stimulus dollars. He said although we didn't qualify for this time, another award consideration is anticipated with some focus on road preservation, trails, and sidewalk improvements. He said that he will know more by the 19th of February.

City Administrator Karlinsey added that one project that might qualify is the Point Fosdick / 56th Frontage Road Improvements which he described as mostly designed, permitted, and has a completed SEPA. He said that staff is working to get the NEPA done in time for consideration. He added that when the adjacent property is developed there would be a pro-rata contribution towards the improvements.

Councilmember Ekberg reported that Chief Mike Davis has been representing the City well explaining that Chief Davis read to the students at Harbor Heights Elementary. Councilmember Ekberg read some of the thank you notes and safety tips forwarded to the Chief by the students.

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 potential and pending litigation per RCW 42.30.110(1)(i).

MOTION: Move to adjourn to Executive Session at 7:15 p.m. for the purpose of discussing potential litigation per RCW 42.30.110(1)(i) for approximately fifteen minutes:
Payne / Conan - unanimously approved.

MOTION: Move to return to regular session at 7:43 p.m.
Kadzik / Payne - unanimously approved.

ADJOURN:


MOTION: Move to adjourn at 7:43 p.m.
Payne / Kadzik - unanimously approved.

CD recorder utilized: Tracks 1001 – 1023

Charles L. Hunter, Mayor

Molly Towslee, City Clerk



TO: MAYOR HUNTER AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR 
DATE: FEBRUARY 22, 2010
SUBJECT: 2009 FOURTH QUARTER FINANCE REPORT

The 2009 fourth quarter financial reports are attached.

Total resources for all funds (revenues and beginning fund balances) came in at 93% of the 2009 annual budget. Annual revenues (excluding beginning fund balances) were 91% and expenditures (excluding ending fund balances) were 76% of the annual budget.

General fund revenues (excluding beginning balance) were 93% of budget in 2009, while general fund expenditures were 87% of budget. Sales taxes came in at 90% of budget, while utility taxes came in at 112% of budget. Development fees came in at \$500,000 which was about 58% of budget. General fund expenditures were within the 2009 annual budget.

The Street Operating Fund ended 2009 with expenditures coming in at 96% of budget. Expenditures were \$1.44 million as compared with a budget of \$1.5 million.

2009 Hotel-Motel taxes collected were \$217,173 (\$265,214 in 2008, \$272,975 in 2007 and \$228,953 in 2006) while related tourism expenditures were nearly \$270,000.

The Civic Center Debt Reserve Fund had interest earnings of \$102,000 and has an ending fund balance of \$3,972,000.

Water, Sewer and Storm operating revenues were 110%, 104% and 119% of budget (excluding beginning fund balances and year-end accruals); and Water, Sewer and Storm expenses (excluding ending fund balances) were 90%, 85% and 70% of budget.

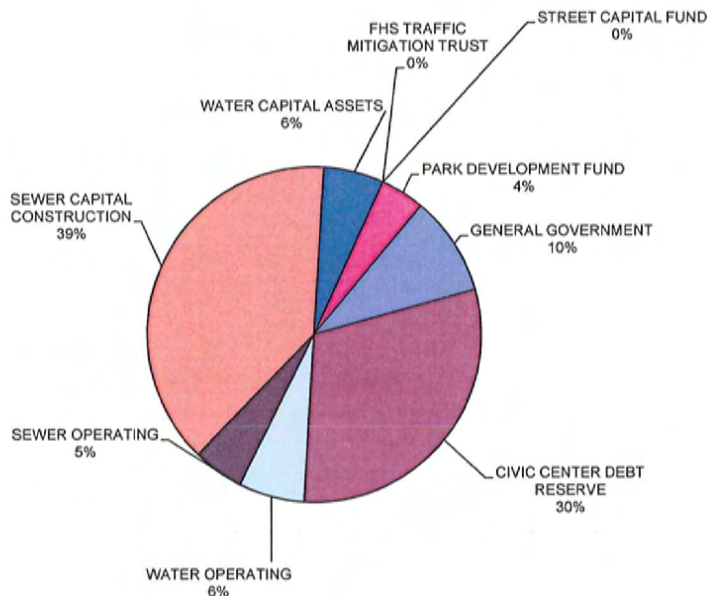
CITY OF GIG HARBOR
 CASH AND INVESTMENTS
 YEAR TO DATE ACTIVITY
 AS OF DECEMBER 30, 2009

FUND NO.	DESCRIPTION	BEGINNING BALANCE	REVENUES	EXPENDITURES	OTHER CHANGES	ENDING BALANCE
001	GENERAL GOVERNMENT	\$ 1,550,824	\$ 7,915,496	\$ 7,831,500	\$ (470,024)	\$ 1,164,797
101	STREET FUND	355,420	1,617,506	1,436,401	(127,893)	408,633
102	STREET CAPITAL FUND	789,176	3,908,077	4,495,245	29,870	231,877
105	DRUG INVESTIGATION FUND	74,707	11,255	43,197	896	43,662
107	HOTEL-MOTEL FUND	190,308	218,238	269,946	1,146	139,745
108	PUBLIC ART CAPITAL PROJECTS	99,409	642	8,491	-	91,559
109	PARK DEVELOPMENT FUND	1,161,300	1,866,556	1,383,094	(1,124,462)	520,300
110	CIVIC CENTER DEBT RESERVE	2,882,102	50,539	-	748,903	3,681,543
208	LTGO BOND REDEMPTION	45,803	1,213,027	1,254,032	-	4,798
209	2000 NOTE REDEMPTION	5,350	77,117	12,299	-	70,168
210	LID NO. 99-1 GUARANTY	94,375	626	-	-	95,001
211	UTGO BOND REDEMPTION	133,933	337,113	266,347	-	204,699
301	PROPERTY ACQUISITION FUND	122,045	125,198	125,000	-	122,243
305	GENERAL GOVT CAPITAL IMPR	174,308	100,677	125,000	-	149,985
309	IMPACT FEE TRUST	8,492	18,615	-	3,844	30,950
401	WATER OPERATING	445,483	1,046,302	676,506	(44,050)	771,229
402	SEWER OPERATING	451,018	2,450,661	2,181,949	(122,549)	597,181
407	UTILITY RESERVE	188,133	1,248	-	-	189,381
408	UTILITY BOND REDEMPTION	736	530,840	524,381	-	7,195
410	SEWER CAPITAL CONSTRUCTION	1,985,372	11,190,193	8,810,994	342,141	4,706,712
411	STORM SEWER OPERATING FUND	196,792	798,453	466,579	(83,910)	444,757
412	STORM SEWER CAPITAL	-	1,162	-	(20)	1,142
420	WATER CAPITAL ASSETS	1,087,084	39,673	380,518	(42,828)	703,411
605	LIGHTHOUSE MAINTENANCE TRUST	2,088	14	-	-	2,102
607	EDDON BOATYARD TRUST	181,664	150,043	331,707	-	-
608	FHS TRAFFIC MITIGATION TRUST	838,922	42	830,000	-	8,965
631	MUNICIPAL COURT	-	149,326	149,326	-	-
		<u>\$ 13,064,843</u>	<u>\$ 33,818,638</u>	<u>\$ 31,602,512</u>	<u>\$ (888,936)</u>	<u>\$ 14,392,035</u>

COMPOSITION OF CASH AND INVESTMENTS
 AS OF DECEMBER 31, 2009

	MATURITY	RATE	BALANCE
CASH ON HAND			\$ 1,300
CASH IN BANK			2,898,644
LOCAL GOVERNMENT INVESTMENT POOL		0.5686%	11,492,091
			<u>\$ 14,392,035</u>

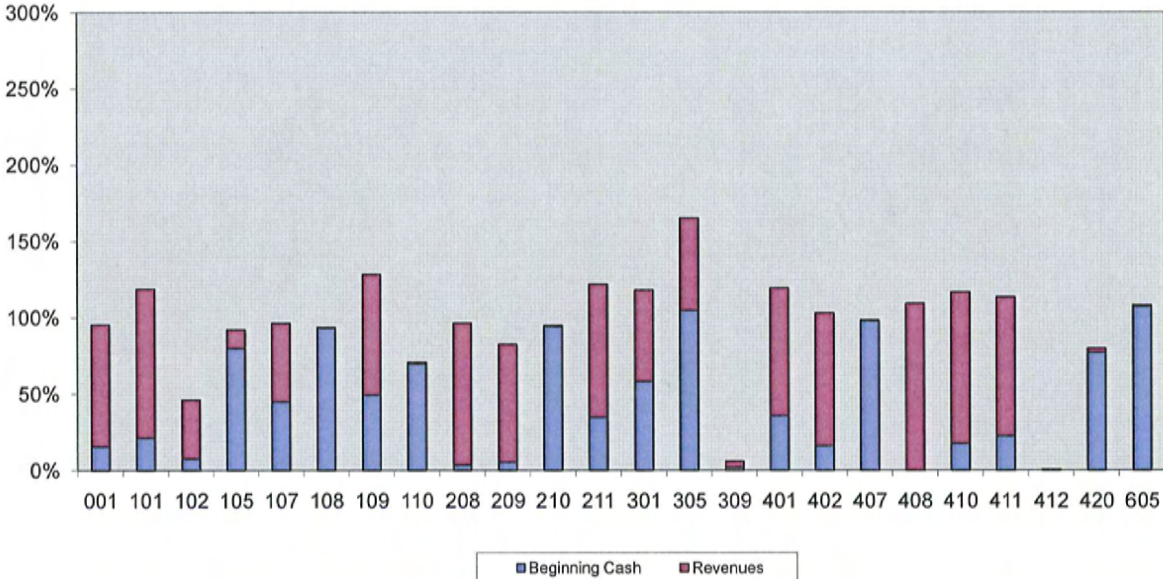
Ending Cash Balances by Fund



**CITY OF GIG HARBOR
YEAR-TO-DATE RESOURCE SUMMARY
AND COMPARISON TO BUDGET
AS OF DECEMBER 30, 2009**

FUND NO.	DESCRIPTION	ESTIMATED RESOURCES	ACTUAL Y-T-D RESOURCES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT	\$ 9,924,681	\$ 9,466,321	\$ 458,360	95%
101	STREET FUND	1,660,416	1,972,926	(312,510)	119%
102	STREET CAPITAL FUND	10,193,430	4,697,253	5,496,177	46%
105	DRUG INVESTIGATION FUND	93,295	85,963	7,332	92%
107	HOTEL-MOTEL FUND	423,715	408,545	15,170	96%
108	PUBLIC ART CAPITAL PROJECTS	106,697	100,050	6,647	94%
109	PARK DEVELOPMENT FUND	2,359,286	3,027,855	(668,569)	128%
110	CIVIC CENTER DEBT RESERVE	4,132,012	2,932,640	1,199,372	71%
208	LTGO BOND REDEMPTION	1,305,005	1,258,830	46,175	96%
209	2000 NOTE REDEMPTION	99,969	82,466	17,503	82%
210	LID NO. 99-1 GUARANTY	100,194	95,001	5,193	95%
211	UTGO BOND REDEMPTION	386,070	471,046	(84,976)	122%
301	PROPERTY ACQUISITION FUND	209,388	247,243	(37,855)	118%
305	GENERAL GOVT CAPITAL IMPR	166,224	274,985	(108,761)	165%
309	IMPACT FEE TRUST	454,553	27,107	427,446	6%
401	WATER OPERATING	1,248,843	1,491,785	(242,942)	119%
402	SEWER OPERATING	2,817,630	2,901,679	(84,049)	103%
407	UTILITY RESERVE	192,508	189,381	3,127	98%
408	UTILITY BOND REDEMPTION	486,577	531,575	(44,998)	109%
410	SEWER CAPITAL CONSTRUCTION	11,284,038	13,175,565	(1,891,527)	117%
411	STORM SEWER OPERATING FUND	876,692	995,246	(118,554)	114%
412	STORM SEWER CAPITAL	229,000	1,162	227,838	1%
420	WATER CAPITAL ASSETS	1,409,149	1,126,757	282,392	80%
605	LIGHTHOUSE MAINTENANCE TRUST	1,946	2,102	(156)	108%
607	EDDON BOATYARD TRUST		331,707	(331,707)	
608	FHS TRAFFIC MITIGATION TRUST		838,965	(838,965)	
631	MUNICIPAL COURT		149,326	(149,326)	
		\$ 50,161,318	\$ 46,883,482	\$ 3,277,836	93%

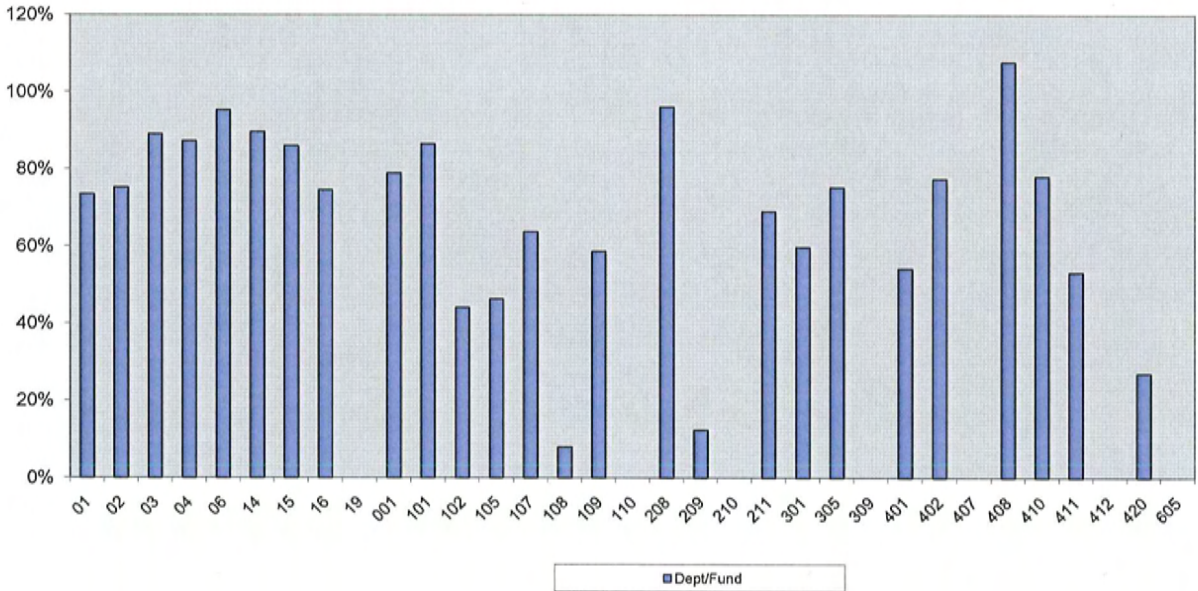
Resources as a Percentage of Annual Budget



CITY OF GIG HARBOR
YEAR-TO-DATE EXPENDITURE SUMMARY
AND COMPARISON TO BUDGET
FOR PERIOD ENDING DECEMBER 30, 2009

FUND NO.	DESCRIPTION	ESTIMATED EXPENDITURES	ACTUAL Y-T-D EXPENDITURES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT				
01	NON-DEPARTMENTAL	\$ 1,978,847	\$ 1,454,088	\$ 524,759	73%
02	LEGISLATIVE	30,350	22,830	7,520	75%
03	MUNICIPAL COURT	382,800	340,859	41,941	89%
04	ADMINISTRATIVE/FINANCIAL	1,298,890	1,132,866	166,024	87%
06	POLICE	2,725,842	2,596,007	129,835	95%
14	COMMUNITY DEVELOPMENT	1,591,992	1,426,590	165,402	90%
15	PARKS AND RECREATION	721,100	620,000	101,100	86%
16	BUILDING	319,750	238,258	81,492	75%
19	ENDING FUND BALANCE	875,110	-	875,110	
001	TOTAL GENERAL FUND	9,924,681	7,831,500	2,093,182	79%
101	STREET FUND	1,660,416	1,436,401	224,015	87%
102	STREET CAPITAL FUND	10,193,430	4,495,245	5,698,185	44%
105	DRUG INVESTIGATION FUND	93,295	43,197	50,098	46%
107	HOTEL-MOTEL FUND	423,715	269,946	153,769	64%
108	PUBLIC ART CAPITAL PROJECTS	106,697	8,491	98,206	8%
109	PARK DEVELOPMENT FUND	2,359,286	1,383,094	976,192	59%
110	CIVIC CENTER DEBT RESERVE	4,132,012	-	4,132,012	
208	LTGO BOND REDEMPTION	1,305,005	1,254,032	50,973	96%
209	2000 NOTE REDEMPTION	99,969	12,299	87,670	12%
210	LID NO. 99-1 GUARANTY	100,194	-	100,194	
211	UTGO BOND REDEMPTION	386,070	266,347	119,723	69%
301	PROPERTY ACQUISITION FUND	209,388	125,000	84,388	60%
305	GENERAL GOVT CAPITAL IMPR	166,224	125,000	41,224	75%
309	IMPACT FEE TRUST	454,553	-	454,553	
401	WATER OPERATING	1,248,843	676,506	572,337	54%
402	SEWER OPERATING	2,817,630	2,181,949	635,681	77%
407	UTILITY RESERVE	192,508	-	192,508	
408	UTILITY BOND REDEMPTION	486,577	524,381	(37,804)	108%
410	SEWER CAPITAL CONSTRUCTION	11,284,038	8,810,994	2,473,044	78%
411	STORM SEWER OPERATING FUND	876,692	466,579	410,113	53%
412	STORM SEWER CAPITAL	229,000	-	229,000	
420	WATER CAPITAL ASSETS	1,409,149	380,518	1,028,631	27%
605	LIGHTHOUSE MAINTENANCE TRUST	1,946	-	1,946	
607	EDDON BOATYARD TRUST	-	331,707	(331,707)	
608	FHS TRAFFIC MITIGATION TRUST	-	830,000	(830,000)	
631	MUNICIPAL COURT	-	149,326	(149,326)	
		\$ 50,161,318	\$ 31,602,512	\$ 18,558,806	63%

Expenditures as a Percentage of Annual Budget

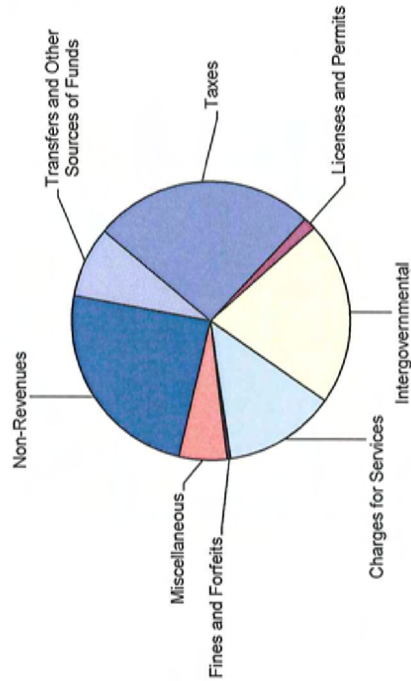


CITY OF GIG HARBOR
YEAR-TO-DATE REVENUE SUMMARY
BY TYPE
FOR PERIOD ENDING December 31, 2009

TYPE OF REVENUE	AMOUNT
Taxes	\$ 8,720,652
Licenses and Permits	489,141
Intergovernmental	7,204,998
Charges for Services	4,394,671
Fines and Forfeits	137,343
Miscellaneous	1,890,484
Non-Revenues	8,192,400
Transfers and Other Sources of Funds	2,788,950
Total Revenues	33,818,638
Beginning Cash Balance	13,064,843
Total Resources	\$ 46,883,482

diff \$ 888,935

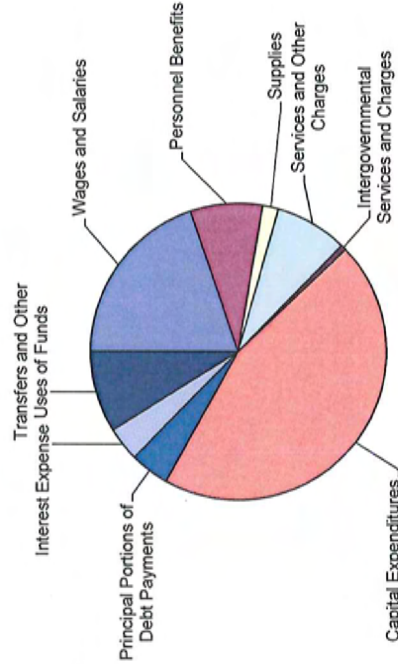
Revenues by Type - All Funds



CITY OF GIG HARBOR
YEAR-TO-DATE EXPENDITURE SUMMARY
BY TYPE
FOR PERIOD ENDING December 31, 2009

TYPE OF EXPENDITURE	AMOUNT
Wages and Salaries	\$ 6,244,961
Personnel Benefits	2,488,928
Supplies	544,966
Services and Other Charges	2,497,934
Intergovernmental Services and Charges	193,077
Capital Expenditures	14,272,554
Principal Portions of Debt Payments	1,356,439
Interest Expense	1,180,619
Transfers and Other Uses of Funds	2,823,033
Total Expenditures	31,602,512
Ending Cash Balance	14,392,035
Total Uses	\$ 45,994,546

Expenditures by Type - All Funds



CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF DECEMBER 30, 2009

	SPECIAL REVENUE FUNDS						
	101	102	105	107	108	109	110
GENERAL GOVERNMENT	STREET	ST CAP	DRUG INVESTIGATION	HOTEL - MOTEL	PUBLIC ART PROJECTS	PARK DVLP FUND	CIVIC CTR DEBT RSRV
ASSETS							
CASH	\$ 82,588	\$ 46,864	\$ 9,622	\$ 28,244	\$ 18,505	\$ 105,157	\$ 744,068
INVESTMENTS	326,046	185,013	34,039	111,502	73,054	415,143	2,937,475
RECEIVABLES	55,476	-	-	30,705	-	110,179	291,195
FIXED ASSETS	-	-	-	-	-	-	-
OTHER	-	-	-	-	-	-	-
TOTAL ASSETS	2,405,708	231,877	43,662	170,450	91,559	630,479	3,972,738
LIABILITIES							
CURRENT	49,223	372,333	1,244	10,145	-	344,058	-
LONG TERM	11,361	-	-	-	-	103,736	-
TOTAL LIABILITIES	60,584	372,333	1,244	10,145	-	447,793	-
FUND BALANCE:							
BEGINNING OF YEAR	2,261,126	446,713	74,360	212,014	99,409	(2,349,875)	3,922,200
Y-T-D REVENUES	7,915,496	3,908,077	11,255	218,238	642	1,866,556	50,539
Y-T-D EXPENDITURE	(7,831,500)	(4,495,245)	(43,197)	(269,946)	(8,491)	(1,383,094)	-
ENDING FUND BALANCE	2,345,123	(140,456)	42,418	160,305	91,559	(1,866,413)	3,972,738

CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF DECEMBER 30, 2009

	SPECIAL REVENUE FUNDS							TOTAL SPECIAL REVENUE
	301	305	309	605	607	608	631	
	PROPERTY ACQUISITION	GEN GOVT CAPITAL IMP	IMPACT TRUST FUND	LIGHTHOUSE MAINT	EDDON BOATYARD	FHS TRFC MITIGATION	MUNICIPAL COURT	
ASSETS								
CASH	\$ 24,706	\$ 30,313	\$ 6,255	\$ 425	\$ -	\$ 1,812	\$ -	\$ 1,098,559
INVESTMENTS	97,537	119,672	24,695	1,677	-	7,152	-	4,333,005
RECEIVABLES	-	-	-	-	-	-	-	487,556
FIXED ASSETS	-	-	-	-	-	-	-	-
OTHER	-	-	-	-	-	-	-	-
TOTAL ASSETS	122,243	149,985	30,950	2,102	-	8,965	-	5,919,120
LIABILITIES								
CURRENT	-	-	5,555	-	-	-	-	758,363
LONG TERM	-	-	-	-	-	-	-	137,199
TOTAL LIABILITIES	-	-	5,555	-	-	-	-	895,562
FUND BALANCE:								
BEGINNING OF YEAR	122,045	174,308	6,781	2,088	181,664	(3,458,757)	-	(342,540)
Y-T-D REVENUES	125,198	100,677	18,615	14	150,043	42	149,326	8,216,727
Y-T-D EXPENDITURE	(125,000)	(125,000)	-	-	(331,707)	(830,000)	(149,326)	(9,197,407)
ENDING FUND BALANCE	122,243	149,985	25,396	2,102	-	(4,288,715)	-	(1,323,220)

CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2009

	208	209	210	211	TOTAL
	LTGO BOND	2000 NOTE	LID 99-1	UTGO BOND	DEBT
	REDEMPTION *****	REDEMPTION*****	GUARANTY	REDEMPTION*****	SERVICE
ASSETS					
CASH	\$ 970	\$ 4,368	\$ 19,200	\$ 41,371	\$ 65,910
INVESTMENTS	3,828	65,799	75,801	163,328	308,756
RECEIVABLES	-	-	-	11,661	11,661
FIXED ASSETS	-	-	-	-	-
OTHER	-	-	-	-	-
TOTAL ASSETS	4,798	70,168	95,001	216,360	386,326
LIABILITIES					
CURRENT	-	-	-	-	-
LONG TERM	-	-	-	9,198	9,198
TOTAL LIABILITIES	-	-	-	9,198	9,198
FUND BALANCE:					
BEGINNING OF YEAR	45,803	5,350	94,375	136,396	281,924
Y-T-D REVENUES	1,213,027	77,117	626	337,113	1,627,882
Y-T-D EXPENDITURE	(1,254,032)	(12,299)	-	(266,347)	(1,532,678)
ENDING FUND BALANCE	4,798	70,168	95,001	207,162	377,128

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF DECEMBER 30, 2009**

	PROPRIETARY										TOTAL
	401	402	407	408	410	411	412	420	PROPRIETARY	TOTAL	
	WATER OPERATING	SEWER OPERATING	UTILITY RESERVE	UTILITY BOND REDEMPTION	SEWER CAP. CONST.	STORM SEWER OPERATING	STORM SEWER CAPITAL	WATER CAP. ASSETS			
ASSETS											
CASH	\$ 155,951	\$ 120,775	\$ 38,275	\$ 1,454	\$ 951,263	\$ 89,889	\$ 235	\$ 142,165	\$ 1,500,007	\$ 2,899,964	
INVESTMENTS	615,278	476,406	151,106	5,741	3,755,449	354,868	927	561,246	5,921,021	11,492,091	
RECEIVABLES	258,159	352,471	-	-	-	160,640	-	-	771,269	2,511,396	
FIXED ASSETS	3,558,006	9,355,043	-	-	4,377,266	526,628	-	511,245	18,328,188	18,328,188	
OTHER	-	-	-	-	-	-	-	-	-	-	
TOTAL ASSETS	4,587,394	10,304,694	189,381	7,195	9,083,978	1,132,024	1,162	1,214,656	26,520,486	35,231,640	
LIABILITIES											
CURRENT	139,386	45,096	-	477,152	799,139	1,372	-	1,433	1,463,579	2,271,165	
LONG TERM	52,739	63,082	-	3,397,750	-	47,289	-	-	3,560,359	3,718,617	
TOTAL LIABILITIES	192,125	108,178	-	3,874,902	799,139	48,662	-	1,433	5,024,438	5,989,782	
FUND BALANCE:											
BEGINNING OF YEAR	4,025,474	9,927,805	188,133	(3,874,166)	5,905,640	751,489	-	1,554,068	18,478,442	20,678,952	
Y-T-D REVENUES	1,046,302	2,450,661	1,248	530,840	11,190,193	798,453	1,162	39,673	16,058,533	33,818,638	
Y-T-D EXPENDITURE	(676,506)	(2,181,949)	-	(524,381)	(8,810,994)	(466,579)	-	(380,518)	(13,040,927)	(31,602,512)	
ENDING FUND BALANCE	4,395,270	10,196,517	189,381	(3,867,707)	8,284,839	1,083,363	1,162	1,213,223	21,496,048	22,895,079	



Subject: Renewal of Department of Licensing Interlocal Agreement for Business License Services

Proposed Council Action:

Authorize the attached Interlocal Extending the Expiration Date to April 5, 2010

Dept. Origin: Administration

Prepared by: Molly Towslee *MT*

For Agenda of: February 11, 2008

Exhibits: Amendment to Contract

Initial & Date

Concurred by Mayor:

CH 2/12/10

Approved by City Administrator:

RJK

Approved as to form by City Atty:

memo 2/12

Approved by Finance Director:

[Signature]

Approved by Department Head:

Expenditure Required	Amount Budgeted \$	Appropriation Required	\$0

INFORMATION / BACKGROUND

On March 27, 2006 Council authorized the Mayor to sign an Interagency Agreement with DOL will allow the Master License Service (MLS) to act as the City of Gig Harbor's agent for business license purposes. They have been acting in this capacity since then.

The contract with Master License Service expires in April, 2008. The attached amendment will extend the contract's extension date till April of 2010.

FISCAL CONSIDERATION

There are no proposed changes in the cost to the city, which include a monthly service fee if we access the state's database to run a report or to look up information. This is an estimated amount of \$10 - \$20 per month depending on usage. The only other charges are .23% (46 cents) to cover fees for an applicant using a debit/credit card on-line. There are no other on-going costs to partners.

The city receives the usual \$20 application and renewal fees from the state through electronic transfers.

RECOMMENDATION / MOTION

Move to: Authorize the Mayor to sign the attached Interlocal Agreement to extend the contract's expiration date until April of 2010.

INTERLOCAL AGREEMENT
BETWEEN
THE STATE OF WASHINGTON
DEPARTMENT OF LICENSING
AND
CITY OF GIG HARBOR

This Agreement is made and entered into by and between the State of Washington Department of Licensing, hereinafter referred to as "DOL," and the City of Gig Harbor, hereinafter referred to as "the City." DOL and the City enter into this Agreement pursuant to the authority granted by Chapter 39.34 RCW.

PURPOSE

It is the purpose of this Agreement to authorize the DOL Master License Service, (hereinafter referred to as "MLS") to act as the City's agent for business licensing activities, and to ensure that the City retains its full, lawful, regulatory and approval authority over all business licensing activities within its jurisdiction. This Agreement may also be referred to as a "MLS City Partnership Agreement".

THEREFORE, IT IS MUTUALLY AGREED THAT:

DEFINITIONS

As used throughout this Agreement, the following terms shall have the meanings set forth below:

1. "Confidential Information" shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, Personal Information, agency source code or object code, and agency security data.
2. "Partner" shall mean any city entering into a MLS City Partnership Agreement with DOL.
3. "Personal Information," shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, e-mail addresses, credit card information, law enforcement records, financial identifiers, and other information that may be exempt from disclosure to the public or other unauthorized persons under either RCW 42.56 or other state and federal statutes.
4. "RCW" shall mean the Revised Code of Washington.
5. "SDT" means Secure Data Transfer.
6. "Subcontractor" shall mean one not in the employment of a party to this Agreement, who is performing all or part of those services under this Agreement under a separate contract with a party to this Agreement. The terms "Third Party" and "Agents" in this Agreement includes subcontractors

STATEMENT OF WORK

The parties to this Agreement shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the exchange of data as set forth in the *Statement of Work, Attachment A* attached hereto and incorporated herein.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement will begin on the **date of final signature** hereto, and **end five (5) years thereafter**, unless terminated sooner as provided herein.

COMPENSATION

Services identified in this Agreement are provided by DOL at no charge with the exception of the following:

The City agrees to reimburse DOL for any fees charged by financial institutions and/or credit card processors to handle the City's license fees collected by credit card and/or other electronic means, for the internet filing process of the City's licensees.

The City agrees to reimburse DOL the costs of developing and producing ad hoc informational reports if reports are requested by the City and agreed-upon by DOL.

The City shall reimburse DOL expenses for the implementation of changes to the MLS process, if requested by the City and agreed-upon by DOL.

All project coordination costs, including travel-related expenses, shall be absorbed by the respective parties for their own staff.

BILLING PROCEDURES

DOL shall submit any invoices as-needed, but in no event more often than monthly. Invoices shall be sent to the attention of:

**Jaci Auclair
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335**

Payment to DOL shall be made by warrant or account transfer by the City within thirty (30) calendar days of receipt of the invoice. Upon expiration of this Agreement, any claim for payment not already made shall be submitted within ninety (90) calendar days after the expiration date or the end of the fiscal year, whichever is earlier.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of each party, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. Unless otherwise agreed, all books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, DOL Internal Auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

CONFIDENTIALITY

DOL maintains data that is required or shared by multiple regulatory agencies and other jurisdictions. This data is subject to various public disclosure laws regulating its protection and dissemination to third parties. In particular, much of the Master Application information may not be disclosed under RCW 82.32.330, RCW 51.16.070 and RCW 50.13.020. The Parties agree that all data provided or shared under this Agreement shall be governed by the public disclosure laws of the Department of Revenue, the Department of Labor and Industries, the Department of Employment Security and the Office of the Secretary of State. Information determined to be subject to public disclosure is written in the Washington State UBI Policies and Procedures Manual (<http://dor.wa.gov/Docs/Pubs/UBI/UBImanualComplete.pdf>). City's public disclosure laws shall also apply.

All requests to City or DOL for public information of data collected by DOL's Master License Service shall be guided by these laws and policies.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

AGREEMENT ALTERATIONS AND AMENDMENTS

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

MEMORANDUM OF UNDERSTANDING (MOU)

Instructions that either Contract Manager determines to address more than day-to-day concerns, but which do not modify the terms of this contract, shall be documented by a written, numbered *Memorandum of Understanding*.

TERMINATION

Either party may terminate this Agreement upon ninety (90) calendar days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered in accordance with the terms of this Agreement prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 business days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint two additional members to the Dispute Board. The Dispute Board shall review the facts, Agreement terms, and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, any of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable state and federal statutes and rules;
2. The terms of this Agreement;
3. *Statement of Work*, Attachment A;
4. Any other provisions of the Agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising from it, is not assignable or delegable by any party in whole or in part, without the express prior written consent of the other parties.

WAIVER

A failure by any party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by personnel authorized to bind the party and attached to the original Agreement.

RIGHTS OF INSPECTION

Each party shall provide right of access to the other party, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance of internal policies and procedures, and/or records relating to the safeguarding, use, and disclosure of Confidential Information obtained or used as a result of this Agreement. Each party shall make available information necessary for the other party to comply with public's right to access, amend, and receive an accounting of any disclosure of their Confidential Information.

SUBCONTRACTING

With prior written consent, any party may enter into subcontracts for any of the work or services contemplated under this Agreement. Consent shall not be unreasonably withheld. The party issuing the subcontract is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement. To this end the provisions of this Agreement are declared to be severable.

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

The Contract Manager for the City is:	The Contract Manager for DOL is:
Molly Towslee City Clerk City of Gig Harbor 3510 Grandview Street Gig Harbor, WA 98335 Phone: 253 851-8136 Fax: 253 851-8563 E Mail: TowsleeM@cityofgigharbor.net	Maria Moore Master License Service Department of Licensing PO Box 9034 Olympia, Washington 98507-9034 Phone: 360-664-1419 Fax: 360-570-7875 Email: mmoore@dol.wa.gov

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

City of Gig Harbor

State of Washington
Department of Licensing

Charles L. Hunter, Mayor Date

Julie Knittle Date
Assistant Director

Approved by City Council on:

Date

Approved as to Form
Signature on File January 13, 2009
Jerald Anderson, AAG Date

ATTACHMENT A
STATEMENT OF WORK

The City Shall:

Agree to the exclusive use of the "Master Application" and any required addenda for the process of applying for a City business license, and the exclusive use of the "MLS Licenses and Registrations" document for proof of City business licensure. If additional forms are identified as necessary for the processing of City licensee accounts, their design, creation, or collection will be a cooperative effort between DOL and the City.

Agree to the exclusive use of the Unified Business Identifier (UBI) number in conjunction with the physical location identification number used by DOL in the identification of licensees and license accounts in all communications with DOL.

Maintain a SecureAccess Washington account and access to Host on Demand for each employee needing inquiry and update access to the MLS Database. Maintain access to a secure folder, known as an SDT folder, established for city specific downloads. The City shall provide a link on the City webpage to the DOL website containing licensing information. End-to-end testing for all processes will take place until such time as both the City and DOL are satisfied.

Accept responsibility for payment of all equipment, connection, access and maintenance charges related to the City's access into and use of the MLS Database.

Accommodate requirements for Master Application forms regardless of whether the transaction involves a City business license.

Ensure the timely availability to DOL of City Licensing and Information Technology staff. City will make best efforts to provide staff who are knowledgeable of City operations and/or technology and able to assist DOL staff with process improvements and/or troubleshooting.

Use commonly accepted security procedures to ensure that confidential information is not improperly disclosed.

Provide advance notice to DOL of potential changes to City business licensing requirements, fees or processes to allow DOL the timely implementation of changes into any electronic or automated systems or procedures related to the administration of City's business licensing.

Upon request by DOL, provide statistical data associated with the MLS City Partnership Agreement such as Full Time Equivalent (FTE) savings, change in number of City licensees, and change in revenue flow.

DOL Shall:

Create, produce, issue, accept, and process new and renewal applications for City business licenses. In doing so, DOL will collect, process and disburse the respective City business license fees and licensing information received from applicants and licensees.

Issue licensing documents (Master Licenses) for City business licensees.

Maintain and update the MLS Database to the best of its ability. DOL shall not be responsible for system down time or other delays to the receipt of information or errors in the compilation of such information.

Provide informational reports to the City of the City's business licensees. City staff will determine which reports best suit their needs and the frequency that reports are required. Reports may include but are not limited to: daily lists of new business applications and renewals, fees processed each day, weekly list of pending accounts, and lists of businesses for which fees have been transferred.

Provide services through Internet-based or paper-based licensing processes, depending on the needs of the City and the capability of DOL.

Design and implement modifications to the MLS Database and establish any related procedures and forms.

Provide technical assistance in establishing and configuring appropriate MLS Database access and ensuring security of access for City staff.

Provide training to City staff in the use of the MLS Database upon execution of Agreement. Provide ongoing training to accommodate system or staff changes. Training will be provided onsite at City location or via internet/telephone, as agreed between both parties.

Notify the City of any changes anticipated to MLS processes or services as they become known, and mitigate the impacts that such changes may have upon the services provided.

Prepare any required computer system change request in coordination with the City, and place the request in a prioritized work queue for timely completion. DOL staff will be mindful of potential impacts to DOL and City Partners as a result of any proposed changes to the MLS process. DOL will assist City Partners in considering possible alternatives and determining the most feasible means of achieving the objective of a proposed change. DOL will review the proposed change with all City Partners potentially impacted and will attempt to reach consensus among all affected parties.

Microfilm or electronically image all paper documents submitted and maintain electronic representations of all filings completed via the Internet. DOL shall not maintain paper copies. The City will have access to information filed with DOL on paper or via the Internet through electronic access to the MLS Database. If the City requires a paper document, DOL will produce a copy from microfilm or electronic record. The copy will be certified, if required by the City.

Subject: APPOINTMENT TO PARKS COMMISSION

Proposed Council Action:

A motion for the re-appointment of Emily Cross to serve a three-year term on the Parks Commission.

Dept. Origin: Administration

Prepared by: Boards/Commission Review Committee

For Agenda of: February 22, 2010

Exhibits: Application Package

Initial & Date

Concurred by Mayor:

CC# 2/12/10

Approved by City Administrator:

RJK

Approved as to form by City Atty:

N/A

Approved by Finance Director:

N/A

Approved by Department Head:

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

INFORMATION / BACKGROUND

We received only one application for the opening on the Parks Commission; a letter from Emily Cross asking to be re-appointed for a three-year term.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

Because there was only one application from the incumbent, the Board did not meet to review candidates.

RECOMMENDATION / MOTION

Move to: A motion for the re-appointment of Emily Cross to serve a three-year term on the Parks Commission.



Subject: Use Agreement with Pierce County Department of Emergency Management

Proposed Council Action:

Adopt this Communications System Use Agreement

Dept. Origin: Police Department

Prepared by: Chief Mike Davis 

For Agenda of: February 22, 2010

Exhibits: Communications Use Agreement

Initial & Date

Concurred by Mayor: _____

Approved by City Administrator: 

Approved as to form by City Atty: _____

Approved by Finance Director: 

Approved by Department Head: 

Expenditure	Amount	Appropriation
Required \$4,930.00	Budgeted \$4,930.00	Required none

INFORMATION / BACKGROUND

In the past, the Law Enforcement Support Agency (LESA), with who we contract for police dispatch services has charged us for the use of the VHF radio system. The radio system actually belongs to Pierce County and LESA was charging contract municipalities the use fee and then passing the money onto Pierce County. LESA and Pierce County have agreed to have the user fee charge administered directly by Pierce County in order to streamline the process.

The attached agreement will formalize this agreement allowing Pierce County DEM to directly charge and collect the radio system user fee from contract cities.

FISCAL CONSIDERATION:

The \$4,930.00 was originally budgeted in our LESA 2010 contract billing.

RECOMMENDATION / MOTION

Move to: Approve the Communications System Use Agreement with Pierce County DEM

Communications System Use Agreement City of Gig Harbor and Pierce County

This agreement is made and entered into by and between the City of Gig Harbor, herein referred to as "User", and Pierce County, herein referred to as "County", for the purpose of allowing the use of County's Radio System by User's Police Department communications equipment.

WHEREAS, the County has communication infrastructure systems established for Pierce County Radio coverage, which may be made available to other municipal corporations; and

WHEREAS, the User is a municipal corporation with a need to use the County's Radio System with all applicable rules and regulations of the County; and

WHEREAS, the User recognizes its obligation to pay for the use of the system in accordance with the schedule of rates and charges currently placed in effect by the County;

NOW THEREFORE IT IS HEREBY AGREED BETWEEN THE PARTIES, AS FOLLOWS:

1. Purpose

The purpose of this agreement is to permit User the use of the County's Radio System, for its radio and communication needs for dispatch services, calls for service while contracted with the Law Enforcement Support Agency (LESA), subject to all applicable rules and regulations of the County and the Federal Communications Commission (FCC). User is hereby permitted to allow other fire departments in the region (as well as the County Department of Emergency Management) to use the same system.

2. Term

The term of this agreement shall commence on the first day of January, 2010 and terminating on the 31st day of December, 2010. This agreement may be renewed for five additional one year terms with the negotiation of a use charge schedule by the parties.

3. Use Charges

User shall pay County an annual use charge in accordance with the following schedule for the User's use of the Radio System, except as authorized under paragraph 7 or 8 hereof. Payments shall be due and payable on the first day of each period below stated, for the use of the Radio System.

1/1/10 – 12/31/10 \$4,930.00 For the year.

4. Technical Standards

User shall operate its equipment communicating with the Radio System in compliance with the rules and regulations of the FCC and of the County.

5. Inspection

The County shall have the right to inspect User's equipment (radios) at any time during the term of this agreement to ensure compliance with the terms and conditions herein. Advance notice of such an inspection will be provided whenever possible.

6. Lawful Conduct

User agrees that the Radio System used hereunder is only for the purposes contemplated herein and to comply with all applicable Federal Communications Commission laws and ordinances. User shall not carry on or permit any illegal or immoral practice or business using such Radio System.

7. Assignment

User's interest hereunder shall not be sold, conveyed, mortgaged, encumbered, assigned or otherwise transferred without prior written approval of County.

This agreement is binding upon County and User and their respective heirs for the duration of this agreement.

8. Sublet

User may not sublet, or in any manner, allow any other party the use of the Radio System without prior written approval of County.

9. Breach or Default

The following event shall constitute a breach or default of this agreement by User:

Failure to perform or comply with any of the terms, covenants or conditions of this agreement, if the nonperformance or noncompliance shall continue for a period of thirty (30) days after written notice by County to User. Provided, that if performance or compliance cannot be reasonably attained within thirty (30) days, User shall have commenced performance within the thirty (30) day period and shall continue good faith correction of the breach to attain performance or compliance as soon as reasonably possible.

10. Remedies

In the event of default or breach, County shall have the following rights:

1. County shall have the right to cancel or terminate this agreement following notice required by paragraph 9.
2. County may elect, but shall not be obligated; to make any payment required of User herein or comply with any term, covenant or condition required hereunder to be performed by User.
3. The remedies given to County shall be cumulative, and the exercise of one right or remedy by County shall not impair its right to exercise any other right or remedy.

11. Notices

All notices and other communications shall be in writing and shall be deemed given if delivered or forwarded by certified mail, proper postage prepaid, to the following:

If to County: Pierce County DEM
Office of the Director
2501 S 35th St, Suite D
Tacoma, WA 98409-7405

If to User: City of Gig Harbor
Office of City Administrator
3510 Grandview St
Gig Harbor, WA 98335

12. Surrender

Upon termination or expiration of this agreement, User shall cease using the Radio System.

13. Non-liability and Indemnifications

User agrees that County shall not be liable for injury or death to any person, damage to property, or loss of business arising out of or in any way connection with the User's use of the Radio System.

County shall give User prompt notice of any such claim and User agrees to indemnify and hold County harmless against all such claims, including investigation costs, court costs and attorney's fees. User shall indemnify and save harmless County from all loss, liability, damage or other injury, including reasonable attorney's fees, arising as a direct or indirect result of any and all acts, omissions or negligence of Users, its officers, employees, contractors or subcontractors in its performance of this agreement. User shall also indemnify and save harmless County from any claims for copyright, libel, slander or similar liability by reason of the exercise of its rights hereunder. User assumes all responsibility and risk for its use of Radio System covered by this agreement.

14. Attorney Fees

If either party files an action to recover any use charge or payment under this agreement, for or on account of any breach of this agreement, to enforce or interpret any of the provisions of this agreement, or for the recovery of possession of the herein mentioned Radio System, then the prevailing party shall recover all reasonable collection costs and attorney's fees.

15. Non-waiver of Breach

The failure of County to insist upon strict performance of any of the covenants and conditions of this agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such rights, or any other covenants or conditions, but the same shall be and remain in full force and effect.

16. Other Documents

Each party undertakes to execute such additional or other documents as may be required to fully implement the intent of this agreement.

17. Miscellaneous

This agreement shall be governed by and construed in accordance with the laws of the State of Washington and the regulations of the Federal Communications Commission. This agreement replaces and supersedes all prior agreements and understanding between the parties with respect to the subject matter herein.

No alterations, modifications or changes in this agreement shall be valid unless made in writing and agreed to by both parties. Nothing in the execution and performance of this agreement shall be deemed in any way to constitute the parties as joint ventures or partners with each other.

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

PIERCE COUNTY
Recommended:

CITY OF GIG HARBOR
Recommended:

By _____ Date _____
Tim Lenk
Communications Systems Manager

By _____ Date _____

Attest:

Attest:

By _____ Date _____
Prosecuting Attorney
(as to form only)

By _____ Date _____
City Attorney (as to form only)

By _____ Date _____
Budget and Finance

By _____ Date _____

Approved:

Approved:

By _____ Date _____
Steven C. Bailey
DEM Director

By _____ Date _____

Subject: Paladin Interlocking Web Portal & Dashboard Interface

Dept. Origin: Information Technology

Proposed Council Action:

Prepared by: Kay Johnson

Approve two original engagement agreement(s) to receive Software for the Public Portal and Dashboard Management Interface, to include online permit payment processing.

**For Agenda of:
Exhibits:**

Initial & Date

Concurred by Mayor:

CLH 2/12/10

Approved by City Administrator:

RJK

Approved as to form by City Atty: approved by email ✓

Approved by Finance Director:

[Signature]

Approved by Department Head:

[Signature]

Expenditure	Amount	Appropriation
Required \$10,576	Budgeted \$5,300	Required see fiscal consideration below

INFORMATION / BACKGROUND

Currently, the city holds an interlocal Government service subscription agreement with MyBuildingPermit.com, a Bellevue based eCityGov alliance/agency. Initially this agreement allowed the city to obtain online payment permitting services and hosting of public status updates for review. Previously this was the most cost-effective solution available. Since the original agreement of May 29, 2007, Paladin has developed a much more robust, and enhanced cost effective solution for the city. Enhancements are for public/council access to permit status' in addition to providing online payment solutions with our current bank gateway for online financial transactions and payments using credit cards. The Dashboard application provides in depth reporting and analysis superseding anything the city currently has available.

FISCAL CONSIDERATION

The annual maintenance fee for MyBuildingPermit.com alliance comes up for renewal payment in May - in the amount of \$5,300. This presents the city with a unique opportunity to transfer services, and the use of this money, to purchase and utilize a better system for the public, council, staff and management. This is in conjunction with using LESA (Law Enforcement Support Agency's) hardware server, firewall to host and maintain the application for public access for the city. The additional out of pocket expense of \$5,276 is for the first year only. After the first year, support costs will be virtually the same with an enhanced system for the public and council and internal reporting for management staff. Sufficient funds are available in the Community Development Budget to cover this one-time expense.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Approve Engagement agreements (2 originals) to acquire the public portal and dashboard management interface.



Sales Quote

Cover Page

Paladin Data Systems Corporation
19362 Powder Hill Place NE
Poulsbo, WA 98370-8720
Tel: 360-779-2400 1-800-532-8448

Date: 14-DEC-2009
Quotation: 4346

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

Telephone : 253-853-7623
Fax : 253-851-5483

Contact: Kay Johnson

Estimated By: Genevieve Olivarez-C
Required date : 12/23/2009

Purpose of this sales order / quote:

The purpose of this sales quote and agreement is for the City of Gig Harbor's purchase and payment plan of the Public Portal and Management Dashboard of InterLocking Software™ Suite of Local Government Solutions as outlined in Exhibit A.

The City currently has a perpetual contract for 30 user licenses and 6 inspection assistant licenses for InterLocking Software.

Quantity	Unit of Issue	Description	Cost	Extended Price
1	1	InterLocking Software Public Portal and Management Dashboard- Retail price - \$12,700 Discount for Gig Harbor-60% - \$7,700 Discounted Price - \$5,000	\$5,000.00	\$5,000.00
1	1	Annual Product Support and Maintenance - 25% of the Retail Price	\$3,176.00	\$3,176.00

Terms
The attached agreement contains the terms and conditions.
See Exhibit A for details of pricing and payment.

Subtotal:	\$8,176.00
Shipping cost:	\$0.00
Tax Rate: 0.00%	\$0.00
Total estimated cost:	\$8,176.00

**PALADIN DATA SYSTEMS CORPORATION
ENGAGEMENT AGREEMENT**

THIS AGREEMENT ("AGREEMENT") is between PALADIN DATA SYSTEMS CORPORATION ("PALADIN"), a Washington corporation, 19362 Powder Hill Place NE, Poulsbo, WA 98370, and City of Gig Harbor ("CUSTOMER"), a Washington incorporated City, 3510 Grandview Street, Gig Harbor, WA 98335. The effective date ("EFFECTIVE DATE") will be the date of the last signer of this AGREEMENT.

IN CONSIDERATION of the mutual covenants, and conditions set forth below, the receipt and adequacy of which are hereby acknowledged, the parties to this AGREEMENT hereby agree as follows:

1.0 DEFINITIONS.

1.1 "Derivative Work" means a work, including software in human readable form, which is based upon one or more pre-existing copyrightable works such as a revision, modification, translation, abridgment, compilation, condensation or expansion or any other form in which such pre-existing work may be recast, transformed, or adapted, and which, if prepared without the consent of the author of the pre-existing work, would be a copyright infringement.

1.2 "Documentation" means the user guides and manuals for installation and use of the Software, regardless of the media or format of such materials.

1.3 "Error" means a reproducible defect in the Software or Documentation when operated on a Supported Environment which causes the Software not to operate substantially in accordance with the Documentation.

1.4 "Fees" means, as appropriate, the license fees ("License Fees") or support fees ("Support Fees") payable by CUSTOMER to PALADIN pursuant to Article 7.0.

1.5 "Go Live" means the date when the CUSTOMER begins to use PALADIN's InterLocking Software Permitting System to support business operations. It is a day appointed by the implementation manager and agreed to by CUSTOMER's project manager. In preparation for this cutover, the system has been configured, data has been migrated from the legacy system, and staff has been trained.

1.6 "Hardware" means the specific equipment, if any, described in Exhibit A.

1.7 "Software" means the specific version of the software program described in Exhibit A, including any Updates to that version.

1.8 "Specifications" means PALADIN's published functional and operational specifications for the Software.

1.9 "Support" means PALADIN's ongoing support as described at www.PaladinData.com/solutions/local-government-solutions/support-services, and Updated from time to time, for the Licensed Software described in Exhibit A, including any Updates thereto.

1.10 "Supported Environment" means the specific configuration of Hardware and releases of the operating Software and platforms described in Exhibit A.

1.11 "Update" means a subsequent release of the Software issued by PALADIN from time to time to deal with any Errors or to enhance the functionality of the Software as part of any Support purchased by CUSTOMER during the term of this AGREEMENT. PALADIN may release bug fix patches as required to repair known defects between regular releases.

1.12 Trademarks. InterLocking Software is a trademark of Paladin Data Systems Corporation, covering Paladin's suite of government software products.

2.0 SOFTWARE & HARDWARE SUPPLIED.

2.1 This AGREEMENT covers the Software described in Exhibit A. All Software licensed by PALADIN to CUSTOMER is covered by the Software License agreement in Exhibit B. Other software, such as those supplied by Microsoft for the Operating System, are covered by their own specific Software License or End-User Agreements, which are not attached to this AGREEMENT.

2.2 Incidental Hardware. Solely for the convenience of CUSTOMER, CUSTOMER may order and PALADIN may resell hereunder certain third party-supplied computers, servers or other similar Hardware to operate the Software within the Supported Environment (collectively, "Third Party Hardware"). Any such Hardware, if supplied, is listed on Exhibit A to this AGREEMENT. PALADIN hereby assigns and passes through to CUSTOMER "AS-IS" any warranties or service agreements on any Third Party Hardware from the original equipment manufacturers ("OEMs"), and PALADIN makes no independent representations or warranties with respect to any such Third Party Hardware. CUSTOMER acknowledges that CUSTOMER shall look solely and exclusively to the respective OEMs with respect to any issues or problems regarding any such Third Party Hardware.

2.3 Virus Protection. PALADIN's software facilitates the transfer and storage of data and files and does not claim to, nor does it perform any virus detection and/or virus elimination function. It is the responsibility of the CUSTOMER to install and maintain virus protection software on related servers and client workstations.

3.0 TECHNICAL SUPPORT.

3.1 Support Availability. Technical Support for PALADIN's InterLocking Software products is optionally available to customers. Information on the inclusion of Support is included in Exhibit A to this AGREEMENT. Exhibit C provides specific information on how PALADIN provides technical Support.

4.0 TERM AND TERMINATION.

4.1 Term. This AGREEMENT shall continue indefinitely unless terminated in accordance with this Article 4.0

4.2 Termination for Convenience. CUSTOMER may terminate this AGREEMENT at any time upon thirty (30) days written notice to PALADIN, provided such termination for convenience shall not entitle CUSTOMER to any refund of any License Fees or Support Fees paid prior to such termination.

4.3 Termination for Material Breach. Either party may terminate this AGREEMENT upon ten (10) days written notice to the other party if the other party is in material breach of this AGREEMENT and fails to cure such breach within thirty (30) days written notice thereof.

4.4 Insolvency or Bankruptcy. If CUSTOMER becomes insolvent or enters into any voluntary or involuntary bankruptcy preceding that is not dismissed within sixty (60) days of filing, PALADIN may treat such situation as a material breach hereunder. If PALADIN becomes insolvent or enters into any voluntary or involuntary bankruptcy preceding that is not dismissed within sixty (60) days of filing, CUSTOMER may treat such situation as a material breach hereunder. At CUSTOMER's option and upon payment of royalty payments if any, as specified in Exhibit A, to PALADIN, this AGREEMENT and its licenses of intellectual property to CUSTOMER are intended to and shall remain in full force and effect under Section 365(n) of the U.S. Bankruptcy Code

4.5 Cumulative Remedies. Termination of this AGREEMENT or any license hereunder shall not limit either party's right to pursue other remedies available to it, including, without limitation, injunctive relief.

4.6 Survival. Upon any termination of this AGREEMENT, CUSTOMER shall promptly cease using, and shall return or destroy, all copies of the applicable Software and Documentation. The parties' rights

and obligations under Articles 4.0 through 10.12, Article B.3 through B.3.j, including, without limitation, CUSTOMER's duty to pay any outstanding Fees or expenses, shall survive any such termination.

5.0 WARRANTIES, INDEMNITIES AND REMEDIES.

5.1 Limited Software Warranty. For a period of ninety (90) days from the EFFECTIVE DATE ("Warranty Period"), PALADIN represents and warrants to CUSTOMER that the Software will function in all material respects in accordance with the Specifications. PALADIN DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR-FREE OR WILL PERFORM WITHOUT INTERRUPTION, THE SOFTWARE WILL NECESSARILY MEET CUSTOMER'S REQUIREMENTS; OR ANY ERROR CAN OR WILL BE CORRECTED. CUSTOMER shall give PALADIN prompt written notice of any claim under the foregoing warranty; and in such event, PALADIN's sole obligation shall be to use its reasonable commercial efforts to modify or repair the Software to conform to the Specifications. The foregoing warranty shall not apply to the extent that any alleged defect derives from (a) a combination of the Software with any program, equipment or device not supplied by PALADIN or not described in the Specifications; (b) any modification or customization of the Software by or on behalf of CUSTOMER which is not performed by PALADIN; or (c) CUSTOMER's failure to use the most current version of the Software provided to CUSTOMER.

5.2 Limited Warranties. PALADIN represents and warrants to CUSTOMER that:

- (a) PALADIN has not intentionally included or embedded any disabling code or devices within the Software;
- (b) PALADIN has the full power and authority to grant the licenses for the Software and Documentation under this AGREEMENT to CUSTOMER without the consent of any other person; and
- (c) Neither the license to, nor use by the CUSTOMER of the Software and Documentation (including the copying thereof) will constitute an infringement of a third party's U.S. copyright, trademark, trade secret or, to the best of PALADIN's knowledge as of the EFFECTIVE DATE, a third party's U.S. Patent.

5.3 Disclaimer of Other Warranties. PALADIN GIVES AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY SET FORTH IN SECTIONS 5.1 and 5.2. WITHOUT LIMITING THE FOREGOING, NO IMPLIED WARRANTY OF MERCHANTABILITY, NO IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, AND NO IMPLIED WARRANTY ARISING FROM USAGE OR TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE IS GIVEN OR MADE BY PALADIN OR SHALL ARISE BY OR IN CONNECTION WITH THIS AGREEMENT.

5.4 PALADIN Indemnity to CUSTOMER. PALADIN shall defend and indemnify CUSTOMER and its officers, directors, employees and agents from and against liability, costs, damages and fees, including reasonable attorneys' fees and legal costs incurred by CUSTOMER resulting from or arising out of the infringement or violation by the Software on a third party's valid U.S. patent, copyright, trademark or trade secret (collectively, "IP Legal Claim"). Notwithstanding the foregoing, PALADIN shall have no liability to CUSTOMER for any IP Legal Claim based on:

- (a) solely on CUSTOMER's operation of an application developed using the Software and not upon the Software itself;
- (b) CUSTOMER's combination of the Software with other products not furnished by PALADIN when such IP Legal Claim is based upon such combination;
- (c) CUSTOMER's continued use of a superseded version of the Software when a non-infringing current version is available from PALADIN; or

(d) CUSTOMER's use of an altered version of the Software not supplied by PALADIN when such IP Legal claim is based upon such alteration.

5.5 CUSTOMER Indemnity to PALADIN. CUSTOMER shall defend and indemnify PALADIN and its officers, directors, employees and agents from and against liability, costs, damages and fees, including reasonable attorneys' fees and legal costs incurred by PALADIN resulting from or arising out of the use of the Software with any data not owned by CUSTOMER ("Third Party Data"), any failure of CUSTOMER to secure the proper third party consents to use, compile or publish such Third Party Data, and all acts or omissions relating thereto (collectively, "Third Party Data Legal Claim").

5.6 Mechanics of Indemnity. A party seeking indemnity for an IP Legal Claim or a Third Party Data Claim ("Indemnified Party") gives the other party ("Indemnifying Party") prompt written notice of any such Legal Claim and gives the Indemnifying Party full authority, information and assistance and sole control over the defense and settlement of such claim. In response to any such IP Legal Claim, PALADIN, in its sole discretion and at its sole expense, may procure from such third party the right to allow CUSTOMER to continue to use the Software; modify or replace the Software or infringing portions thereof to become non-infringing; or, if neither option is commercially reasonable under the circumstances, PALADIN may terminate this AGREEMENT and refund the applicable Fees to CUSTOMER. In response to any such Third Party Data Claim, CUSTOMER, in its sole discretion and at its sole expense, may procure from such third party the right for CUSTOMER to continue to use, compile or publish such data; modify its use, compilation or publication thereof to satisfy such third party; or, if neither option is commercially reasonable under the circumstances, may terminate this AGREEMENT without refund of the applicable Fees to CUSTOMER. An Indemnified Party may engage counsel of its own choosing and at its sole expense. An Indemnified Party shall not settle any Legal Claim without Indemnifying Party's written consent, which consent will not be unreasonably withheld.

6.0 LIMITATIONS OF LIABILITY.

6.1 Liability Cap. TO THE EXTENT PERMITTED BY LAW, PARTIES' AGGREGATE CUMULATIVE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER ARISING FROM CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED THE TOTAL AMOUNT OF LICENSE, SUPPORT OR OTHER SERVICE FEES OR EXPENSES PAID BY CUSTOMER IN THE TWELVE (12) MONTHS PRIOR TO THE INCIDENT GIVING RISE TO SUCH LIABILITY.

6.2 Consequential Damages Exclusion. IN ANY CASE, NEITHER CUSTOMER NOR PALADIN OR ITS SUPPLIERS SHALL NOT BE LIABLE IN ANY AMOUNT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING OUT OF OR RELATED TO THIS AGREEMENT.

7.0 PAYMENTS.

7.1 Fees and Expenses. CUSTOMER shall pay all Fees or expenses according to the payment terms set forth in Exhibit A. CUSTOMER will pay all such invoices within 30 days of submittal, unless CUSTOMER gives notice that the invoice is in dispute. In the event of such a dispute, CUSTOMER will pay the amount not in dispute and may withhold payment without interest on all disputed amounts until such dispute(s) are resolved by the parties. In addition, on any sums not paid when due, CUSTOMER shall pay interest at the lower of the maximum legal rate of interest or one percent (1%) per month, which interest will be immediately due and payable. Without limiting the foregoing, as an additional remedy for non-payment when due, PALADIN may suspend its Support of the Software until all amounts in arrears (including applicable interest) have been paid in full.

7.2 Payments. CUSTOMER shall make all payments of Fees or expense in United States Dollars and directed to:

Attention: Accounts Receivable
Paladin Data Systems Corporation
19362 Powder Hill Place NE

Poulsbo, WA 98370
Electronic Remittance should be made to:
Bank of America
Account # 485007023715
Account Name: Paladin Data Systems Corporation
ACH Routing Number # 323070380
Bank Address: 1000 6th Street, Bremerton, WA 98337

A contract or invoice reference number must accompany all payments.

7.3 Taxes. The Fees listed in Exhibit A do not include any sales tax, use tax, excise, tax import or export tax, value added tax, nor any other tax applicable to the Software and are not based on Paladin Data Systems Corporation's net income (collectively, "Taxes"). CUSTOMER shall be solely responsible for payment of any Taxes that is owed by CUSTOMER, and shall not offset, deduct or withhold any sum for such Taxes from its payments of the Fees or expenses hereunder.

8.0 OWNERSHIP AND CONFIDENTIALITY.

8.1 Ownership of PALADIN Materials. CUSTOMER acknowledges that PALADIN or its suppliers shall own all right, title and interest in and to any patent, copyright, trademark, trade secret or other intellectual property right in the Software, Documentation or other materials provided by PALADIN under this AGREEMENT, which shall be treated as the confidential information of PALADIN. CUSTOMER shall not remove or alter any copyright, trademark or other proprietary notice thereon, whether in printed or electronic form. Nothing in this AGREEMENT shall be construed to create a "work for hire," and neither the Software nor the Documentation shall be considered a "work for hire."

8.2 Ownership of CUSTOMER or Third Party Data. PALADIN acknowledges that CUSTOMER or its suppliers shall own all right, title and interest in and to any intellectual property right in the data used, compiled or published with the Software, which shall be treated as the confidential information of CUSTOMER except to the extent such data may be placed in the public domain by CUSTOMER. PALADIN shall not remove or alter any proprietary notice thereon, whether in printed or electronic form.

8.3 Non-Disclosure. Each party shall keep confidential and take any other reasonable steps to protect the intellectual property rights in the other party's confidential information ("Confidential Information") and shall not use or disclose the same except as permitted by this AGREEMENT.

8.4 Injunctive Relief. Each party acknowledges that any material breach of this Article 8.0 or the licenses set forth in Exhibit B will cause irreparable harm to the other party, and that, accordingly, in addition to any other remedies at law or in equity for any breach or threatened breach, an aggrieved party may seek injunctive and equitable relief, including, but not limited to, the right to specific performance, without the necessity of posting a bond.

9.0 DISPUTE RESOLUTION.

9.1 Dispute Resolution. Except as provided in Section 9.2 below, PALADIN and CUSTOMER shall each use its best efforts to resolve any dispute between them promptly and amicably and without resort to any legal process if feasible within thirty (30) days of receipt of a written notice by one party to the other party of the existence of such dispute. The foregoing requirement in this Section 9.1 shall be without prejudice to either party's rights, if applicable, to terminate this AGREEMENT under Section 4.3 above.

9.2 Litigation Rights Reserved. If any dispute arises with regard to the unauthorized use or infringement of Confidential Information by a party, the other party may seek any available remedy at law or in equity from a court of competent jurisdiction.

9.3 Procedure for Arbitration. Except as provided in Section 9.2 above, any dispute, claim or controversy arising out of or in connection with this AGREEMENT which has not been settled through

negotiation within a period of thirty (30) days after the date on which either party shall first have notified the other party in writing of the existence of a dispute shall be settled by final and binding arbitration under the then applicable Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any such arbitration shall be conducted by a single neutral arbitrator appointed by mutual agreement of the parties or, failing such agreement within fifteen (15) days of a demand for arbitration, in accordance with said Rules. Such arbitrator shall be an experienced business attorney or independent certified public account with background in commercial software products. Any such arbitration shall be conducted in Seattle, Washington, U.S.A. An arbitral award may be enforced in any court of competent jurisdiction. Notwithstanding any contrary provision in the AAA Rules, the following additional procedures and rules shall apply to any such arbitration:

- (a) Each party shall have the right to request from the arbitrator, and the arbitrator shall order upon good cause shown, reasonable and limited pre-hearing discovery, including (i) exchange of witness lists, (ii) depositions under oath of named witnesses at a mutually convenient location, (iii) written interrogatories and (iv) document requests;
- (b) Upon conclusion of the pre-hearing discovery, the arbitrators shall promptly hold a hearing upon the evidence to be adduced by the parties and shall promptly render a written opinion and award;
- (c) The arbitrators may not award or assess punitive damages against either party or any other damages limited or excluded by Article 6.0; and
- (d) Each party shall bear its own costs and expenses of the arbitration and one-half (1/2) of the fees and costs of the arbitrator, subject to the power of the arbitrator, in their sole discretion, to award all such reasonable costs, expenses and fees to the prevailing party.

10.0 MISCELLANEOUS.

10.1 Entire AGREEMENT. This AGREEMENT, its exhibits supersede, and their terms shall govern over, all prior proposals, agreements or other communications between the parties, oral or written, regarding the subject matter of this AGREEMENT. If there is any conflict between the terms of this AGREEMENT and any exhibit hereto, the terms of this AGREEMENT shall control. This AGREEMENT, its appendices, and its exhibits shall not be modified except by a subsequently dated written amendment signed by the parties, and any conflicting terms on a CUSTOMER purchase order or other similar document purporting to supplement the provisions hereof shall be void.

10.2 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strike, shortage, riot, insurrection, fire, flood, storm, explosion, acts of God, war, governmental action, labor condition, earthquake, material shortage or any other cause which is beyond the reasonable control of such party. The affected party shall give prompt written notice to the other party of any such event.

10.3 Assignment. Neither this AGREEMENT nor any rights or obligations of either party hereunder may be assigned, in whole or in part, without the prior written approval of the other party, which approval shall not be unreasonably withheld, provided, however, either party's rights and obligations, in whole or in part, under this AGREEMENT may be assigned by such party as part of any merger or acquisition of such party with another entity that has agreed in writing to be bound by the terms and conditions of this AGREEMENT.

10.4 Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect the right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

10.5 Severability. In the event that any provision of this AGREEMENT shall be unenforceable or invalid under any applicable law or court decision, such unenforceability or invalidity shall not render this

AGREEMENT unenforceable or invalid as a whole and, in such event, any such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or intended provision within the limits of applicable law or applicable court decisions.

10.6 Law, Jurisdiction and Venue. This AGREEMENT, and all matters arising out of or relating to this AGREEMENT, shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Subject to Article 9.0, any action at law, suit in equity or other judicial proceeding arising under or out of this AGREEMENT may be instituted and maintained only in a court of competent jurisdiction located in Kitsap County, Washington. Company hereby waives all defenses of lack of personal jurisdiction and forum non conveniens.

10.7 No Agency. Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the parties.

10.8 Headings. The section headings appearing in this AGREEMENT are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

10.9 Export Restrictions. The Software is subject to the U.S. Export Administration Regulations ("EAR"). CUSTOMER shall not knowingly export or re-export, or knowingly permit the re-export of, the Software or any technical data relating to the Software, directly or indirectly, to any other country or any other user except as permitted by the EAR.

10.10 Record Retention. The costs, records and accounts pertaining to reimbursable expenses payable to PALADIN by CUSTOMER under this Agreement are to be kept available for inspection by representatives of the CUSTOMER for a period of three (3) years after final payment. Copies shall be made available reasonably promptly upon request.

10.11 No Employment Relationship Created. No agent, employee or representative of PALADIN shall be deemed to be an agent, employee or representative of the CUSTOMER for any purpose. PALADIN shall be solely responsible for all acts of its agents, employees, representatives and subcontractors during the performance of this Agreement.

10.12 Standard of care. PALADIN represents that PALADIN has the necessary knowledge, skill and experience to perform services required by this Agreement. PALADIN and any persons employed by PALADIN shall use their best efforts to perform the work in a professional manner consistent with sound practices, in accordance with the usual and customary professional care required for services of the type described in this Agreement.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by their authorized representatives.

PALADIN DATA SYSTEMS CORPORATION

CITY OF GIG HARBOR ("CUSTOMER")



Signature

Signature

Robert Johnston

Print Name

Print Name

COO

Print Title

Print Title

1/23/10

Date

Date

EXHIBIT A - Pricing for the City of Gig Harbor Public Portal

PRICE AND PAYMENT

SOFTWARE

InterLocking Software Public Portal and Management Dashboard –

Retail Price.....	\$12,700.00
Discount for Gig Harbor - 60%.....	(\$7,700.00)
Purchase Price	\$5,000.00

- Unlimited Users
- Public Portal and Management Dashboard
- Online Payment
- Online Document Submittal
- Permit Status Tracking
- Permit Records
- Inspection Requests
- Permit Application Submittal
- Internal Web-based reporting.

Not included:

- Hardware
- IIS Server
- Virus Software

Public Portal must run on IIS Server

Annual Product Support and Maintenance - 25% of the Retail Price \$3,176.00

Gig harbor will be entitled to all of Paladin's annual portal enhancements and new releases as long as fees for annual product support and maintenance are kept current.

Annual Product Support and Maintenance due at the Public Portal Go-Live. After year 1, the then current Support Fees for the Public Portal will be prorated to fall in line with Gig Harbor's support for InterLocking Software licenses purchased on the contract effective July 10, 2006.

Conditions:

- It is the responsibility of Gig Harbor or Gig Harbor's hosting service to provide a dedicated IIS Server for hosting InterLocking Software's Public Portal, which is accessible to the public.
- It is the responsibility of Gig Harbor or Gig Harbor's hosting service to provide virus protection on the IIS Server.
- Gig Harbor will open two dedicated ports from the InterLocking App Server to the hosted and secure IIS Server for enabling inspection requests and document submittal.

City of Gig Harbor
Schedule of Payments

Public Portal and Mgmt Dashboard	\$5,000.00	
Total Invoice #1 Due Upon Contract Signing		\$5,000.00
Annual Product Support and Maintenance	\$3,176.00	
Total Invoice #2 Due at Go-Live Date		\$3,176.00
Total Overall		\$8,176.00
*Applicable Sales Tax Not Included in the Above Amounts		

Exhibit B – PALADIN’s InterLocking Software Products Software License

B.1 Rights Granted. Subject to the terms and conditions of this AGREEMENT and in consideration of the payment of the Fees under Article 7, PALADIN hereby grants to CUSTOMER for the CUSTOMER’s internal business use only a perpetual, personal, non-exclusive, non-transferable and non-assignable (except as provided under Section 12.3) license to use the Software (in object code form only) and the Documentation on the Supported Environment, and to use the source code of the Software for reference purposes only. CUSTOMER may make one copy of the Software and Documentation electronic media for back-up purposes. CUSTOMER may make as many printed reproductions of manuals supplied on the electronic media as are required for the CUSTOMER’s normal operations. Except as so expressly licensed, no other rights are granted to CUSTOMER and none shall be implied.

B.2 Limitations. Except as reasonably necessary for CUSTOMER’s own internal use, CUSTOMER shall not;

- (a) Cause or permit the copying or reproduction of the Software or Documentation;
- (b) Disclose the Software or Documentation to or permit any use thereof by any third party;
- (c) Disassemble, decompile, compile, or reverse engineer the Software or modify or create any Derivative Works;
- (d) Sublicense, lease, distribute or enter into any time share or service bureau arrangement with respect to the Software;
- (e) Transfer title or ownership of the Software license to any third party; or
- (f) Export the Software outside the United States without PALADIN’s prior written consent.

B.3 Source & Object License. As part of the Software distribution, the CUSTOMER will be provided the source (human readable), and object (machine executable) code for every release received under this license as governed by Appendix C – Technical Support. The Source and Object Code is provided in an unencrypted format on the electronic media shipped for each release.

B.3.a Source Code Non-Disclosure. The source code contains PALADIN proprietary information consisting of, but not limited to, processes, methods and underlying structures. This information is provided to CUSTOMER subject to the following non-disclosure terms. Source code is provided to CUSTOMER to facilitate their understanding of the Software systems in order that they may write their own integrated extensions to the software using the provided interfaces. A license is granted to use internally, modify and create Derivative Works of the Source Code versions of the PALADIN’s InterLocking Software Technology for the sole purpose of creating user extensions for CUSTOMER’s own use. CUSTOMER is expressly prohibited from reproducing, distributing, licensing or sublicensing the Source Code version of PALADIN’s InterLocking Software Products, including any Derivative Works containing PALADIN’s InterLocking Software Products Source Code to any third party.

B.3.b Object Code Non-Disclosure. The object code contains PALADIN proprietary information consisting of, but not limited to, any machine instructions – both in English and machine interpretable, processes, methods and underlying structures. This information is provided to CUSTOMER subject to the following non-disclosure terms. Object code is provided to execute on computer hardware. A license is granted to use internally the Object Code versions of the PALADIN’s InterLocking Software Technology for the sole purpose of CUSTOMER’s own use. CUSTOMER is expressly prohibited from reproducing, distributing, licensing or sublicensing the Object Code version of PALADIN’s InterLocking Software Products, including any Derivative Works containing PALADIN’s InterLocking Software Products Object Code to any third party.

You may not copy, reverse engineer, decompile, reverse compile, translate, adapt, or disassemble the Object Code, or any part thereof.

B.3.c Prohibited Uses. You may not use the PALADIN's InterLocking Software Products, or any part thereof, in the operation of a service bureau, or for the benefit of any other person or entity. You may not cause, assist or permit any third party to do any of the foregoing.

B.3.d Confidential Information. All information (including, but not limited to; machine instructions – both in English and machine interpretable, processes, methods and underlying structures, business plans, data, business records, license agreements, strategic information, instruction techniques, strategies or procedures, formulas, trade secrets or the like) ("Confidential Information") disclosed by PALADIN to the CUSTOMER shall be considered highly confidential and valuable proprietary information not previously released or available to the public and such information is recognized and acknowledged by both Parties to possess competitive value.

B.3.e Use of Confidential Information. CUSTOMER agrees that Confidential Information will be used solely by it to support day to day operations to accomplish those functions that the Software is designed to support.

B.3.f Non-disclosure Covenants. CUSTOMER agrees that it will not, without the prior written consent of PALADIN, disclose any Confidential Information to anyone, except its employees who need to know it for the purpose of supporting the business needs of CUSTOMER, and they will keep permanently confidential all Confidential Information. Employees of the CUSTOMER will be required to agree to be bound by this AGREEMENT to the same extent as if they were parties thereto prior to the disclosure to them of any Confidential Information. In any event, CUSTOMER will be responsible for any breach of this AGREEMENT by its employees.

B.3.g Reasonable Safeguards. CUSTOMER warrants to PALADIN it will use reasonable safeguards against the unauthorized disclosure of Confidential Information, and agrees it shall protect the Confidential Information of PALADIN in the same manner that it protects its own confidential proprietary information. If this Software agreement is terminated for any reason CUSTOMER agrees to immediately return to PALADIN all copies of Confidential Information in its possession, or to send a certified letter documenting the destruction of all Confidential Information in its possession.

B.3.h Exclusion. This AGREEMENT shall be inoperative as to such portions of the Confidential Information which;

- (i) are generally available to the public through no fault or action by the CUSTOMER, its agents or representatives,
- (ii) are available to the CUSTOMER on a confidential basis from a source other than PALADIN which is not prohibited from disclosing such Confidential Information to CUSTOMER by a contractual, legal or fiduciary obligation to PALADIN or
- (iii) has been disclosed pursuant to a requirement of a court order, subpoena, governmental agency or law, provided that CUSTOMER has provided PALADIN with prior notice of such requirement and has cooperated with any attempt by PALADIN to prevent such disclosure.

B.3.i Remedies. In the event of a breach or threatened breach by CUSTOMER, or its employees, of the provisions of Sections B.3.a, B.3.b, B.3.c, B.3.d, B.3.e, B.3.f, B.3.g, or B.3.h, PALADIN shall be entitled to an injunction restraining CUSTOMER, or its employees, from such breach. Nothing herein contained shall be construed as prohibiting PALADIN from pursuing any injunction or any other remedies available for such breach, or threatened breach, or any other breach of this AGREEMENT. PALADIN shall also have the right to recover from CUSTOMER all reasonable costs and attorneys' fees incurred by it in seeking any such remedies. No breach by a Party of any other agreement between the Parties shall be a defense to any breach by the other Party to this AGREEMENT.

B.3.j Common Law, Torts and Trade Secrets. The Parties agree that nothing in this AGREEMENT shall be construed to limit or negate the common law of torts or trade secrets where it provides a Party with broader protection than that provided herein.

Exhibit C – TECHNICAL SUPPORT

C.1 General. Except during the Warranty Period in Section 5.1 hereof, PALADIN provides the Software to CUSTOMER "AS IS" and without Support. At its option, CUSTOMER may purchase Support as described in Exhibit A on an annual basis upon payment of the then-current Support Fees. If Support has been terminated or interrupted, PALADIN may, at its option, reinstate such Support to CUSTOMER only if PALADIN then offers such Support for the Software and CUSTOMER pays a fee equal to the Support Fees that would have been payable for the period during which Support was terminated or interrupted.

C.2 Access to Personnel and Equipment. If CUSTOMER has purchased Support for the Software, CUSTOMER shall provide PALADIN with reasonable access to CUSTOMER's personnel and VPN access to CUSTOMER's equipment for the purpose of providing remote software support from PALADIN facilities. PALADIN shall only access and use the Supported Environment for purposes of Support.

C.3 Incidental Expenses. For any on-site services requested by CUSTOMER in relation to any Support provided under this AGREEMENT, CUSTOMER shall reimburse PALADIN for its actual and reasonable travel, lodging and out-of-pocket expenses thereby incurred.

C.4 Training, Data Conversion and Database Administration Services. At its option, CUSTOMER may also purchase training, data conversion or database administration services from PALADIN. All such separate services shall be billed to CUSTOMER on a time-and-materials basis at PALADIN's then-current rates unless the parties expressly agree otherwise in writing.

C.5 Third Party Hardware. CUSTOMER shall work directly with any relevant OEMs regarding any technical Support questions or issues regarding Third Party Hardware. PALADIN shall not provide any Support for Third Party Hardware, including that provided by PALADIN for CUSTOMER's convenience as listed on Exhibit A.

C.6 Support Hours and phone numbers. Hours of availability and the methods to be used to contact Support are published publicly, and are subject to change in order to best Support our customer base. They are available on the web at www.PaladinData.com/solutions/local-government-solutions/support-services.



**Subject: Pierce County G.I.S.
Orthophotography Subscription
Services Agreement continuance**

Dept. Origin: Information Technology

Prepared by: Kay Johnson

Proposed Council Action:

**For Agenda of:
Exhibits:**

Approve three original subscription agreement(s) to continue to receive hosted digital data access to high-resolution orthophotography for geographical data with Pierce County GIS

Initial & Date

Concurred by Mayor:

CLH 2/2/10

Approved by City Administrator:

RYK

Approved as to form by City Atty:

ok by email 2/1/10

Approved by Finance Director:

CP

Approved by Department Head:

[Signature]

Expenditure	Amount	Appropriation
Required \$4,163	Budgeted \$4,163	Required \$0

INFORMATION / BACKGROUND

Currently, the city's subscription for orthophoto data has expired and is up for renewal. The County orthophotography subscription program includes an update in 2011 to the 2008 orthophoto dataset. Updates to the orthophotography database will be as frequent as every three years and no less than every four years. The frequency of the update is determined by the County following consideration of subscriber concerns, budget issues and any other pertinent factors that may affect the quality or cost of the orthophoto database.

Subscribers can request the County to make a copy of the orthophotos and provide this data to consultants or engineers who are performing work under contract for a specific Subscriber project.

FISCAL CONSIDERATION

Costs for orthophoto services and subscription have not changed from the previous contract.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Approve Engagement agreements (3 originals) to continue the subscription to receive high-resolution orthophotography database services and access to updates.

DIGITAL ORTHOPHOTOGRAPHY SUBSCRIPTION AGREEMENT

Agreement # 77605
between
Pierce County
and
City of Gig Harbor

City of Gig Harbor, hereinafter called **Subscriber**, and Pierce County, hereinafter called **COUNTY**, agree to the terms of this Digital Orthophotography Subscription Agreement.

WHEREAS the **County** conducts an orthophotography (orthophoto) construction program to develop a high resolution digital orthophotography database and makes this digital data available for subscription;

WHEREAS the **Subscriber** needs digital orthophotography for viewing, mapping and analysis and wishes to subscribe to the **County's** Digital Orthophotography;

NOW, THEREFORE, the **Subscriber** and **County** agree to the following responsibilities and terms of the Digital Orthophotography Subscription agreement effective this _____ day of _____, 2010.

It is agreed by the parties:

Product

1. **County** will establish the orthophotography specifications and requirements for 1"=100" mapping.
 - 1.1. Imagery is a 1"=800' color photo, pixel size of 0.5 ft, free of cloud cover, and artifacts that obscure physical features.
 - 1.2. Every effort is made to utilize the best available terrain model and maintain the horizontal positional alignment of the dataset as compared to the 1998 county orthophotos. This will benefit **Subscribers** who have constructed datasets on top of the orthophotos.
2. **County** will conduct and manage the timely competitive bid, selection, procurement, development, quality control of the Pierce County orthophotography dataset.
3. **Subscriber** will determine what geographic area of the orthophoto database the Subscriber will subscribe to and use.

4. Orthophotography Subscription program provides to the **Subscriber**:
 - 4.1. Orthophoto coverage area defined by: **CITY URBAN GROWTH AREA**
 - 4.2. Orthophotography for the year(s): **prior to and including 2012.**
 - 4.3. Other related data sets: contours, lidar terrain model, OrthoViewer System for subscribers with on-line access and full countywide ortho subscription
5. The **County** Orthophotography Subscription program includes an update in 2011 to the 2008 orthophoto dataset. Updates to the orthophotography database will be as frequently as every three years and no less than every four years. The frequency of the update is determined by the County following consideration of subscriber concerns, budget issues and any other pertinent factors that may affect the quality or cost of the orthophoto database.
6. Other **County** products, services or data sets are not a part of this agreement.

Product Use

7. **Subscriber** will have rights to use the orthophotography for viewing, mapping, analysis and use in a GIS system.
8. The **County** licenses the orthophotos from the orthophoto vendor. Access by the **Subscriber** to the digital orthophotos and associated data is subject to and governed by this agreement, including the following licensing terms:
 - 8.1. The **Subscriber** shall use the orthophoto data for internal business purposes only.
 - 8.2. The **Subscriber** may make hardcopy maps of orthophotos (and with other data overlays) for internal or public distribution.
 - 8.3. The **Subscriber** may copy portions of the orthophoto database to other internal company servers for use with Autocad or other mapping software.
 - 8.4. The **Subscriber** can request the **County** to may make a copy of the orthophotos and provide this data to consultants or engineers who are performing work under contract for a specific **Subscriber** project. Consultants or contractors must adhere to the terms in agreement (restricted distribution) and pay the \$80/hr to copy the dataset onto CD or DVD.
 - 8.5. The **Subscriber** may not post the orthophotos to any web site.
9. The **Subscriber** may not distribute or permit the distribution of the orthophoto database/files in any digital format to other agencies, the public or third parties. Violation of this restriction will result in a) the **Subscriber** returning the orthophotography to the

County thus ceasing use of the product, b) if using online County GIS application services, orthophoto access will be discontinued or c) the County may also seek legal redress.

10. If the **Subscriber** uses County GIS on-line application services, the **Subscriber's** GIS users will be provided access to the orthophotography through the on-line application services in CountyView. If the **Subscriber** does not have on-line access to the County GIS, the **Subscriber** will provide a hard disk to copy the dataset for transfer.
11. The Subscriber has a perpetual use license to the orthophotography as defined in this document unless terminated for cause (section 8) or non-payment of license fees.
12. **Subscriber's** rights under this agreement are nonassignable, nontransferable, nonsublicensable and nonexclusive.
13. **Subscriber** accepts that a limited (larger pixel scale) public domain product may be produced with each acquisition and released with a 6 month schedule delay. This product is for the USGS and National Map program and will be provided only when the USGS contributes funding to the orthophotography program.

Product Fees and Term

14. The **Subscriber** will pay license fees for the development and maintenance of the orthophotography. Subscribers may choose to license a city urban growth area or the entire county dataset:

Yearly licensing fee for CITY URBAN GROWTH AREA only:

Annual maintenance fee in 2010, 2011, 2012: \$4,163

Yearly licensing fees for COUNTY dataset:

Annual maintenance fee in 2010, 2011, 2012: \$1,000 per user per year up to a maximum of \$ 7,500 per year.

15. After the initial contract term (2010-2012), the fees will be adjusted based on the number of subscribers and the cost of the products provided in the program. The **County** will notify **Subscribers** of changes to the subscription fees.
16. Non-Appropriations (applies to Governmental Agencies only)
 - 16.1. **Subscriber** intends to continue this Agreement for its entire term and to satisfy its obligations hereunder. For each fiscal period during the term of this Agreement: 1) **Subscriber** agrees to include in its budget request appropriations sufficient to cover **Subscriber's** obligations under this Agreement and 2) **Subscriber** agrees to use all reasonable and lawful means to secure these appropriations.

- 16.2 In the event that **Subscriber** is appropriated insufficient funds, by appropriation, appropriation limitation or grant, to continue payments under this Agreement and has no other funding source lawfully available to it for such purpose, **Subscriber** may terminate this Agreement by giving **County** at least two weeks' written notice to terminate as of December 31st of the then current calendar year. Upon termination and to the extent of lawfully available funds, **Subscriber** shall remit all amounts due through the date of termination.
17. The **Subscriber** may unsubscribe to the **County** Orthophotography Program by giving **County** at least two weeks' written notice to terminate as of December 31st of the then current calendar year. Fees are not refundable.
18. In the event the **Subscriber** chooses to unsubscribe to the orthophotography program, the **Subscriber** will return the orthophotography to the **County** and discontinue use of the data.
19. The contract period shall be from January 1, 2010 to December 31, 2012.

Limitations

20. The **County** makes no warranty, expressed or implied, concerning the orthophotography's content, accuracy, currency or completeness, or concerning the results to be obtained from queries or use of the data. ALL DATA IS EXPRESSLY PROVIDED "AS IS" AND "WITH ALL FAULTS". The **County** makes no warranty of fitness for a particular purpose, and no representation as to the quality of any data. **Subscriber** users of data are responsible for ensuring the accuracy, currency and other qualities of all products (including maps, reports, displays and analysis) produced from or in connection with **County's** orthophotography.

Spatial Accuracy

21. Orthophotography can be plotted or represented at various scales other than the original source of the data. The **Subscriber** is responsible for adhering to industry standard mapping practices which specify that data utilized in a map or analysis, separately or in combination with other data, will be produced at the largest scale common to all data sets.

No County Liability

22. **County** shall not be liable to the **Subscriber** (or transferees or vendees of **Subscriber**) or others for damages of any kind, including lost profits, lost savings or any other incidental or consequential damages relating to the providing of the orthophotography or the use of it. The **Subscriber** and any others shall have no remedy at law or equity against the **County** in case the orthophotography provided is inaccurate, incomplete or otherwise defective in any way.

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

CITY OF GIG HARBOR:

Name Date

(Signature) Date

Title of Signatory

Contact Name Date

Mailing Address:

Street Address, if different:

Contact Phone: _____

Contact Email: _____

Contact FAX: _____

PIERCE COUNTY:

By _____
Deputy Prosecuting Attorney Date
Approved as to legal form only

Recommended:

By _____
Budget and Finance Date

Approved:

By _____
Department Director Date
(less than \$250,000)

or

By _____
Pierce County Executive Date
(\$250,000 or more)

Subject: Washington State Historical Society Agreement for the Reconstruction of Eddon Boat Dock

Proposed Council Action: Approve and authorize the Mayor to execute the agreement with the Washington State Historical Society for \$238, 401 to Reconstruct Eddon Boat Dock

Dept. Origin: Administration

Prepared by: Lita Dawn Stanton
Special Projects *ADS*

For Agenda of: February 22, 2010

Exhibits: Contract

Initial & Date

Concurred by Mayor: *CLH 2/16/10*
Approved by City Administrator: _____
Approved as to form by City Atty: *ckemal*
Approved by Finance Director: *DR 2/16/10*
Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required \$ 238,401	Budgeted \$238,401	Required \$ -0-

INFORMATION / BACKGROUND

Eddon Boat Park was acquired through the 2005 Voted General Obligation (UTGO) Bond. As part of the acquisition, the historic boat building was identified for preservation and restoration so that its traditional and culturally significant use, boat building, could also be preserved for the community. As part of the site soils contamination clean-up completed in 2009, the dock, creosote piling and marine railways were removed. In order to preserve the integrity of the site, permitting agencies agreed to our intent to reconstruct the dock in its original configuration when funding became available. In 2008, a Washington State Heritage Capital Projects grant for \$243,266 was approved to reconstruct the dock, and reposition the ramp, float and exterior railway. The agreement is attached.

FISCAL CONSIDERATION

This is a reimbursement grant that is already matched through the 2005 UTGO Bond and associated soils remediation expenses. Two percent of the award goes to the Washington State Historical Society (WSHS) leaving \$238,401 to fund the restoration project.

BOARD OR COMMITTEE RECOMMENDATION

n/a

RECOMMENDATION / MOTION

Move to approve and authorize the Mayor to execute Agreement No.WHPG1136 with WSHS for the Eddon Boat Dock Reconstruction Grant for \$238,401.

STATE OF WASHINGTON
WASHINGTON STATE HISTORICAL SOCIETY

CAPITAL CONTRACT # WHPG1136

GRANTEE: City of Gig Harbor

A. PARTIES TO THE CONTRACT

This state funded contract for Heritage Capital Projects (Contract) is entered between the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335 (GRANTEE) and the Washington State Historical Society 211 West 21st Ave, Olympia WA 98501 (AGENCY) and shall be binding upon the agents and all persons acting by or through the parties.

B. PURPOSE OF CONTRACT

This Contract sets out the terms and conditions by which a grant is made for a Heritage Capital Project during the 2009 - 2011 biennium from funds appropriated by the Washington State Legislature in ESHB 1216, which was incorporated into the Capital Budget signed into law by the governor on May 15, 2009. RCW 27.34.330 provides statutory authorization for the funding program. The funding is administered under WAC 225-02 by the heritage resource center, which is an outreach program of the Washington State Historical Society.

C. DESCRIPTION OF HERITAGE CAPITAL PROJECT

Funds awarded under this Contract shall be used by the GRANTEE solely for Phase II – Eddon Boatyard Dock & Marine Ways Restoration Project as described in ATTACHMENT C: SCOPE OF WORK.

D. AMOUNT OF GRANT

The total funds awarded to the GRANTEE hereunder shall be a sum up to, but not to exceed two hundred thirty-eight thousand one hundred forty dollars (\$238,140.00). The AGENCY has retained two percent (2.0%) of the Appropriation as reimbursement for costs directly associated with managing the completion of this contract.

E. COST SHARE

- a) GRANTEE agrees that the amount of state funding shall not exceed one-third (1/3) of the total project costs. The remaining two-thirds (2/3) of total project costs shall be the GRANTEE's cost share. GRANTEE may agree to a cost share greater than two-thirds of total project costs.
- b) At least one-half of GRANTEE's cost share of total project costs shall be cash match. The other half may be cash match and in-kind contributions.
- c) By signing this agreement, GRANTEE warrants that, at the time of this contract's effective date, ATTACHMENT A (Statement of Cost Share) accurately represents the cash match and in-kind contributions either pledged to or held by the GRANTEE or expended on this project.

- d) Project expenditures incurred prior to the date the Capital Budget is signed into law by the governor shall not be reimbursed. Project expenditures incurred after the Capital Budget is signed into law and prior to the effective date of this contract shall be reimbursed only if they are consistent with the terms and conditions of this contract; and the GRANTEE observes the billing procedures described in the General Provisions.

F. CONTRACT PERIOD

- a) The effective date of this contract shall be the date of the last signature of the contracting parties.
- b) The termination date shall be thirteen (13) years following GRANTEE occupancy of the completed facilities.

G. CAPITAL IMPROVEMENTS TO BE HELD BY GRANTEE

- a) Capital improvements funded by this grant of state money are to be used for the express purpose of this grant. As required by R.C.W. 27.34.330, capital improvements funded by this grant are to be held by the GRANTEE for at least thirteen (13) years and the facilities must be used for the express purpose of the grant and if mobile, used primarily in Washington State.
- b) This provision shall not be construed to prohibit the GRANTEE from selling any property described in this section, provided, that any such sale shall be subject to prior review and approval by the AGENCY, and that all proceeds from such sale shall be applied to the purchase price of a different facility of equal or greater value than the original facility and that any such new facility shall be used for the purposes stated elsewhere in this contract. Provided, however, that no funds appropriated for the Heritage Capital Projects fund shall be used for capital improvements not designated in a grant authorization from the AGENCY.
- c) If the GRANTEE is found to be out of compliance with this provision, the GRANTEE shall repay funds to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant.

H. REAPPROPRIATION

- a) The parties hereto agree and understand that any state funds not expended by end of the biennium, June 30, 2011, will lapse on that date unless reappropriated by the Washington State Legislature. If funds are so reappropriated, the AGENCY'S obligation under the terms of this contract shall be contingent upon the terms of such reappropriation.
- b) The AGENCY reserves the right to assign a share of any such reappropriation as reimbursement for costs directly associated with managing the completion of this contract.

I. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties to this Contract are subject to this Contract and its attachments including the following, which by this reference, are made a part of this Contract:

GENERAL PROVISIONS
ATTACHMENT A (Statement of Cost Share)

- ATTACHMENT B (Project Budget)
- ATTACHMENT C (Scope of Work)
- ATTACHMENT D (Leadership in Energy and Environmental Design)
- ATTACHMENT E (State Voucher A-19)
- ATTACHMENT F (Heritage Capital Project Fund Status Report/
Financial Status and Certification of Match)
- ATTACHMENT G (Secretary of the Interior's Standards for Rehabilitation)
- ATTACHMENT H (Grantee's Application)

J. ENTIRE CONTRACT

This Contract including the General Provisions and all attachments contain all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract and attachments shall be deemed to exist or to bind any of the parties.

K. MODIFICATIONS TO GENERAL PROVISIONS

none

L. CONTRACT REPRESENTATIVES

The GRANTEE'S representative shall be the contact person for all communications and billings regarding the performance of this Contract. The GRANTEE's representative shall be:

Lita Dawn Stanton, City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.
Stanton@cityofgigharbor.net and 253-851-6170.

The AGENCY's representative shall be the contact person for all communications and billings regarding the performance of this Contract. The AGENCY's representative shall be:

Garry Schalliol, Washington State Historical Society, 1911 Pacific Avenue, Tacoma, WA 98402.
garrys@wshs.wa.gov and 253-798-5879.

M. SIGNATURES

Garry Schalliol, Director
Outreach Services Division
Washington State Historical Society

Authorizing Official
City of Gig Harbor

Title

Federal Tax ID # _____

Date: _____

Date: _____

PRE-APPROVED AS TO FORM BY THE STATE ASSISTANT ATTORNEY GENERAL,
JULY 1, 2009.

GENERAL PROVISIONS

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1. HEADINGS

Headings used in this Contract are for reference purposes only and shall not be considered a substantive part of this Contract.

2. DEFINITIONS

AGENCY- the Washington State Historical Society.

Cash Match-- Money from the GRANTEE or sources other than the state. With AGENCY approval, the GRANTEE may substitute for cash on hand: (1) an irrevocable letter of credit, (2) evidence of a binding loan commitment from a financial institution, (3) written pledges or grant commitments from bona fide corporations or foundations and (4) commitments from cities or counties agencies evidenced by actual appropriation in city or county budget.

Cost Share— The two-thirds or more of total project costs incurred by the GRANTEE and not paid for from state funds. Includes cash match and in-kind contributions (if any).

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

Heritage capital project – The project for which the GRANTEE has been awarded a grant of funds and meeting the requirements of RCW 27.34.330 and WAC 255-02.

In-Kind Contributions – Grantee documented contributions to a project that are part of the cost share but not part of the cash match.

Real Property Value -- Fair market value of real property, when such property is acquired solely for the purpose of the project, as established and evidenced by a current fair market appraisal performed by a qualified, professional real estate appraiser; a current property tax statement; or evidence of the purchase price paid by the GRANTEE. With AGENCY approval, GRANTEE may use real property value as a cash match contribution if the real property was acquired solely for the purpose of this project.

Total Project Costs – the amount including the grant amount and the amount the Grantee provides as cost-share.

3. ORDER OF PRECEDENCE

The items listed below are incorporated by reference herein. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and Washington State statutes and regulations including applicable state executive orders.

2. Terms and conditions of this Contract
3. Modifications to the General Provisions
4. General Provisions
5. All attachments or material incorporated by reference.

4. CONTRACT MODIFICATIONS

This Contract may be modified by mutual agreement of the parties. Such modification shall not be binding unless in writing and signed by both parties prior to implementation of the modification. Any oral understanding or agreement not incorporated herein shall not be binding. Budget modification of not more than ten (10) percent of any line item and as described herein is excepted from this clause.

5. NO WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing signed by authorized representatives of the AGENCY and GRANTEE.

6. NONASSIGNABILITY

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the GRANTEE.

7. INDEPENDENT CAPACITY OF GRANTEE

The parties intend that an independent relationship will be created by this Contract. The GRANTEE and its employees or agents performing under this contract are not employees or agents of the AGENCY. The GRANTEE and its employees or agents will not hold themselves out as nor claim to be officers or employees of the AGENCY or of the State of Washington by reason of this contract and will not make any claim, demand, or application to or for any right or privilege which would accrue to such employee under law. Conduct and control of the work will be solely with the GRANTEE.

8. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The AGENCY makes no claim to any real property improved or constructed with funds awarded under this contract and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this contract. This provision does not extend to claims that the AGENCY may bring against the GRANTEE in recapturing funds expended in violation of this contract.

9. HOLD HARMLESS

To the extent permitted by law, the GRANTEE shall defend, protect and hold harmless the State of Washington and the AGENCY, its employees, agents, officers, and assigns from and against all claims, suits, or actions arising from the GRANTEE's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which constitute an infringement of any copyright, patent, trademark, or tradename through use or reproduction of material of any kind. GRANTEE shall be required to indemnify, defend, and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Grantee.

GRANTEE waives its immunity under Title 51 RCW (Industrial Insurance) to the extent required to indemnify, defend and hold harmless AGENCY, the state of Washington and agencies, officials, agents or employees of the state.

10. ACKNOWLEDGEMENT

The GRANTEE shall announce in its publicity materials, on a posted sign, and on a permanent marker that the State of Washington is a source and the Washington State Historical Society the administrator of these funds unless such requirement is modified or waived in writing by the AGENCY.

11. CONFLICT OF INTEREST

The AGENCY may, by written notice to the GRANTEE, terminate this Contract if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute involving the GRANTEE in the procurement of, or performance under, this Contract.

12. PUBLIC DISCLOSURE/CONFIDENTIALITY

- a) GRANTEE acknowledges that the AGENCY is subject to Chapter 42.56 RCW, the Public Records Act and that this Contract shall be a public record as defined in RCW 42.56. Any specific information that is claimed by the GRANTEE to be confidential or proprietary must be clearly identified as such by the GRANTEE. To the extent consistent with Chapter 42.56 RCW, the Agency shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the GRANTEE's information, the Agency will notify the GRANTEE of the request and the date that such records will be released to the requester unless GRANTEE obtains a court order enjoining that disclosure. If the GRANTEE fails to obtain the court order enjoining disclosure, the AGENCY will release the request information on the date specified.
- b) The GRANTEE shall not use or disclose any information concerning the AGENCY, or information which may be classified as confidential for any purpose not directly

connect with the administration of this CONTRACT except (1) with prior written consent of the AGENCY, or (2) as may be required by law.

13. COMPLIANCE WITH APPLICABLE LAW

- a) This GRANTEE will comply with, and AGENCY is not responsible for determining compliance with, all applicable and current federal, state, and local laws, regulations, and policies.
- b) In the event of the GRANTEE's noncompliance or refusal to comply with any applicable law or policy, the Contract may be rescinded, cancelled, or terminated in whole or in part, and the GRANTEE may be declared ineligible for further grant awards from the AGENCY.
- c) The GRANTEE further agrees to indemnify and hold harmless the AGENCY from all liability, damages and costs of any nature including but not limited to costs of suits and attorneys' fees assessed against Agency, as a result of the failure of the GRANTEE to so comply.

14. RECORDS AND REPORTS

The GRANTEE shall maintain books, records, documents and other evidence of accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The GRANTEE will retain all books, records, documents, and other materials relevant to this contract for six years after termination or expiration of the contract, and make them available for inspection by persons authorized under this provision. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

15. RIGHT OF ENTRY

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

16. EVALUATION AND MONITORING

- a) The GRANTEE shall cooperate with and freely participate in any monitoring or evaluation activities conducted by the AGENCY that are pertinent to the intent of this contract, including periodic site inspections.

b) The GRANTEE shall provide the AGENCY with photographs which depict the progress made on the project. Such photographs shall be submitted to the AGENCY at the inception of the project, at the project mid-point, and upon project completion.

17. HAZARDOUS SUBSTANCES

a) Definition. "Hazardous substance, as defined in RCW 70.105D.010, means:

- 1) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010(5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to RCW 70.105;
- 2) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to RCW 70.105;
- 3) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);
- 4) Petroleum or petroleum products; and
- 5) Any substance or category of substances, including solid waste decomposition products, determined by the director or director's designee of the Department of Ecology by rule to present a threat to human health or the environment if released in the environment.
- 6) The term hazardous substance does not include any of the following when contained in an underground storage tank form which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

b) The GRANTEE will defend, protect and hold harmless the AGENCY and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property covered by the project.

18. GOVERNOR'S EXECUTIVE ORDER 05-05

The GRANTEE shall comply with Governor's Executive Order 05-05. In the event that historical or cultural artifacts are discovered at the project site during construction, the GRANTEE shall immediately stop construction and notify the local historical preservation officer and the state historical preservation officer at the Washington State Department of Archaeology and Historic Preservation.

19. PREVAILING WAGE LAW

The project funded under this contract may be subject to state prevailing wage law (Chapter 39.12 RCW). The GRANTEE is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. The AGENCY is not responsible for determining

whether prevailing wage applies to this project or for any prevailing wage payments that may be required by law.

20. NONDISCRIMINATION PROVISION

- a) During the performance of this contract, the GRANTEE shall abide by all applicable federal and state nondiscrimination laws and regulations, including, but not limited to Chapter 49.60 RCW (Washington's Law Against Discrimination) and 42 U.S.C. 12101 et. seq. (the Americans With Disabilities Act [ADA]).
- b) In the event of the GRANTEE'S noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the GRANTEE may be declared ineligible for further contracts with the DEPARTMENT. The GRANTEE shall, however, be given a reasonable time in which to remedy any such noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth in Section 25 of this contract.

21. REIMBURSEMENT

- a) Payments to the GRANTEE shall be made on a reimbursement basis only. Reimbursement shall be for either (1) costs incurred and paid or (2) costs incurred and payable within a minimum of thirty (30) days. No advance payments shall be made to the GRANTEE.
- b) Each request for reimbursement shall be on attached state voucher form and include a completed Project Status Report. The voucher must be certified by an official of the GRANTEE with authority to bind the GRANTEE.
- c) After receiving and approving the voucher and accompanying forms, the AGENCY shall promptly remit a warrant to the GRANTEE. The obligation of the AGENCY to pay any amount(s) under this Contract is expressly conditioned upon strict compliance with the terms of this Contract by the GRANTEE.
- d) The expenditure of state funds shall not exceed the intended state share of total project costs at any time and shall be consistent with the section 6016 of the ESHB 1216.
- e) The final request for reimbursement under this contract shall be submitted by the GRANTEE to the AGENCY with fifteen (15) days following the completion of work or other termination of this contract and be accompanied by a final narrative report.

22. BUDGET MODIFICATIONS

Notwithstanding any other provision of this contract, the GRANTEE may, at its discretion, make modifications not to exceed ten (10) percent of each line item in the Project Budget (Attachment B, hereto). The GRANTEE shall notify the AGENCY in writing prior to making any budget modification or combination of budget modifications that would exceed ten (10) percent of any budget line item. Budget modifications exceeding ten (10) percent of any line item constitutes a Contract Modification and must be approved by both parties in writing prior to implementation of the modification.

23. RECAPTURE OF FUNDS

In the event that the GRANTEE fails to expend state funds in accordance with state law and/or the provisions of this contract, the AGENCY reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. Repayment by the GRANTEE of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the AGENCY is required to institute proceedings to enforce this recapture provision, the AGENCY shall be entitled to its cost thereof, including reasonable attorneys' fees.

24. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this contract are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the contract period, AGENCY may terminate the Contract under the Termination for Convenience clause without advance notice, subject to renegotiation at the AGENCY's discretion, under those new funding limitations and conditions.

25. DISPUTE RESOLUTION

- a) The parties shall make every effort to resolve disputes arising out of or relating to this contract through negotiation.
- b) Except as otherwise provide in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing according to the process set out in this section. Either party's request for dispute hearing must be in writing and clearly state:
 1. The disputed issue(s);
 2. The relative positions of the parties;
 3. The GRANTEE's name, address and project title.
- c) In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be

used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person selected by the GRANTEE, one person selected by the AGENCY, and a third person chosen by the two persons initially appointed.

- d) Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based upon written material if the parties so agree. The disputes panel shall be governed by the provisions of this Contract in deciding the disputes.
- e) The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.
- f) Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party that it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.
- g) All cost associated with implementation of this process shall be shared equally by the parties.

26. TERMINATION OR SUSPENSION FOR CAUSE

- a) In the event the Agency determines the GRANTEE has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate the Contract. Before suspending or terminating the Contract, the AGENCY shall notify the GRANTEE in writing of the need to take corrective action. If corrective action is not taken within 30 days of receiving notice, the Contract may be terminated or suspended.
- b) In the event of termination or suspension for cause, the AGENCY may require the GRANTEE to repay any portion of the state funds paid to the GRANTEE prior to termination.
- c) The AGENCY may enforce this Contract by the remedy of specific performance, which usually will mean completion of the project as described in this Contract. However, the remedy of specific performance shall not be the sole or exclusive remedy available to the AGENCY. No remedy available to the AGENCY shall be deemed exclusive. The AGENCY may elect to exercise any, any combination, or all of the remedies available to it under this Contract, or under any provision of law, common law, or equity.

27. TERMINATION FOR CONVENIENCE

- a) Notwithstanding any provisions of this contract, either party may terminate this contract by providing the other party with written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.
- b) In the event this contract is terminated, the GRANTEE shall be reimbursed for eligible expenses incurred prior to the effective date of such termination and not otherwise paid for by the AGENCY, as the AGENCY reasonably determines.

28. GOVERNING LAW AND VENUE

This contract shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this contract shall be the Superior Court of Thurston County, Washington. The GRANTEE, by execution of this Contract acknowledges the jurisdiction of the courts of the State of Washington.

29. SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of the Contract which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Contract, and to this end the provisions of this Contract are declared to be severable.

**WHPG1136
ATTACHMENT A
STATEMENT OF COST SHARE**

	Cash	In-kind
Property Acquisition	\$335,451	
Construction	\$197,288	

CERTIFICATION

The GRANTEE, by its signature, certifies that project funding from sources other than those provided by this contract and identified above have been reviewed and approved by the GRANTEE's governing body and has either been expended for eligible project expenses, as outlined in the grant application, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this project as described elsewhere in this contract, as of the date and year written below. The GRANTEE shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the project, and shall make such records available for the AGENCY'S review upon reasonable request.

GRANTEE

TITLE

DATE

**WHPG1136
ATTACHMENT B
PROJECT BUDGET**

	HCPF Funds	Cash Match	In-kind
Real Property Acquisition		335,451	
Site Preparation			
Architectural/Engineering	35,760		
Construction	202,641	197,288	
Total	238,401	532,739	

CERTIFICATION

The GRANTEE, by its signature, certifies that the Project Budget set forth above has been reviewed and approved by the GRANTEE'S governing body as of the date and year written below, and that the total cost share required for the project shall be received and expended by July 1, 2011.

GRANTEE

TITLE

DATE

**WHPG1136
ATTACHMENT C
SCOPE OF WORK**

Overview

In 2007 the Environmental Protection Agency (EPA) directed that all existing creosote piling be removed from the tidelands. This required deconstruction of the 122-ft pier and 2 marine railways known as the Eddon Boat Dock. In 2008 a Deconstruction Plan was reviewed and accepted by the Department of Archeology and Historic Preservation (DAHP) in anticipation of a reconstruction of the dock in the same footprint using traditional construction methods and materials. Eddon Boat is located within the last remaining cluster of historic netsheds that serve Gig Harbor's fleet of commercial fishing vessels. Eddon Boat's history of repairing these vessels is compatible with DAHP's approval to engineer the pier to support the small trucks that load and unload fishing net and gear each season. Although the structure will look the same, this engineered use will strengthen the cove's historically significant activity and is consistent with the goals of the project.

Real Property Acquisition

The City acquired the property through a Bond.

Site Preparation

As part of the required remediation, the City removed the dock and bulkhead. The site was graded and is ready for reconstruction.

Design/Engineering

Design and engineer construction drawings for the reconstruction of the dock and bulkhead.

Construction

Reconstruction of the original 122-ft pier includes driving piling and replacement of a bulkhead landing. The pier will be constructed in the original footprint using like materials as permitted by state agencies. The exterior historic railways will be re-positioned for display. The historic ramp, hardware, winch and upgraded float will be repositioned.

CERTIFICATION

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE'S governing body as of the date and year written below.

GRANTEE

TITLE

DATE

FORM
A19-1A



STATE OF
WASHINGTON

Online Help

This document is a protected form for use online. Use the Tab key to advance from text field to text field. Shift-Tab will go to prior text field. Date fields are formatted to return m/d/yyyy format. Calculations will automatically occur as you fill in the number fields, with the total at the bottom. The form can be printed blank and filled in by hand as needed. After completion and appropriate signatures, forward to the Fiscal Office for payment.

(Rev. 1/91)

INVOICE VOUCHER

(new online version 12/01)

AGENCY USE ONLY		
AGENCY NO.	LOCATION CODE	P.R. OR AUTH. NO.

AGENCY NAME		<p>INSTRUCTIONS TO VENDOR OR CLAIMANT: Submit this form to claim payment for materials, merchandise or services. Show complete detail for each item.</p> <p>Vendor's Certificate. I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race, creed, color, national origin, handicap, religion, or Vietnam era or disabled veterans status.</p> <p>BY _____ (SIGN IN INK)</p> <p>_____ (TITLE) _____ (DATE)</p>
WSHS, 1911 Pacific Avenue, Tacoma, WA 98402		
VENDOR OR CLAIMANT (Warrant is to be payable to)		

FEDERAL I.D. NO. OR SOCIAL SECURITY NO. (For Reporting Personal Services Contract Payments to I.R.S.)	RECEIVED BY	DATE RECEIVED
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DATE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT	FOR AGENCY USE

PREPARED BY	TELEPHONE NUMBER	DATE	AGENCY APPROVAL	DATE
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DOC DATE	PMT DUE DATE	CURRENT DOC. NO.	REF. DOC. NO.	VENDOR NUMBER	VENDOR MESSAGE	USE TAX	UBI NUMBER
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REF DOC SUF	TRANS CODE	M O D	FUND	MASTER INDEX			SUB OBJ	SUB SUB OBJECT	ORG INDEX	WORKCLASS	ALLOC	BUDGET UNIT	CITY TOWN MOS	COUNTY	PROJECT	SUB PROJ	PROJ PHAS	AMOUNT	INVOICE NUMBER	
				APPN INDEX	PROGRAM INDEX															

ACCOUNTING APPROVAL FOR PAYMENT	DATE	WARRANT TOTAL	WARRANT NUMBER
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**HERITAGE CAPITAL PROJECT FUND
STATUS REPORT – 2009-11**

Project Name	Contract # WHG
Project Manager	Date

Description of Project Status

Reporting period (month/year): from _____ to _____

Estimated percentage of project completed: _____%

Description of Unresolved Issues

If date of completion differs from the signed contract, please indicate why and what the new estimated date of completion will be: _____. If the total project cost is anticipated to be different from the signed contract, please indicate why and what the new estimated total project cost will be.

FINANCIAL STATUS & CERTIFICATION OF MATCH Mason Agenda - 8
Page 20 of 21

[1] Total Project Expenditures & HCPF Reimbursements to Date				
Budget Categories	Total A, B, and C	A. State HCPF Reimbursements	B. Cash Match in the Project	C. In-Kind Match in the Project
TOTAL				

[2] New Expenditures & Match Certified for Reimbursement				
Budget Categories	Total A, B, and C	A. Cash to be Reimbursed with HCPF Funds	B. Cash Match in the Project	C. In-Kind Match in the Project
TOTAL				

Grand Total to Date [1] + [2]				
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INSTRUCTIONS: Page 1: Describe accomplishments to date and explain problems, if any. Page 2: In top table give total expenditures from all prior Attachment F submissions. In the lower table, provide new cash expenditures and in-kind in the project. Use exactly the same Budget Categories from Attachment B in contract. Signature below is required.

CERTIFICATION (by authorized official): I certify that this report (attachment F) is prepared in an accurate manner and is consistent with our contract with the Washington State Historical Society.

Signature Date

ATTACHMENT G
SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

The GRANTEE, by its signature, certifies that it will do a project that conforms to the *Secretary of the Interior's Standards for Rehabilitation* (36 CFR Part 67), revised 1990, and shall consult with the Washington State Department of Archaeology and Historical Preservation (DAHP) and the AGENCY in regard to the application of the *Standards*.

The GRANTEE agrees to maintain records in a manner that will provide an audit trail to all expenditures reported to AGENCY. The GRANTEE agrees to keep these records for at least four years following the ending date of the grant. With reasonable notice, GRANTEE agrees to make available for inspection by the DAHP or its representative, records of all expenditures related to this grant.

CERTIFICATION

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE'S governing body or board of directors, as applicable, as of the date and year written below.

GRANTEE

TITLE

DATE



Subject: 56th & Pt. Fosdick Frontage Road
Improvements - Cultural Resources Assessment

Proposed Council Action: Authorize the award
and execution of a Consultant Services Contract
with Cultural Resource Consultants, Inc. for an amount
not to exceed \$2,500.00.

Dept. Origin: Public Works/Engineering

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

For Agenda of: February 22, 2010

Exhibits: Consultant Services Contract

Initial & Date

Concurred by Mayor:

CLH 2/17/10

Approved by City Administrator:

Approved as to form by City Atty: Per Email

Approved by Finance Director:

2/17/10

Approved by Department Head:

2/17/10

Table with 6 columns: Expenditure Required, Amount Budgeted, See Fiscal Section Below, Appropriation Required, and two empty columns. Values include \$2,500.00 and \$0.

INFORMATION / BACKGROUND

The City of Gig Harbor in anticipation of future federal stimulus monies must have completed a federal National Environmental Protection Act (NEPA) determination in order to be eligible for funding. The City has a completed State Environmental Protection Act (SEPA) determination on file. This NEPA determination requires that a completed Cultural Resources Investigation and report be completed by a certified archeologist, and be submitted to the various permitting agencies for review and concurrence. The consultant will also assist the City in obtaining the Washington Department of Archaeology and Historic Preservation (DAHP) concurrence during the NEPA process. This work will satisfy DAHP, SEPA, NEPA, Section 106 and EO 0505 requirements and assist the city in developing an Area of Potential Effects letter for this project. Without a completed NEPA determination, the City would not qualify for consideration for Federal funding.

The scope of the construction project generally consists of the reconstruction and widening of the roadway and add left and right turn pockets, curb, gutter, sidewalk and planter strip as a pedestrian buffer on both sides of the roadway, traffic channelization, storm drainage improvements and an illumination system. along 56th and Point Fosdick between the limits of Olympic and Olympic Drive intersections.

Should the City be successful in obtaining federal funding, this project could be ready to be bid and advertised within 6 months as the City would have to update its completed design and bid package from a few years ago and obtain the necessary construction easements from the adjacent property owners.

FISCAL CONSIDERATION

While this project was not an identified objective contained within the 2010 Capital Street Improvement Budget, sufficient funds are available within the Street Capital fund 102-018-595-30-63-46.

RECOMMENDATION/MOTION

Move to: Authorize the award and execution of a Consultant Services Contract with Cultural Resource Consultants, Inc. for the 56th & Pt. Fosdick Frontage Improvements Project for an amount not to exceed \$2,500.00.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
CULTURAL RESOURCE CONSULTANTS, INC.**

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

RECITALS

WHEREAS, the City is presently engaged in the 56th & Pt. Fosdick Frontage Road Improvements Project and desires that the Consultant perform services necessary to provide the following consultation services; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work including any addenda thereto as of the effective date of this Agreement, all of which are attached hereto as **Exhibit A – Scope of Work and Estimated Hours and Fees**, 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 and fee attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. **Payment**.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) 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.

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 March 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, 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

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officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

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

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

8. Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONSULTANT:
Cultural Resource Consultants, Inc.
ATTN: Glenn Hartmann
PO Box 10668
Bainbridge Island, WA 98110
(206) 855-9020

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

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2010.

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its: President/Principal Investigator

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



Cultural Resource Consultants, Inc.

PROJECT SCOPE AND FEE AGREEMENT

CLIENT:	City of Gig Harbor
PROJECT:	56 th & Point Fosdick Improvements
LOCATION:	Gig Harbor, Washington
ANTICIPATED PROJECT DATES:	February – March 31, 2010

The City of Gig Harbor is requesting a cultural resources assessment for the 56th Street NW & Point Fosdick Drive NW Roadway Improvements project in Gig Harbor to comply with NEPA requirements. The project plans to reconstruct and widen the roadway to 11' lanes with a 12' wide center lane. Left turn pockets will be added to the intersection of 56th & Olympic Drive and Point Fosdick & Olympic Drive. The project will provide curb, gutter and a 5.5' wide sidewalk with a 5' wide planter strip as a pedestrian buffer on both sides of the roadway, right turn pocket at the intersection of Olympic Drive and Point Fosdick Drive, traffic channelization, storm drainage improvements and an illumination system. Cultural Resource Consultants, Inc. (CRC) will provide the following project components as part of this cultural resources assessment.

Background Research: CRC will conduct a recorded sites files search at the Washington Department of Archaeology and Historic Preservation (DAHP); review of relevant correspondence between the project proponent, stakeholders and DAHP; and, review of pertinent environmental, archaeological, ethnographic and historical information appropriate to the project area.

Tribal Contact: CRC will contact the cultural resources staff of the affected tribes on a technical staff-to-technical staff basis for relevant project information.

Field Identification: CRC will provide a field investigation of the project location for identification of archaeological and historical resources and, if necessary, excavation of shovel test probes or other exploratory excavations in environments that might contain buried archaeological deposits. Field methods will be consistent with DAHP guidelines.

Documentation of Findings: CRC will document and record historic properties within the project area, including preparation of Washington State archaeological and/or historic site(s) forms. Documentation will be consistent with DAHP standards.

Cultural Resources Assessment Report: CRC will prepare a technical memo describing background research, field methods, results of investigations, and management recommendations. The report will provide supporting documentation of findings, including maps and photographs, and will conform to DAHP reporting standards. Report and support materials will be provided in hard copy and electronically.

CRC will assist the City of Gig Harbor in obtaining DAHP concurrence during the NEPA process. Products provided by CRC will satisfy DAHP, SEPA, NEPA, Section 106 and EO 0505 requirements. CRC will assist the City in developing an Area of Potential Effects letter for the project.

Assumptions: This scope assumes that no more than one unrecorded archaeological site or one unrecorded historic site will be identified within the project area. It would be necessary to adjust the budget if additional sites are found. This budget was prepared with the assumption that no more than ten (10) shovel test probes would be excavated. If extensive archaeological deposits are encountered or if additional shovel test probes are warranted within the project area it may be necessary to modify this agreement to accommodate additional investigations for purposes of site identification.

CRC assumes the client will submit the prepared cultural resources assessment report to DAHP (cover page provided; however, the client should include their own cover letter requesting review) within 15 days of receipt of said report for review. CRC cannot be held liable for reports prepared but not submitted in a timely manner. Additional fees may apply for additional services required as part of DAHP's review process for reports submitted after 15 days of receipt.

Because of recent changes in Washington State law, if human remains are found within the project area, all CRC field investigations will cease immediately, proper authorities will be notified and CRC will not resume field investigations until applicable state laws are addressed.

DAHP guidelines require our technical reports and memorandums to include specific information pertaining to your project to facilitate project review. To expedite your project, we will need the following information prior to commencing work:

- A concise description of your project to be included in our report. This should include a statement defining the overall goal of the project; expected dates of initiation and completion; general methodologies proposed for ground disturbing/construction operations; and projected means to address any environmental mitigation requirements.
- Relevant project plans, blueprints, maps, construction drawings, and as-built schematics, as appropriate. Preferably in PDF format, if available.
- Indication of locations ancillary to the specific project area, but which will be used for any construction equipment staging, utility conduits, refuse disposal, or project environmental mitigation sites.
- Name of the federal, state, or local agency that grants funds, issues permits, or provides government oversight over the project.
- Documentation of communication with the Washington State Department of Archaeology and Historic Preservation.
- Documentation of consultation with affected Indian Tribe(s) and other Stakeholders. Consultation must be initiated by the project proponent, lead government agency, and/or local municipality.
- Name of project area land management agency and contact information (if public property); name of land owner and contact information (if private property).

CRC anticipates completion of the field investigation within 30 days of this signed contract. A final report will be submitted within 30 days of fieldwork completion.

FEE

The fee for services described above is anticipated to be less than \$2,500.00.
Please Note: The time frame and fee for services quote is valid for 60 days.

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

Cultural Resource Consultants, Inc.
Glenn Hartmann
PO Box 10668
Bainbridge Island, WA 98110

Name/Title _____

Glenn D. Hartmann,
President/Principal Investigator

Date: _____

Date: _____



**Business of the City Council
City of Gig Harbor, WA**

Subject: Harborview Dr/Stinson Ave Water Main Design – Consultant Services Contract with Murray, Smith, and Associates

Proposed Council Action: Authorize the Mayor to execute a Consultant Services Contract with Murray, Smith, and Associates, Inc., for an amount not to exceed \$149,528.

Dept. Origin: Public Works

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

For Agenda of: February 22, 2010

Exhibits: Consultant Services Contract, Exhibits

	Initial & Date
Concurred by Mayor:	<u>CLH 2/18/10</u>
Approved by City Administrator:	_____
Approved as to form by City Atty:	<u>VIA EMAIL</u>
Approved by Finance Director:	<u>FD 2/18/10</u>
Approved by Department Head:	<u>SM 2/18/10</u>

Expenditure Required	\$149,528	Amount Budgeted	\$2,175,000	Appropriation Required	\$0
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INFORMATION/BACKGROUND

Over the course of the past few years multiple water main breaks have occurred within the City's water system along Harborview Drive and Stinson Avenue, with the most recent break occurring on February 10th of this year. These breaks have resulted in the disruption of water service in addition to requiring costly repairs to the water main and, at times, resulting in damage to adjacent properties. These breaks are primarily due to the aged and deteriorated asbestos cement water pipes located in these roadways.

In December 2009 the City Council approved the 2010 budget that provides for the replacement of these sections of water main. This proposed consultant services contract would provide for permitting assistance and final design and preparation of bidding documents for the replacement of these problematic water mains.

The anticipated schedule for this project provides for construction completion in October 2010. In order to meet this timeline the permitting assistance and design should be complete in June 2010 with the award of a public works construction contract in July 2010. Subsequently, construction would begin in August 2010.

This work includes the in house project design management, construction management, and construction inspection.

FISCAL CONSIDERATION

The 2010 Water Capital Fund has allocated the following for this project:

2010 Budget for Harborview Drive and Stinson Avenue Water Main Replacements, Water Capital, Objectives No. 4 and 5	\$ 2,175,000
Anticipated 2010 Expenses: Includes City permitting and In house staff time	
Murray, Smith, and Associates Consultant Services Contract	\$ 149,528
<i>Future Public Works Construction Contract</i>	\$ (2,000,000)
<i>Project Design Mgmt, Construction Mgmt, and Inspection</i>	\$ (25,472)
Remaining 2010 Budget	\$ 0

Note: Expenses in *italics* are estimated.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Authorize the Mayor to execute a Consultant Services Contract with Murray, Smith, and Associates, Inc., for an amount not to exceed \$149,528.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
MURRAY, SMITH & ASSOCIATES, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Murray, Smith & Associates, Inc., a corporation organized under the laws of the State of Oregon (the "Consultant").

RECITALS

WHEREAS, the City is presently in need of certain engineering assistance and desires that the Consultant perform services necessary to provide the following consultation services; and

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

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

TERMS

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

2. **Payment.**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed \$149,528.00 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 B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 18 herein. The Project Schedule is attached as **Exhibit C**. Subconsultant Scopes of Services are attached as **Exhibit D**.

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

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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 November 30, 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, 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

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by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. Indemnification.

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

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

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

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

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

8. Insurance.

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

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

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and

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

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

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

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

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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.

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

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

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

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

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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: Murray, Smith &
Associates, Inc.
ATTN: Chris H. Uber, P.E.
1119 Pacific Avenue, Suite 1202
Tacoma, WA 98402
(253) 627-1520

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

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2010.

CONSULTANT

CITY OF GIG HARBOR

By: 
Its: Senior Vice President

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"
CITY OF GIG HARBOR
HARBORVIEW DRIVE AND STINSON AVENUE
WATER MAIN REPLACEMENT PROJECT
ENGINEERING SERVICES
SCOPE OF WORK

The proposed scope of services presented below describes in detail the Engineer's proposed work program, which has been developed to complete the design on a fast-track schedule to meet the City's planned timeline. The proposed scope of services has been prepared in connection with the proposal submitted by Murray, Smith & Associates, Inc. (MSA) in response to the City's Request for Proposals for the Harborview Drive and Stinson Avenue Water Main Replacement. The work program is based on providing a complete set of bid-ready construction documents by June 1, 2010. The timing of the work program is summarized in the proposed project schedule, which was originally submitted with the proposal prepared by MSA. A copy of the proposed project schedule is attached as "Exhibit C." The work program is structured into the following tasks:

Task 1 - Project Management and Coordination – Work under this task includes the project coordination and project management work elements. Included in this task are project communications, meetings, subconsultant coordination and communications, project invoicing and overall project management. Key elements of this task include:

- 1.1 Project startup and overall project management
- 1.2 Kick-off meeting preparation and attendance
- 1.3 Progress meetings and coordination with City

Task 2 - Preliminary Design – Under this task pertinent data and information will be gathered and compiled from the City, County, Department of Transportation, Department of Health, Ecology, which will include existing utility information, as-builts, maps and data. A detailed field survey within the right-of-way of the pipeline route will be completed with utility locating, which will be complimented with Ground Penetrating Radar (GPR) technology. A geotechnical investigation will be completed to evaluate the existing soil, pavement, and groundwater conditions along the pipeline alignment, providing information to be used in the design.

Work under this task will also include confirmation of the proposed water main improvement size using the City's WaterCAD hydraulic model. MSA will prepare a schematic of the alignment and associated engineer's estimation of probable construction cost for three alignments. MSA will also identify a preferred alignment out of the three alignments presented. The proposed alignments will be reviewed with City Staff in a workshop setting. The result of this workshop will be the identification of an alignment to proceed with during the final design phase.

Under this task work will be completed to approximately the 30 percent design completion level and will be documented in a preliminary design engineering report for review and comment by the City. Key elements of this task include:

- 2.1. Information gathering and review
- 2.2. Utility locating and field surveying

- 2.3. Geotechnical investigation and evaluation
- 2.4. Hydraulic modeling to confirm pipeline sizing
- 2.5. Alignment alternatives evaluation and City workshop
- 2.6. Preliminary plan and profile development at 30% design level with cost estimates
- 2.7. Preliminary design engineering report
- 2.8. City review of engineering report and preliminary plans

Task 3 - Permitting Assistance – It is understood that the City has commenced with securing Shoreline Permitting and the SEPA process. Under this task MSA will further assist the City, which may include completing the SEPA Checklist and coordinating the necessary applications and submittals. MSA will also assist the City in preparing and filing applications for additional permits as required for the project. Key elements of this task include:

- 3.1. SEPA process assistance
- 3.2. Shoreline management permitting assistance

Task 4 - Final Design – Under this task the preliminary engineering drawings will be advanced to detailed construction drawings suitable for public bidding. Project specifications and a traffic control plan will be developed. The final project plans, specifications and traffic control plans will be developed in accordance with the 2010 Washington State Department of Transportation Standard Specifications as well as incorporate the requirements of various permits and agency plan reviews. Submittal of the final design plans, specifications and cost estimates will be provided to the City at the 60% and 90% completion levels. Prior to submitting to the City for review, each design set will be subjected to MSA's internal review for constructability, in addition to a thorough QA/QC review of the work. Key elements of this task include:

- 4.1. Design plans, traffic control plans and specifications at 60% with updated cost estimates
- 4.2. Design plans, traffic control plans and specifications at 90% with updated cost estimates
- 4.3. Constructability and QA/QC reviews
- 4.4. City review of plans, specifications and traffic control plans at 60% and 90% development
- 4.5. Contract bid set with final design plans, traffic control plans and specifications at 100%

In accordance with "Section 6.0 Deliverables" of the City's request for proposals, deliverables for this task will include:

- 4.1. Engineering Design Reports and Technical Memorandums – three (3) hard copies and electronic format compatible with Adobe Acrobat Reader 5.0.
- 4.2. Engineering Calculations – three (3) hard copies and electronic format compatible with Adobe Acrobat Reader 5.0.
- 4.3. Project Specifications – one (1) hard copy and electronic format compatible with Adobe Acrobat Reader 5.0.
- 4.4. Conceptual Drawings in 11" x 17" format – one (1) hard copy and electronic format compatible with AutoCAD 2008 and Adobe Acrobat 5.0.

- 4.5. Design Drawings – one (1) hard copy and electronic format compatible with AutoCAD 2008 and Adobe Acrobat 5.0.
- 4.6. Final wet stamped and wet signed mylars 22"x34" size – one (1) hard copy

Task 5 - Public Information Program Assistance – Work under this task includes providing technical assistance in support of City's public information and project communication programs. As part of this task MSA will develop project graphics and technical documents for use and distribution to the public. Key elements of this task include:

- 5.1. Develop graphics and technical documentation for flyers, City website, public meetings and open houses
- 5.2. Attend public meetings and open houses to answer questions and present project information

The following Tasks 6 and 7 will not be included as part of the scope of services at this time, but may be authorized as a contract amendment if the City desires. If so desired by the City, MSA will prepare a revised proposal and associated fee estimate for these tasks at that time. Tasks 6 and 7 are summarized below for informational purposes.

Task 6 - Bidding Assistance – If so desired by the City, MSA will assist the City as needed during the project bidding and award process. Key elements of this task may include:

- 6.1. Respond to bidders questions
- 6.2. Prepare and issue addenda, as necessary
- 6.3. Participate in the pre-bid conference
- 6.4. Attend bid opening and assist with review of bids and recommendation of award

Task 7 - Construction Management Assistance – If so desired by the City, MSA will assist the City as needed during construction of the project. Key elements of this task may include:

- 7.1. Project administration services
- 7.2. Attend pre-construction meeting and periodic progress meetings
- 7.3. Review and comment on shop drawings, submittals and contractor's schedule
- 7.4. Review and respond to requests for information (RFI) and change orders
- 7.5. Review and assist with pay requests and on-site construction observation
- 7.6. Final inspection and project close-out assistance, including separate post-project review and discussion with the City
- 7.7. Prepare as-built drawings per City CAD standards



Exhibit B
SCHEDULE OF RATES AND
ESTIMATED FEE (1 of 2)

Personnel:

Labor will be invoiced by staff classification at the following hourly rates, which are valid from January 1, 2010 to December 31, 2010. After this period, the rates are subject to adjustment.

Senior Principal	\$187.00
Principal	175.00
Principal Associate/Senior Associate	162.00
Principal Engineer/Associate	155.00
Senior Engineering Associate	149.00
Senior Engineer	142.00
Engineer VII	134.00
Engineer VI	128.00
Engineer V	121.00
Engineer IV	112.00
Engineer III	106.00
Engineer II	100.00
Engineer I	93.00
Senior Technician	109.00
Technician	93.00
Junior Technician	77.00
Administrator	82.00
Clerical	66.00

Project Expenses:

Expenses incurred in-house that are directly attributable to the project will be invoiced at actual cost. These expenses include the following:

Computer Aided Design and Drafting	\$13.00/hour
Mileage	Current IRS Rate
Direct Communication Charges	At Cost
Postage and Delivery Services	At Cost
Printing and Reproduction	At Cost
Travel, Lodging and Subsistence	At Cost

Outside Services:

Outside technical, professional and other services will be invoiced at actual cost plus 5 percent to cover administration and overhead.

City of Gig Harbor
 Harborview Drive and Stinson Avenue Water Main Replacement Project
 EXHIBIT B - SCHEDULE OF RATES AND ESTIMATED FEE (2 of 2)

Consent Agenda - 10
Page 13 of 21

TASK	MISA Labor Hours								Total Hours MISA	Labor	ESTIMATED FEES			Total Subconsultants	MISA Expenses	Total
	Principal	PM	Lead Eng	Proj Eng	Bus Eng	CADD	Admin				Subconsultants					
	5175	5162	5125	5121	5112	5189	506				Terra	ASCI	GeoRadar			
Titus	Leathers	Menon	Hall	Harris	Miller											
Task 1 - Project Management and Coordination																
Task 1.1 - Project Startup & Management	2	4						2	8	\$ 1,150				\$ 40	\$ 1,170	
Task 1.2 - Kick-off Meeting	2	4	4					2	12	\$ 1,642				\$ 40	\$ 1,682	
Task 1.3 - Progress Meetings		12	8	4				4	28	\$ 3,716				\$ 220	\$ 3,936	
Task 1 Subtotal	4	20	12	4	0	0	0	8	48	\$ 6,488	\$ -	\$ -	\$ -	\$ -	\$ 300	\$ 6,788
Task 2 - Preliminary Design																
Task 2.1 - Data Collection and Review	1	4	6	4	10				25	\$ 3,195				\$ 50	\$ 3,245	
Task 2.2 - Surveying and Mapping		2	2	2	4	4			14	\$ 1,706	\$ 20,213	\$ 4,751	\$ 24,964	\$ 52	\$ 26,722	
Task 2.3 - Geotechnical Investigation		2	4	2		4			12	\$ 1,514	\$ 18,060		\$ 18,060	\$ 52	\$ 19,626	
Task 2.4 - Pipeline Sizing & Hydraulic Analyses	2	4	8			4			18	\$ 2,458				\$ 72	\$ 2,530	
Task 2.5 - Alignment Alternatives	3	12	24	8	10				55	\$ 7,279				\$ 120	\$ 7,399	
Task 2.6 - Preliminary Design Plan and Profile		16	32	8	16	60			132	\$ 15,988				\$ 1,030	\$ 17,018	
Task 2.7 - Cost Estimates		2		4	8		2		16	\$ 1,836				\$ 20	\$ 1,856	
Task 2.8 - City Workshop	4	4	4				4		16	\$ 2,124				\$ 70	\$ 2,194	
Task 2.9 - Engineering Design Report	2	8	24	4	12	6	12		68	\$ 7,992				\$ 178	\$ 8,170	
Task 2.10 - City Review at 30%	2	4	4			4	4		18	\$ 2,210				\$ 202	\$ 2,412	
Task 2 Subtotal	12	58	108	31	60	82	22	374	\$ 46,302	\$ 20,213	\$ 18,060	\$ 4,751	\$ 43,024	\$ 1,846	\$ 91,172	
Task 3 - Permitting Assistance																
Task 3.1 - SEPA Permit and Processes	1	8	16	4	8		8		45	\$ 5,427				\$ 40	\$ 5,467	
Task 3.2 - Additional Permitting		2	2		4				8	\$ 1,028				\$ 40	\$ 1,068	
Task 3 Subtotal	1	10	18	4	12	0	8	53	\$ 6,455	\$ -	\$ -	\$ -	\$ -	\$ 80	\$ 6,535	
Task 4 - Final Design																
Task 4.1 - Final Plans, Specs & Traffic Control	1	8	16	8	24	40			97	\$ 11,535				\$ 720	\$ 12,255	
Task 4.2 - Cost Estimates		2		2	6				10	\$ 1,258				\$ 20	\$ 1,258	
Task 4.3 - City Review at 60%	2	16	20	8	24	40			110	\$ 13,518				\$ 770	\$ 14,288	
Task 4.4 - City Review at 90%	2	8	8	4	12	30			64	\$ 7,768				\$ 640	\$ 8,408	
Task 4.5 - Contract Bid Set at 100%	2	4	4			8			18	\$ 2,382				\$ 800	\$ 3,182	
Task 4 Subtotal	7	38	48	22	66	118	0	299	\$ 36,441	\$ -	\$ -	\$ -	\$ -	\$ 2,940	\$ 39,391	
Task 5 - Public Information Program Assistance																
Task 5.1 - Public Information Meetings	6	10	8		4	8	4		40	\$ 5,278				\$ 364	\$ 5,642	
Task 5 Subtotal	6	10	8	0	4	8	4	40	\$ 5,278	\$ -	\$ -	\$ -	\$ -	\$ 364	\$ 5,642	
TOTAL - ALL TASKS	38	170	198	42	122	200	42	814	\$ 108,054	\$ 20,213	\$ 18,060	\$ 4,751	\$ 43,024	\$ 5,820	\$ 149,828	

Exhibit C

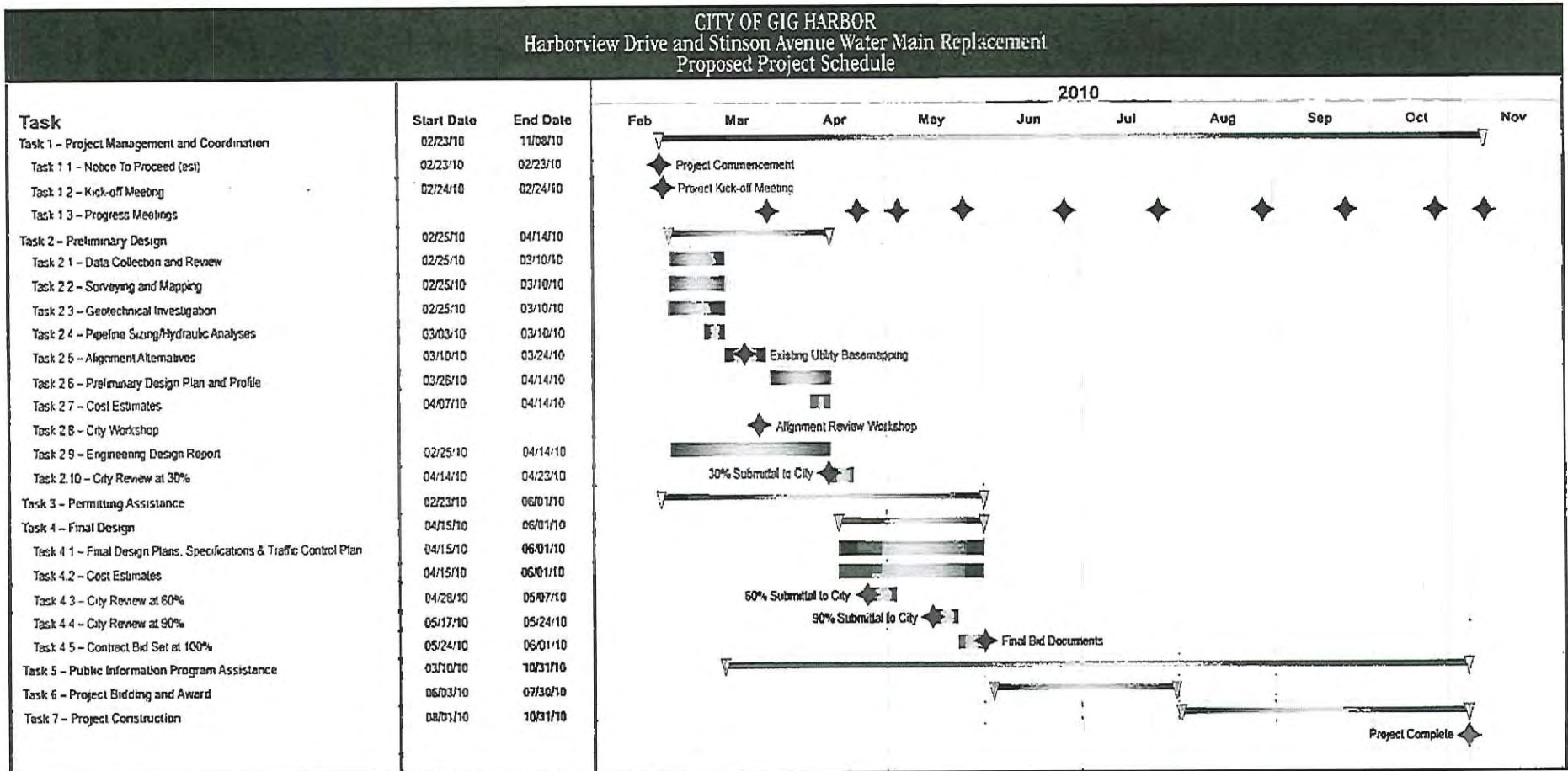




Exhibit D - 1

February 17, 2010

Mr. Marshall Meyer, P.E.
Murray, Smith & Associates, Inc.
2707 Colby Avenue, Suite 1110
Everett, WA 98201-3566

VIA FACSIMILE 425-252-0853

RE: Request for Survey Proposal -- Gig Harbor and Stinson Water Main Survey

Dear Mr. Meyer:

We are pleased to submit for your consideration and approval our proposal for providing horizontal and topographic survey along a selected route shown on attachment to your email dated February 15, 2010. Our scope of work will provide topography survey for approximately 5,500 feet of roadway. The proposed survey will include Harborview Drive from Rosedale Street Northwest to North Harborview Drive; and Stinson Avenue (known as 38th Avenue) from Harborview Drive to Rosedale Street NW

The coordinate system proposed for this survey will be based upon the north Zone of the State Coordinate System. Vertical datum will be in accordance with the City of Gig Harbor benchmark. It is our understanding that you would **NOT** like us to include in this proposal the cost associated with "One-Call" to locate and mark existing underground facilities.

We would propose to perform the work as outlined above for a fee not exceed a budget of \$19,250.00 without your prior approval. The budget is established based on the following breakdown:

84 hours field -two man crew	\$10,920.00
87 hours office- Engineer Tech	\$ 6,325.00
19 hours -Professional Surveyor	\$ 1,805.00
Total	\$19,250.00

We have attached a copy of our 2010 Fee Schedule for your records.

If this is acceptable, please sign this letter of agreement in the space provided below. We will proceed with the work upon receipt of an executed copy of this letter of agreement.

Sincerely,

Mounir "TOM" Touma, P.E.
President

Accepted By _____ Title _____

Date _____ 2010



STANDARD FEE SCHEDULE

EFFECTIVE 1/1/2010

Principle Engineer	\$ 120.00 per hour.
Registered Engineer	\$ 95.00 per hour.
Project Engineer	\$ 80.00 per hour.
Hydrologist	\$ 95.00 per hour.
Engineer Tech	\$ 75.00 per hour.
Registered Land Surveyor	\$ 95.00 per hour.
Two-Man Survey Crew	\$ 130.00 per hour.
Three-Man Survey Crew	\$ 150.00 per hour.

Associated Earth Sciences, Inc.



Celebrating Over 25 Years of Service

February 17, 2010
Project No. TE100050A

Murray, Smith & Associates, Inc.
121 SW Salmon, Suite 900
Portland, Oregon 97204-2919

Attention: Mr. Chris Uber

Subject: Proposal for Subsurface Exploration
and Preliminary Geotechnical Engineering Study
Gig Harbor Water Line
Harborview Drive and Stinson Avenue
Gig Harbor, Washington

Dear Mr. Uber:

As requested, this letter presents our scope of work and cost estimate for subsurface exploration and preliminary geotechnical engineering services to evaluate near-surface soil and ground water conditions for the proposed Gig Harbor water line project. This proposal is based on our discussions with you and general familiarity with the area.

Based on information provided to us by Murray, Smith & Associates, Inc., it is our understanding that the proposed water line will extend along Harborview Drive between Rosedale Street NW and North Harborview Drive and along Stinson Avenue between Rosedale Street NW and Harborview Drive for a total distance of 5,500 feet. Depth of the proposed water line will range from 3 to 6 feet below existing ground surface.

SCOPE OF GEOTECHNICAL ENGINEERING SERVICES

For the purpose of this budget estimate, we have assumed 12 borings (1 boring on average for 500 feet of water line) to depths of up to 10 feet. The number of borings will vary depending on subsurface conditions encountered. We anticipate some contaminated soil could be encountered, and we have included a line item to cover the costs for testing of two samples for the most common contaminants, including gas, diesel, and limited metals. It is our understanding that soil corrosivity is not a concern to Murray, Smith & Associates, Inc., and therefore, soil will not be tested for corrosives.

We will have traffic signs and flagmen to direct traffic within the work area. We will have barriers around our immediate work area to exclude everyone but our work crew. Our exploration equipment will produce noise that could affect people passing by and in adjacent buildings. Because most of the proposed water line alignment is covered with pavement, we

Kirkland ▪ Everett ▪ Tacoma
425-827-7701 425-259-0522 253-722-2992

www.aesgeo.com

have included costs for concrete coring and for patching the drill sites with a flush concrete patch. The borings will be advanced with a compact trailer- or track-mounted, hollow-stem auger drill rig. We will backfill the borings immediately after drilling and complete the concrete patches. No other site restoration is included in this proposal. This proposal includes costs for moving drill cuttings to a location near each of the exploration borings that you select, and does not include costs for removing cuttings from the area. Off-site disposal of cuttings, if required, would add approximately \$200 per boring for a total additional cost of \$2,400. Our costs assume that we will be able to work during normal business hours on a weekday. If we are requested to complete our explorations at night or on a weekend or holiday, additional charges would be incurred.

Upon completion of our exploration program, we would prepare a report describing subsurface conditions and providing preliminary geotechnical engineering recommendations for construction of the project. Specific items that will be covered in our report will include:

- A site plan with exploration locations indicated;
- A summary of our subsurface observations;
- Interpretive exploration logs;
- Recommendations for trench shoring, if required;
- Suitability of trench subgrade materials for pipe/bedding support;
- Allowable "passive" soil resistance on thrust blocking;
- Recommendations for structural backfill;
- Our opinion regarding the suitability of trench spoils for structural backfill;
- General erosion control recommendations and wet weather construction considerations;
- and,
- Recommendations for further study, if warranted.

SCHEDULE AND COST

Estimate for Subcontracted Services:

Traffic control signage and personnel	\$1,000
Concrete coring (where concrete slabs are encountered)	\$500
Laboratory testing (2 samples for contaminant testing)	\$1,000
Drill Rig (12 borings to depths up to 10 feet)	<u>\$6,000</u>
Subcontractor Total	\$8,500

Estimate for AESI Services:

Project setup, permit acquisition and research	\$1,760
Field engineer	\$3,300
Laboratory testing (3 Proctor tests, 3 sieves, 12 moisture contents)	\$1,000
Design team meeting (1 meeting)	\$440
Report preparation	<u>\$2,200</u>
AESI Total	\$8,700 *

* Includes 70 hours at an average rate of \$110 per hour.

Additional design team meetings or services other than those described herein would be extra. The scope of services described herein does not include observation and testing during water line construction. Once the duration of Associated Earth Sciences, Inc. (AESI) involvement during water line construction is known, an estimate for observation and testing during water line construction can be prepared.


We can complete the scope of work described above within an estimated budget of \$17,200. All of our work would be billed on a time and materials basis in accordance with our Schedule of Charges and General Conditions "A", copies of which are attached.

Our preliminary report can be completed within 2 weeks after the completion of laboratory testing. We are available to provide verbal recommendations a day or two after our explorations are completed.

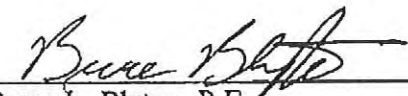
We appreciate the opportunity to submit this proposal and look forward to working with you on this project. If you have any questions or require further information, please do not hesitate to call. Your signature below will provide acceptance of this proposal, authorizing us to proceed with geotechnical services as outlined herein. Please return a signed copy of this proposal to our office for our files.

Sincerely,
ASSOCIATED EARTH SCIENCES, INC.
Tacoma, Washington

The undersigned has reviewed and accepts
the attached General Conditions "A".


Maire Thornton, P.E.
Senior Engineer

Client Date
Authorized Representative Signature


Bruce L. Blyton, P.E.
Principal Engineer

Client (please print name)

Attachments: Schedule of Charges/General Conditions "A"

Effective July 2008

ASSOCIATED EARTH SCIENCES, INC.
SCHEDULE OF CHARGES

Our compensation will be determined on the basis of time and expenses in accordance with the following schedule unless a lump sum amount is so indicated in the proposal or services agreement. Current rates are as follows:

Personnel Charges - Engineers, Hydrogeologists, Geologists, Biologists, Scientists, and Technicians

Principal	\$160.00/hour
Sr. Associate	\$145.00/hour
Associate	\$135.00/hour
Senior.....	\$125.00/hour
Sr. Project	\$115.00/hour
Project.....	\$105.00/hour
Sr. Staff	\$90.00/hour
Staff.....	\$75.00/hour
Legal Testimony (4 hour minimum)	\$230.00/hour

Other Personnel and Disbursement Charges

CAD Operator and Workstation	\$84.00/hour
Prints - Sizes A and B.....	\$2.00/each
Prints - Sizes C, D, E, and F.....	\$5.00/each
Project Assistant	\$70.00/hour
Laboratory Technician.....	\$65.00/hour
Clerical, Word Processing, etc.....	\$53.00/hour
Computer Services (GIS)	\$80.00/hour
Mileage.....	\$0.65/mile
Four Wheel Drive Vehicle.....	\$0.80/mile
Per Diem.....	To be established on a project basis
Subcontractors and Miscellaneous Expenses.....	cost plus 15%

Laboratory Charges (Minimum Laboratory Charge - \$100.00)

Moisture Content	\$20.00/test
Combined Sieve and Hydrometer.....	\$175.00/test
Sieve with Wash #200	\$95.00/test
Sieve with Organic Burn	\$140.00/test
Percent Passing #200	\$55.00/test
Specific Gravity + #4	\$58.00/test
Absorption and Bulk Specific Gravity + #4.....	\$58.00/test
Specific Gravity - #4.....	\$63.00/test
Proctor ASTM:D-1557 and ASTM:D-698.....	\$160.00/test
Permeability-Fines (Falling Head).....	\$160.00/test
Permeability-Granular Soils (Falling Head)	\$160.00/test
Fracture Count.....	\$32.00/test
Pebble Count Petrograph.....	\$32.00/test
Ethylene Glycol Test (3 rock minimum)	\$30.00/rock
Sand Equivalent.....	\$60.00/test
Atterberg Limit	\$90.00/test
Direct Shear	\$350.00/3 point test
Hydrometer	\$85.00/test
Consolidation.....	\$300.00/test
Organic Content	\$65.00/test

Other laboratory tests and equipment rental will be provided on a per job basis.



Feb. 17, 2010

Marshall G. Meyer, P.E. • Civil Engineer
 Murray, Smith & Associates, Inc • www.msa-ep.com
 1119 Pacific Avenue, Suite 1202 • Tacoma, Washington 98402-4323
 Tel: 253.627.1520 • Cell: 253.219.8906 • Fax: 253.627.1923 • mgm@msa-ep.com
meyerm@msa-ep.com

RE: City of Gig Harbor - Harborview Dr and Stinson Ave.

Description: Scan and mark utilities at designated stations on the roadway as well as mark the edges of the concrete panels below the asphalt.

City of Gig Harbor Utility Investigation GPR Project Quote:

Services	Unit	Total Rate
Structural Radar Imaging (16 Hours @ \$250 Per Hour)	Per Day	\$4,000
Mobilization	LS	\$525
Additional Radar Imaging Time (\$250 Per Hour)	Per Hour	
Radan Image Processing/Summary Report (\$110 Per Hour)	Per Hour	
Travel (Sammamish to Gig Harbor Round Trip) (6 Hrs @ \$75 Per Hour)	Per Hour	
Exclusion: Drawings, Survey, Filing Fees & Traffic Control		
	Total	\$4,525

We provide non-destructive structural and sub-surface radar imaging services utilizing Ground Penetrating Radar (GPR) technology. Our company specializes strictly in GPR services in order to provide consistent quality results. We use highly trained and experienced GPR technicians and the latest ground penetrating radar equipment available. Our findings are an interpretation of what we believe that lies below the surface.

If you would like to discuss items in this quote, or if you need any additional information, please call me @ 425-749-6325.

Robert Schall
 Project Manager
 GeoRadar Imaging S.L.C.
 425-765-7833 Office
 425-749-6325 Cell
geo-radar3@comcast.net



Washington
 21418 E. Main Street
 Sammamish, WA. 98074-7002
 425-765-7833 www.georadarimaging.com

PT Tomorrow Conceptual Plans



Lind Simonsen
Community Relations
Pierce Transit
February 22, 2010



PT Tomorrow: Public Involvement Results



- 9 Community Design Workshops
- 2 Summits
- 39 Leader Interviews
- 54 Community Presentations
- 1,700 Website Visitors
- 15 Transit Center Events
- 1,400 Comments Received
- 38,900 Direct Mail Postcards
- 16,500 Brochures Distributed

Over 8,500 Face-to-Face Interactions

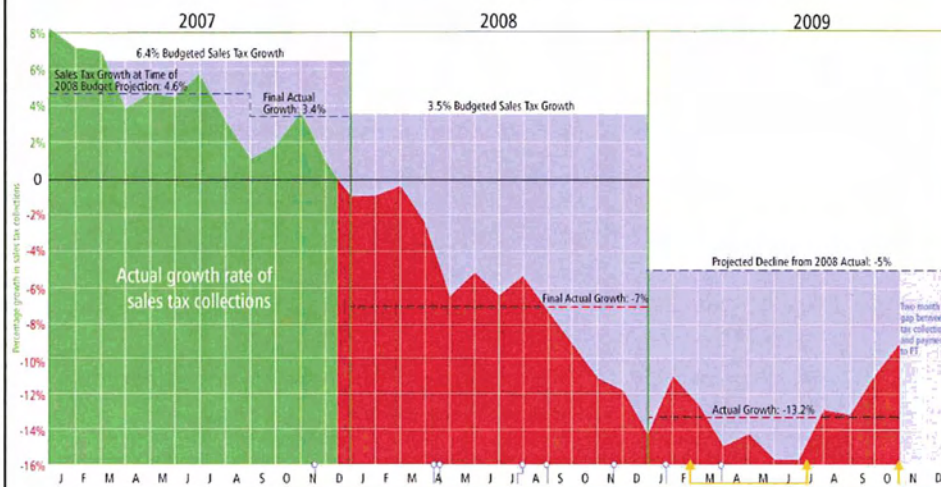


Designing a Transit System the Community Values & Uses

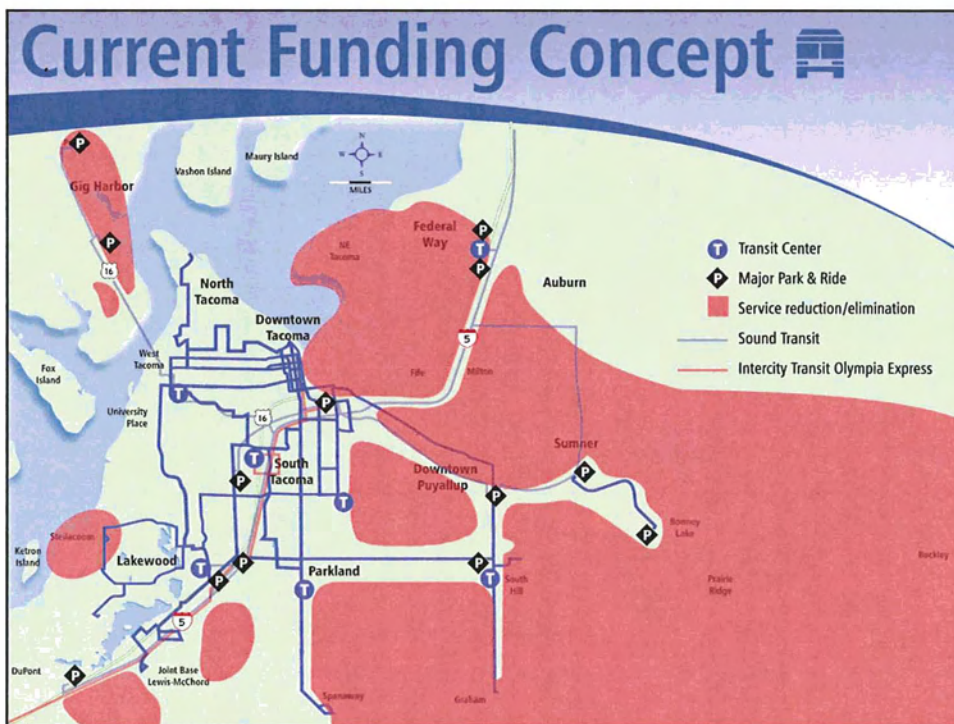
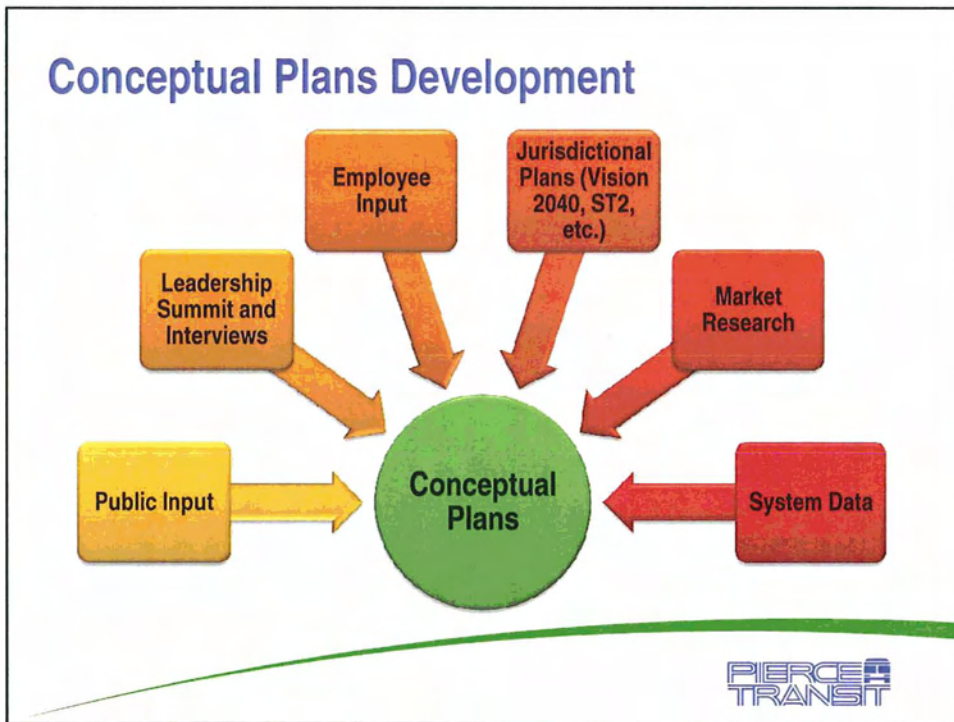
- Services that relate to **Social Service** and **Economic Development** should be the top priority
- Continue to invest in the **Environment** and **Safety & Security**



Sales Tax Revenue Loss



\$68 million by end of 2012



Designing a Financially Sustainable Transit System the Community Values & Uses

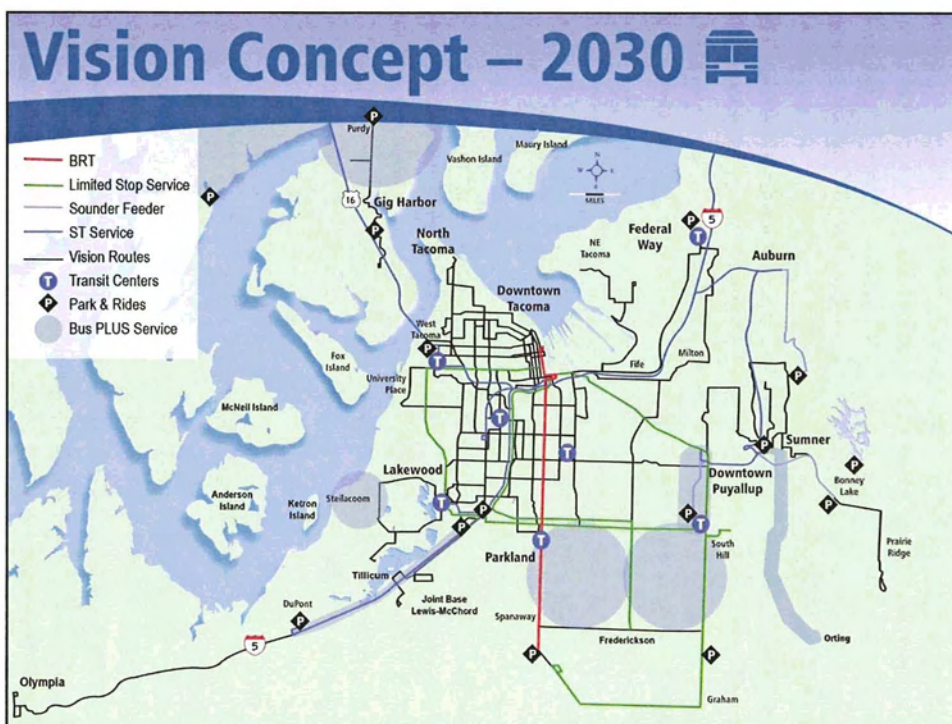
Current Funding Concept

Financially Sustainable

- Significant Reductions
 - Service Hours
 - Span of Service
 - Frequency
 - Coverage
- Eliminate Unproductive Routes
- Maximize Efficiencies

Public Values & Uses

- Economic Development & Social Service
 - Disperses routes in downtown Tacoma to provide better access to jobs and
- Retains Routes:
 - Jobs
 - Population
 - Current Ridership
- Connects Urban Centers



Designing a Financially Sustainable Transit System the Community Values & Uses

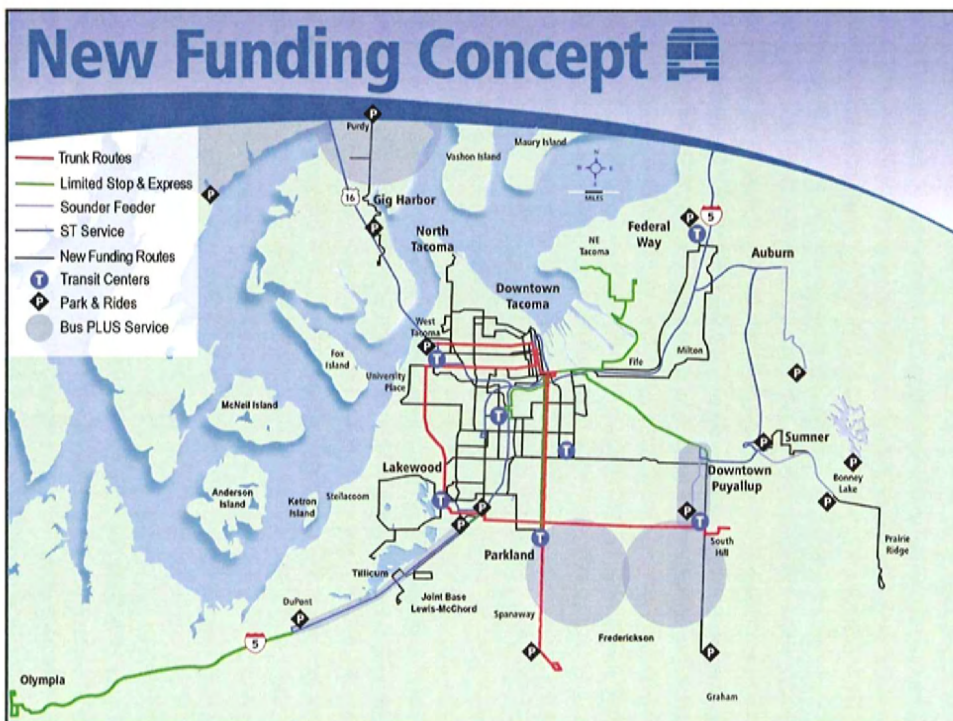
Vision Concept

Financially Sustainable

- Responds to the aspirations of the community
- Requires additional funding sources to achieve

Public Values & Uses

- More Direct
- Increased Frequency
- Connecting Communities
 - Economic Development (jobs)
 - Social Service (basic life needs)



Designing a Financially Sustainable Transit System the Community Values & Uses

New Funding Concept

Financially Sustainable

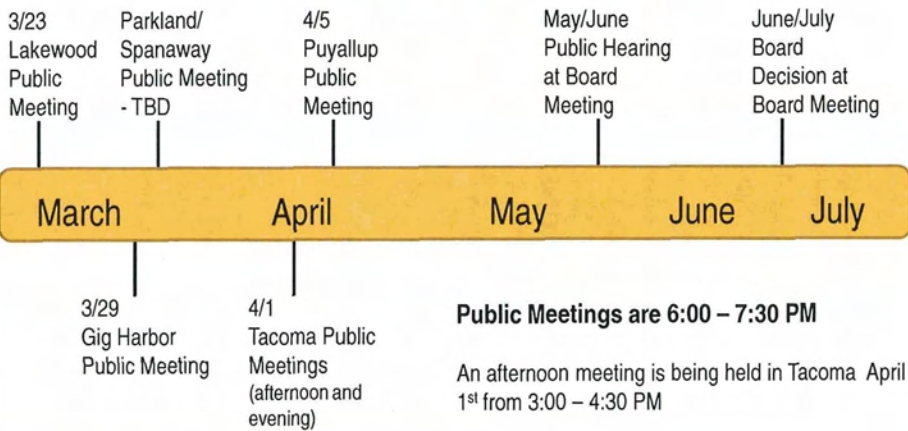
- Some Growth
- Partnerships
- Phased Implementation
- Efficiencies

System the Public Values & Uses

- More Direct
- Increased Frequency
- Connecting Communities
 - Economic Development (jobs)
 - Social Service (basic life needs)
 - Express Services
 - Fixed Route
 - BusPLUS



PT Tomorrow Timeline



Sign up for updates at www.PTtomorrow.org





Subject: Public Hearing and approval of a Resolution to enter into a Development Agreement for the RITA Plat; a 25-lot Subdivision.

Proposed Council Action: Hold a public hearing, review the proposed Development Agreement and approve Resolution No. _____ authorizing the Mayor to execute the agreement on behalf of the city.

Dept. Origin: Planning Department

Prepared by: Tom Dolan
Planning Director

For Agenda of: February 22, 2010

Exhibits: Resolution, Development Agreement, RITA Development Agreement application & Pierce County Preliminary Plat Approvals/Extensions

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

Handwritten signatures and dates:
LH 2/16/10
ADK 2/10/10
approved per council date 2/10/10
AD 2/10/10

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

The proposed Development Agreement would allow for a two year extension to the March 2, 2010 expiration date for the Preliminary Plat Approval previously authorized by Pierce County for the RITA Plat; a 25 lot subdivision. The subdivision was annexed into the city with the recent Burnham/Sehmel Annexation. The applicant indicates that 90% of the required infrastructure improvements have been constructed within the plat. The Development Agreement would allow for the extension of the Preliminary Plat Approval; allow the applicant to complete the required infrastructure improvements and allow the completion of the city's Final Plat Approval process for the subdivision.

ENVIRONMENTAL ANALYSIS

The Development Agreement is not subject to review under the State Environmental Policy Act.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Hold a public hearing, review the Development Agreement, and authorize the Mayor to execute the agreement on behalf of the city.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND THE SUBDIVISION OF LAND, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH W. SMITH, LLC; APPLYING TO ONE PARCEL, TOTALING 6.21 ACRES OF PROPERTY, LOCATED WEST OF BURNHAM DRIVE AND NORTH OF 120TH STREET NW EXTENDED TO THE EAST, GIG HARBOR, WASHINGTON.

WHEREAS, RCW 36.70B.170 authorizes a local government and a person having ownership or control of real property within its jurisdiction to enter into a development agreement; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, the Developer has a fee simple or other substantial beneficial interest in the real property located property located at 12110 Burnham Drive (Parcel No. 0122251027) Gig Harbor, Washington, which is legally described in Exhibit A of the Development Agreement, attached hereto and incorporated herein by this reference; and

WHEREAS, Pierce County originally authorized Preliminary Plat Approval for the proposed 25 lot subdivision and last extended its authorization for a one year period on April 9, 2009; and

WHEREAS, the County's authorization of the Preliminary Plat expires on March 2, 2010; and

WHEREAS, the City's Preliminary Plat Ordinance (Gig Harbor Municipal Code Title 16) contains no provision to extend the plat; and

WHEREAS, applicant Carl E. Halsan submitted a Development Agreement Application to the city of Gig Harbor requesting a two-year extension to the previously authorized Preliminary Plat Approval and its most recent extension; and

WHEREAS, environmental review was previously conducted on the Plat by Pierce County and the subject Development Agreement is exempt from the threshold determination and Environmental Impact Statement requirements of the State Environmental Policy Act; and

WHEREAS, on February 22, 2010, the City Council held a public hearing on the Development Agreement; and voted to authorize the Mayor to execute the agreement on behalf of the city; Now, Therefore,

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

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreement attached hereto as Exhibit A, with W. Smith, LLC.

Section 2. The City Council hereby directs the Planning Director to record the Development Agreement against the Property legally described in Exhibit A to the Development Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this ____ day of February, 2010.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

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

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND W SMITH, LLC, FOR THE
RITA PLAT/PLANNED DEVELOPMENT DISTRICT DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 2010, by and between the CITY OF GIG HARBOR, a Washington municipal corporation, hereinafter the "City," and W Smith, LLC, a limited liability company organized under the laws of the State of Washington, hereinafter the "Developer."

RECITALS

WHEREAS, RCW 36.70B.170 authorizes the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction; and

WHEREAS, the owner of the subject real property, Sterling Savings Bank, has authorized Developer to bind the property with this Development Agreement by way of letter dated February 4, 2010, a copy of which is attached hereto as Exhibit C, thus providing the Developer control necessary to enter into this Agreement; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement; and

WHEREAS, this Development Agreement relates to the development known as RITA, which is located at: 12110 Burnham Drive NW, Application No. PL-DEV-10-0001; and

WHEREAS, the following events have occurred in the processing of the Developer's application:

- a) The Pierce County Hearing Examiner approved the 29 lot Preliminary Plat/Planned Development District on February 19, 1999;
- b) The City of Gig Harbor and the original developer entered into a Utility Extension Agreement for sewer service to the project and recorded the Agreement under AFN 200109170321;
- c) The Pierce County Planning Director approved a Minor Amendment for the project on September 17, 2004 reducing the number of lots in the project to 25 (see Pierce County File No's. 377337 & 378158);

d) The Pierce County Hearing Examiner granted a time extension for the final plat on April 9, 2009 with a new deadline of March 2, 2010 (see Pierce County File No. 655557);

e) The subject project site was annexed into the City limits of Gig Harbor in May of 2009;

f) After a public hearing, by Resolution No. ____, the City Council authorized the Mayor to sign this Development Agreement with the Developer; and

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. The Project. The Project is the development and use of the Property contemplated in this Agreement. The Plat/PDD describes the Project as 25 lot single family project.

Section 2. The Property. The Property consists of 6.21 acres and is legally described in Exhibit "A", attached hereto and incorporated herein by this reference.

Section 3. Definitions. As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

A. "Adopting Resolution" means the resolution which approves this Development Agreement, as required by RCW 36.70B.200.

B. "Certificate of occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

C. "Design Guidelines" means the Gig Harbor Design Manual, as adopted by the City.

D. "Development Standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3).

E. "Director" means the City's Community Development Director or Director of Planning and Building.

F. "Effective Date" means the effective date of the Adopting Resolution.

G. "Existing Land Use Regulations" means the ordinances adopted by the City Council of Gig Harbor in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, the Design Manual, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, building standards. Existing Land Use Regulation does not include non-land use regulations, which includes taxes and impact fees.

H. "Landowner" is the party who has acquired any portion of the Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement.

Section 4. Exhibits. Exhibits to this Agreement are attached hereto and incorporated herein, including the following:

Exhibit A – Legal Description of the Property.

Exhibit B – Project Site Plan

Exhibit C - Letter from Sterling Savings Bank dated February 4, 2010

Section 5. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 6. Term of Agreement. This Agreement shall commence upon the effective date of the Adopting Resolution approving this Agreement, and shall continue in force for a period of 2 years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 7. Vested Rights of Developer. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the exhibits hereto, or as expressly consented thereto by the Developer.

Section 8. Permitted Uses and Development Standards. The permitted uses, the density and intensity of use, the maximum height and size of

proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Property shall be those set forth in this Agreement, the permits and approvals identified herein, and all exhibits incorporated herein.

Section 9. Final Plat. On or before March 2, 2012, the Developer shall submit a complete application for final plat approval to the City together with the required filing fee.

Section 10. Minor Modifications. Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the City's code, and shall not require an amendment to this Agreement.

Section 11. Further Discretionary Actions. Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 12. Existing Land Use Fees and Impact Fees.

A. Land use fees adopted by the City by ordinance as of the Effective Date may be increased by the City from time to time, and applicable to permits and approvals for the Property, as long as such fees apply to similar applications and projects in the City.

B. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in chapter 19.12 of the Gig Harbor Municipal Code.

Section 13. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the Gig Harbor Municipal Code, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

Section 14. Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement. The City may charge fees as necessary to cover the costs of conducting the annual review.

Section 15. Termination. This Agreement shall terminate upon the expiration of the term identified in Section 6 or when the Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence and the lot or parcel upon which such residence is located, when it has been approved by the City for occupancy.

Section 16. Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

Section 17. Effects upon Termination on City. Upon any termination of this Agreement as to the Developer of the Property or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

Section 18. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Property at least 30 days in advance of such action.

Section 19. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties, their respective heirs, successors and assigns. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it.

Section 20. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Property during the term of this Agreement, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property after termination of this Agreement.

Section 21. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the following addresses:

If to the Developer:

Walt Smith
PO Box 1272
Gig Harbor, WA
98335-1272

If to the City:

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

Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 22. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and

above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff, legal and consultant costs not otherwise included within application fees. Such payment of all fees shall be made, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer. In the event Developer fails to pay the fees within the 30-day period, the City may declare the Developer in default and terminate this Agreement after 30 days written notice if the default is not timely cured.

Section 23. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 24. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 25. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 26. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the Adopting Resolution, such invalidity shall not affect the validity of the remainder of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

OWNER/DEVELOPER:

CITY OF GIG HARBOR

By: Walter H Smith
Its: Owner/Developer
Date: 2-8-2010

By: _____
Its: Mayor
Date: _____

ATTEST:

City Clerk

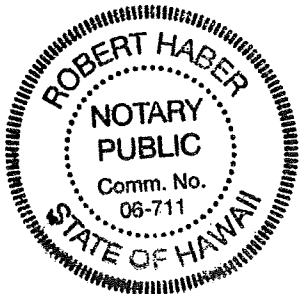
APPROVED AS TO FORM:

City Attorney

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

I certify that I know or have satisfactory evidence that WALTER H. SMITH is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Managing Member of W Smith, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 2-8-10



Printed: Robert Haber
NOTARY PUBLIC in and for Hawaii
Residing at: WAIKOLA HAWAII 96738
My appointment expires: 11-19-2010

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

DATED: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

EXHIBIT "A"

RITA Legal Description

That portion of the Southwest quarter of the Northeast quarter of Section 25, Township 22 North, Range 1 East of the Willamette Meridian lying westerly of Gig Harbor-Purdy County Road; except that portion conveyed to the State of Washington for State Route 16 and State Highway No. 14. Said property is more precisely described as follows:

Beginning at the Southwest quarter corner of the Northeast quarter of Section 25, Township 22 North, Range 1 East of the Willamette Meridian, then North 02°28'44" East 1,324.24 feet; then South 88°00'23" East 68.57 feet, then 15°29'57" East 310.16 feet, then South 02°01'21" East 432.40 feet, then South 15°37'20" East 359.38 feet, then South 04°23'34" East 256.17 feet, then North 87°59'40" West 340.55 feet to the Point of Beginning.

Exhibit C



February 4, 2010

RE: Preliminary Plat of Rita Estates

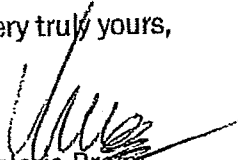
To Whom It May Concern:

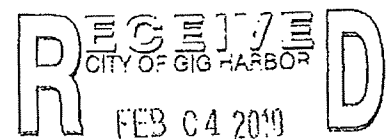
Sterling Savings Bank acquired, through foreclosure, the property being developed as the Plat of Rita Estates in Gig Harbor. The legal description of that property is attached on Exhibit A.

Sterling Savings Bank has entered into a Purchase and Sale Agreement with Walter H. Smith (doing business under his company of W Smith, LLC). Pursuant to that Agreement, Sterling Savings Bank does hereby authorize Walter H. Smith (or his company, W Smith, LLC) to apply for an extension of time for completing the existing preliminary plat. If you need further documentation of this authority, please advise the undersigned. If you would like to discuss this authority further, please contact me as well.

This authority will terminate if the Purchase and Sale Agreement with Mr. Smith terminates. I will advise you in writing if that occurs.

Very truly yours,


Valerie Breen
REO Disposition



COMMUNITY
DEVELOPMENT

11400 SE 8th St., Ste. 110
Bellevue, WA 98004
Phone: 800-875-8669 Fax: 425-451-8233
[Smith - To Whom it May Concern ltr]

HALSAN FREY, L.L.C.
REAL ESTATE DEVELOPMENT & CONSULTING SERVICES

February 1, 2010

Ms. Jennifer Kester, Senior Planner
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

RE: RITA DEVELOPMENT AGREEMENT

Dear Ms. Kester:

Thanks for meeting with Walt Smith and me the recently to discuss the above captioned project. I have checked with the County, and Final Plat was submitted in April 2008 although it has never been recorded. As of May 2009, the property was annexed into the City. I checked with Mojgan Carlson from Pierce County Planning and confirmed the County no longer has any interest in the project.

As a matter of background RITA was submitted to the County as a 32 lot plat/PDD in early 1998. During project review, the number of lots was reduced to 29. The Hearing Examiner reviewed the project as a 29 lot plat/PDD with 26 zero lot line home site and three detached home sites. The Hearing Examiner approved the project on February 19, 1999 and imposed 46 conditions of approval. Condition #31 required that a final plat be submitted within 3 years of the effective date of the decision (March 2, 2002). On September 17, 2004 the new owners of the project obtained approval of a Minor Amendment from the Pierce County Planning Director (attached). It reduced the number of lots down to 25, imposed MSF setbacks, eliminated the gated entry and eliminated one of the proposed access points. This decision and order added 12 new conditions of approval. Time extensions were requested each and every year up until 2009. On April 9, 2009 the Pierce County Hearing Examiner granted a one-year time extension that expires on March 2, 2010.

Now that the project is within Gig Harbor's jurisdiction and because final plat has not been recorded, it will be necessary to apply for final plat approval to the City. The project is about 90% complete (the plat, not the homes), but has been at that stage for more than 18 months. During the recent market correction, several ownership changes have taken place resulting in the Walt Smith acquiring the project from the most recent owner (Sterling Savings Bank). Walt intends on quickly finishing the plat construction and submitting for final plat approval just as soon as possible.

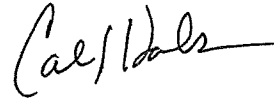
Since Gig Harbor's code doesn't not have time extension provisions similar to Pierce County, we've been advised to seek approval of a Development Agreement that would allow enough time for Walt to complete what's necessary for final plat approval. The attached agreement requests a two-year time period for Walt to complete all work and have the final plat approved by the City and recorded.

PO BOX 1447 * GIG HARBOR, WA * 98335
OFFICE: (253) 307-1922 FAX: (253) 858-9816
EMAIL: carl@halsanfrey.com

- 2 -

Thank you again for all your help in this matter and please call with any questions at (253) 307-1922 or email me carl@halsanfrey.com.

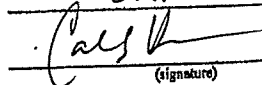
Sincerely,

A handwritten signature in black ink, appearing to read "Carl Halsan", with a long horizontal flourish extending to the right.

Carl E. Halsan
Member

Walt Smith

CITY OF GIG HARBOR GENERAL APPLICATION <input type="checkbox"/> Conditional Use <input type="checkbox"/> Variance <input type="checkbox"/> Site Plan RWV <input type="checkbox"/> Planned Unit Dev <input type="checkbox"/> Rezone <input type="checkbox"/> Admin Appeal <input type="checkbox"/> Performance-Based Height Exc <input type="checkbox"/> Binding Site Pln	CITY USE ONLY Case Number _____ Date Received _____ By _____ Receipt # _____ By _____
Name of project/proposal <u> RITA DEVELOPMENT AGREEMENT </u>	

Applicant CARL E. HALSAN _____ <small>(name)</small> PO BOX 1447 _____ 307-1922 <small>(street address)</small> <small>(telephone)</small> GIG HARBOR, WA _____ 98335 <small>(city & state)</small> <small>(zip)</small>	Property location Property Address <u>12110 BURNHAM DRIVE NW</u> Section <u>25</u> Township <u>22N</u> Range <u>1E</u> Assessor's Parcel Number <u>0122251027</u>
Owner W. SMITH LLC _____ <small>(name)</small> PO BOX 1272 _____ 606-3797 <small>(street address)</small> <small>(telephone)</small> GIG HARBOR, WA _____ 98335 <small>(city & state)</small> <small>(zip)</small>	Full Legal Description <small>(attach separate sheet if too long)</small> SW QUARTER OF THE NE QUARTER OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN; EXCEPT THAT PORTION DEEDED TO STATE FOR SR-16 AND STATE HIGHWAY 14.
I (We) CARL HALSAN _____ <small>(name)</small>  _____ 2/2/2010 <small>(signature)</small> <small>(date)</small> _____ <small>(signature)</small> <small>(date)</small>	Utilities 1. Water Supply: <small>(Name of Utility, if applicable)</small> a. Existing: <u>WASHINGTON WATER</u> b. Proposed: _____ 2. Sewage Disposal: <small>(Name of Utility, if applicable)</small> a. Existing: <u>CITY OF GIG HARBOR</u> b. Proposed: _____
do hereby affirm and certify, under penalty of perjury, that I am one (or more) of the owners or owner under contract of the herein described property and that the foregoing statements and answers are in all respects true and correct on my information and belief as to those matters, I believe it to be true.	
Property Information:	
Existing Zoning Designation: <u>R-1</u> Wetlands on site? <u>NO</u> Slopes exceeding 15%? <u>NO</u>	
Existing land use: Describe (or illustrate separately) existing land use, including location of all existing structures and setbacks (in feet) from property lines. <u>VACANT LAND</u>	

7.11 ACRES
6.21 per Carl H. per
Phone conversation
2/5/10 - See Exh. B
to Draft Deed. Agree.
PK

fax^P

1
50



Waikoloa Highlands Center
Waikoloa Village
68-1845 Waikoloa Road
Suite 106
Waikoloa, Hawaii 96738
808-883-2626
808-883-2627 fax

date:

attention

name Jennifer Kester
company City of Gig. Hbr, Wa 98335
fax number 1-253-858-6408
regarding Rita Plat Authorization

from: Walt Smith 253-606-3797
CC Carl Halsen 253-858-9816
CC Sandy Smith 253-959-4288

notes

I, Walt Smith, authorize Carl Halsen to act and represent me regarding Rite Estate Plat.

Sincerely
Walt Smith
2-4-2010



February 4, 2010

RE: Preliminary Plat of Rita Estates

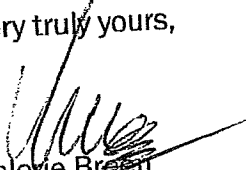
To Whom It May Concern:

Sterling Savings Bank acquired, through foreclosure, the property being developed as the Plat of Rita Estates in Gig Harbor. The legal description of that property is attached on Exhibit A.

Sterling Savings Bank has entered into a Purchase and Sale Agreement with Walter H. Smith (doing business under his company of W Smith, LLC). Pursuant to that Agreement, Sterling Savings Bank does hereby authorize Walter H. Smith (or his company, W Smith, LLC) to apply for an extension of time for completing the existing preliminary plat. If you need further documentation of this authority, please advise the undersigned. If you would like to discuss this authority further, please contact me as well.

This authority will terminate if the Purchase and Sale Agreement with Mr. Smith terminates. I will advise you in writing if that occurs.

Very truly yours,


Valerie Breen
REO Disposition

RECEIVED
CITY OF GIG HARBOR
FEB 04 2010

COMMUNITY
DEVELOPMENT

11400 SE 8th St., Ste. 110
Bellevue, WA 98004
Phone: 800-875-8669 Fax: 425-451-8233
[Smith - To Whom it May Concern ltr]



Office of the Pierce County Hearing Examiner

902 South 10th Street
Tacoma, Washington 98405
(253) 272-2206

STEPHEN K. CAUSSEAU, JR.
Pierce County Hearing Examiner

April 9, 2009

Trilogy Development Group
6750 Kimball Drive
Gig Harbor, WA 98335

**RE: ELEVENTH YEAR TIME EXTENSION, PRELIMINARY PLAT/PLANNED
DEVELOPMENT DISTRICT, RITA/PDD (APPLICATION NO. 655557)**

Dear Applicant:

Transmitted herewith is the Report and Decision of the Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

SKC/ca

- cc: Parties of Record
- PIERCE COUNTY PLANNING AND LAND SERVICES
- PIERCE COUNTY CODE ENFORCEMENT
- PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
- PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
- TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
- FIRE PREVENTION BUREAU
- PIERCE COUNTY PARKS AND RECREATION
- PIERCE COUNTY COUNCIL
- PIERCE COUNTY RESOURCE MANAGEMENT



OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

TIME EXTENSION FOR: ELEVENTH YEAR TIME EXTENSION FOR
PRELIMINARY PLAT: RITA (APPLICATION NO.
655557)

SUMMARY OF REQUEST:

A eleventh year time extension has been timely filed and requested by the applicant.

SUMMARY OF DECISION:

Time extension is hereby granted. However, future extensions may require a public hearing.

FINDINGS AND DECISION:

FINDINGS:

1. A letter from MOJGAN CARLSON was received in support of the time extension.
2. All departments have reviewed the request for time extension.
3. The request for a ELEVENTH year time extension appears to be in accordance with the conditions and recommendations made on the preliminary plat.
4. The expiration date of the time extension will be March 2, 2010.

DECISION:

The request for a ELEVENTH YEAR TIME EXTENSION FOR PRELIMINARY PLAT: RITA (APPLICATION NO. 655557) is hereby granted. However, future extensions may require a public hearing.

ORDERED this 9th day of April, 2009.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 9th day of April, 2009, to the following:

APPLICANT: Trilogy Development Group
6750 Kimball Drive
Gig Harbor, WA 98335

AGENT: Carl Halsan
P.O. Box 1447
Gig Harbor, WA 98335

OTHERS:

The Petrich Trust
51 Orchard Road
Tacoma, WA 98406

Ken and Cindy Manning
6325 Woodhill Drive
Gig Harbor, WA 98332

R.A. Cisco
18311 – 40th Avenue E.
Tacoma, WA 98446

Matthew Sweeney
Attorney at Law
P.O. Box 7935
Tacoma, WA 98406

Peggy Southwell
12217 – 64th Avenue Ct. NW
Gig Harbor, WA 98332

PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY CODE ENFORCEMENT
PIERCE COUNTY DEVELOPMENT ENGINEERING
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
PIERCE COUNTY FIRE PREVENTION BUREAU
TACOMA PIERCE COUNTY HEALTH DEPARTMENT
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

**CASE NO: ELEVENTH YEAR TIME EXTENSION,
PRELIMINARY PLAT/PLANNED DEVELOPMENT
DISTRICT: RITA/PDD, APPLICATION NO. 655557**

NOTICE

1. **RECONSIDERATION:** Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. **APPEAL OF EXAMINER'S DECISION:** The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.

September 17, 2004

**DECISION BY THE DIRECTOR OF
PIERCE COUNTY PLANNING AND LAND SERVICES DEPARTMENT**

CASE NO.: **MINOR AMENDMENT: Rita Preliminary Plat/PDD**
Pierce County Application Numbers: 377337, 378158

**OWNER/
APPLICANT:** Burnham Builders LLC
Attention: Joe Cederland
P.O Box 778
Burley, Washington 98322

AGENT: Matthew L. Sweeney
P.O. Box 7935
Tacoma, Washington 98406

CONTACT: Mojgan K. Carlson, Associate Planner

PROPOSAL: Applicant requests a Minor Amendment to the approved Preliminary Plat/Planned Development District of Rita as follows:

1. Reduce the total number of lots from 29 to 25 single-family residential lots, with an average lot size of 6,506 square feet and smallest lot size of 5,501 square feet;
2. Impose the Moderate Density Single Family (MSF) zone classification setbacks (front yard setback of 25 feet, side yard setback of 5 feet, and rear yard setback of 10 feet);
3. Comply with the Residential Design Standards;
4. Maintain the 30-foot easement location on the adjacent property to the north;
5. Eliminate construction of a gate; and,
6. Reduce the number of access points to one located at the southeast portion of the site.

The project site is located in the Single-Family (SF) zone classification, at 12110 Burnham Drive NW, in the in the NE ¼ of Section 25, T22N, R1E, W.M. in Council District #7.

HISTORY:

- On January 30, 1998, the applicant submitted a Planned Development District/Preliminary Plat application to the County to subdivide a 7.25-acre parcel into 32 single-family residential lots and five (5) open space tracts (approximately 2.2 acres). The PDD was to allow reduction of the front yard setback from the private road from 25 feet to 10 feet and reduction in the side yard setback to zero.
- On July 24, 1998, the County issued a Determination of Nonsignificance (DNS) with a comment deadline of August 10, 1998. No appeal was filed.
- On September 9, 1998, the Peninsula Advisory Commission (PAC) heard the request at its regularly scheduled meeting. The Commission recommended denial of the project based on lack of information to make the PDD findings.
- On September 30, 1998, the Pierce County Hearing Examiner held a public hearing to consider the proposed Preliminary Plat/PDD.
- On February 19, 1999, the Pierce County Hearing Examiner approved the proposed project subject to 46 conditions.
- On February 2, 2002, the applicant requested a time extension under application number 337081.
- Also, on February 7, 2003, the applicant requested another time extension under application number 359091.
- On September 10, 2003, the Pierce County Hearing Examiner approved the request for the one year time extension to March 2, 2004, subject to the new condition imposed by the Washington State Department of Fish and Wildlife (WDFW) regarding compliance with the Bald Eagle Management Plan.
- On November 14, 2003, the applicant applied for a Minor Amendment to the approved PDD/Preliminary Plat of Rita.
- On February 20, 2004, the applicant requested a time extension under application number 382330.
- On April 29, 2004, the Pierce County Hearing Examiner approved the request for the time extension. The new expiration date for the plat is March 2, 2005.
- On August 25, 2004, an addendum to the original DNS was issued by the Planning Department

ANALYSIS AND FINDINGS:

1. Staff has conducted various site inspections. The site is vacant, an irregularly 7.25-acre pie shaped parcel. The property is vacant and is located on the west side of Burnham Drive. Vegetation on the site consists of a mix of evergreen and deciduous trees and understory growth. The site is approximately 341 feet deep at the southern boundary and narrows to approximately 69 feet at the northern boundary. The southwest corner of the site is approximately 150 feet from McCormick Creek and the nearest proposed impervious surfaces are approximately 350 feet from the creek. Large open space tracts are retained on the north and south ends of the proposed plat. The development in the area includes single-family residences and vacant/forested properties. The access to the site is via Burnham Drive NW. The site is located at 12110 Burnham Drive NW, within the NE ¼ Sec. 25, T22N, R1E, W.M.

2. The Pierce County Hearing Examiner approved the PDD/Preliminary Plat of Rita with 46 conditions on February 19, 1999.
3. On December 2, 2002, per Section 18A.25.100.F(3), the zone classification was changed from Moderate Density Single Family (MSF) to Single-family (SF).
4. On November 26, 2003, the application for the Minor Amendment was submitted and deemed complete.
5. On December 20, 2003, the applicant posted notification of the proposal on the site. An affidavit of posting is in the case file.
6. The project is currently located within the Single Family (SF) zone classification. In accordance with Section 18A.85.040(C), this project is subject to the Minor Amendment criteria.
7. The project, as proposed, complies with all criteria outlined in the Pierce County Code, Title 18A, Section 18A.85.040.C.1 (Amendment Standards – Use Permit).
8. The Planning and Land Services Department has not received any unfavorable comments from the reviewing agencies.
9. Pursuant to the State Environmental Policy Act (SEPA) and the Pierce County Environmental Regulations, the Pierce County Environmental Official designate has reviewed this project and issued an addendum to the previously issued Determination of Nonsignificance (DNS) on August 25, 2004, with no comment period.
10. In a letter dated December 31, 2003, the Washington State Department of Ecology (DOE), in part, stated that the soil be sampled and analyzed for lead and arsenic. Staff has recommended a condition of approval to address this issue.
11. Issuance of a decision by Pierce County on the subject proposal pertains only to the County's regulatory jurisdiction and thus compliance with County regulations does not necessarily ensure compliance with other federal or state laws.

CONCLUSION:

Under Title 18A - Pierce County Development Regulations – Zoning, Section **18A.05.035, Recognition of Previously Granted Permits and Approvals**, the proposed plat of Rita (Preliminary Plat/PDD) was approved as a Use Permit (subdivision). The current development regulations permit the uses as a Preliminary Plat and a Use Permits. Therefore, the original approval still governs the use. A new application would not be necessary unless a major amendment is proposed. The minor amendment criteria under Section **18A.85.040 Amendments**, will be used to determine if the proposed amendment is a major amendment or to be considered a significant change

18A.85.040 Amendments.

A Minor Amendment to a Special Use Permit or Preliminary Plat may be approved only if the proposal meets all of the criteria set forth in Section **18A.85.040.C.1.d.** of Title 18A (Development Regulations- Zoning) of the Pierce County Code. These criteria are listed below and followed by staff comments:

Section 18A.85.040.C.1.d.

Minor amendments may be approved or modified with conditions for approval by the Director provided all of the following requirements are met:

- (1) The Examiner does not object to the minor amendment approval.

Comment: A draft copy of this Minor Amendment decision has been forwarded to the Pierce County Hearing Examiner. The Hearing Examiner, in a letter dated September 13, 2004, determined that the proposal is consistent with the original decision and meets the criteria of a Minor Amendment.

- (2) Any proposal that results in a change of use must be permitted outright in the current zone classification.

Comment: The preliminary plat was approved for 29 residential lots. The proposal would not result in a change of use previously approved; however, it will change the number of residential lots from 29 to 25 single-family residential lots.

- (3) A change to a condition of approval does not modify the intent of the original condition.

Comment: The applicant has not requested or proposed any changes to the intent of the original conditions of approval of the approved preliminary plat. However, the applicant has proposed a setback modification (increase) in order to meet MSF setback requirements. The required/proposed setbacks are as follow:

Front-yard from property line	25 feet
Rear-yard from property line	10 feet
Side-yard from property line	5 feet

Reducing the number of building lots, imposing the MSF zone classification setbacks, compliance with the Residential Design Standards, reduction on the number of access points, and elimination of a gate, do not modify any condition of approval for the plat. Staff has agreed with the proposed modifications, as they will meet the MSF setback requirements.

- (4) The perimeter boundaries of the original site shall not be extended by more than 5 percent of the original lot area.

Comment: The perimeter boundaries of the site are not being altered by this amendment.

- (5) The proposal does not increase the overall residential density of a site.

Comment: The proposal does not increase the overall residential density of the site, as the applicant is reducing the number of proposed residential lots from 29 to 25 lots or reducing the density of 4 dwelling units per acre to 3.4 dwelling units per acre. The revised density meets the density requirements of the MSF zone.

- (6) The proposal does not change or modify housing types.

Comment: The proposal does not change or modify housing types. The plat remains a single-family housing development.

- (7) The proposal does not reduce designated open space.

Comment: The proposal does not reduce the designated open space within the plat. The original proposal contained approximately 2.2 acres of open space which is proposed to remain unchanged.

- (8) The proposal does not add more than 25 percent gross square footage of structures to the site.

Comment: The applicant meets this criterion, as the proposal does not add any gross square footage of structures on the site.

- (9) The proposal does not increase the overall impervious surface on the site by more than 25 percent.

Comment: The proposal does not increase the overall impervious surface by more than 25 percent on the site nor does it increase the density. The number of dwelling units has been decreased from 29 to 25. With the reduction of four lots the total impervious surface coverage on the individual building lots will be reduced.

- (10) Any additions or expansions approved through minor amendments that cumulatively exceed the requirements in this Section shall be reviewed as a major amendment.

Comment: This is the first Minor Amendment proposed for the PDD/Plat of Rita. Thus, the proposal does not cumulatively exceed the requirements of the Section and does not need to be reviewed as a Major Amendment.

Section 18A.85.040.C.1.

- e. Minor amendment approvals shall be in writing and attached to the official file.
- f. A finding that addresses the applicability of any specific conditions of approval for the original permit shall be required.
- g. Copies of the decision shall be mailed to all parties of record.

Comment: This Decision will be attached to the Plat/PDD of Rita Planning file and copies sent to the reviewing departments and parties of record. All conditions of approval shall be carried over from the prior decisions. A condition of approval states the same.

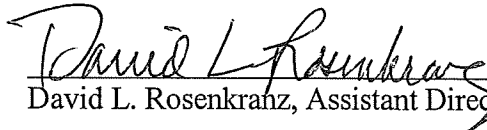
DECISION: The Planning and Land Services Department hereby approves the Minor Amendment to Preliminary Plat/PDD of Rita. The approval is subject to compliance with the following conditions:

1. The applicant must be aware that this approval does not constitute building or other permit approval, which must be obtained through the appropriate agencies.
2. The original conditions contained in the Examiner's decision dated February 19, 1999, and all other conditions of subsequent time extensions, remain pertinent, still apply, and are binding except where modified by this decision.
3. A Memorandum of Agreement shall be executed between the applicant and the Director of Planning and Land Services Department, and recorded with the Pierce County Auditor. The Memorandum of Agreement shall include the requirements and conditions contained in this Order. No building permit will be issued prior to recording of this agreement.
4. The Final Plat submittal shall include a preliminary plat map revision that accurately shows all tracts/open space, lots, and improvements.
5. The operation of heavy equipment and associated materials in the construction of this project has the potential to result in fugitive dust being generated from the site. Impacts to neighboring properties shall be controlled by the use of watering trucks to water frequently used roads and associated areas as necessary to prevent the travel of fugitive dust.
6. All provisions of Section 18A.35.025 Residential Design Standards must be met. This includes installation of concrete curbs, gutters and sidewalks, street trees along both sides of the internal plat road, streetlights, and a minimum of 14,000 square foot on site recreational area/park.

7. Prior to Final Plat Approval the applicant shall provide a conceptual park/playground plan to the Planning Department for review and approval. The park plan, at the minimum, shall include 14,000 square feet of recreation/park areas. No recreational area/park shall be less than 5,000 square feet in size. If not installed prior to final plat approval, the park/playground improvements must be bonded and completed within one year of Final Plat Approval. The plan shall incorporate recreational facilities which address needs of both children and teenagers/adults, i.e., playgrounds/tot lots and sport courts. The park plan shall also include seating associated with the recreational facilities, turf areas of sufficient size for informal play, and trees sufficient to provide shade for the various park activities. The park plan shall include:
- a) A grass area for informal play, to be hydroseeded or sodded with a grass mix suitable for informal athletic use and overlain over a suitable base of soil amendment;
 - b) Recreational facilities for children, i.e., a "tot lot" or similar playground feature, unless a note is placed on the final plat stating that: "All lots shall be restricted to residents in which at least one member of the family or an individual is age 55 or over and no member of the household is under 18 years of age.";
 - c) All-weather recreational features for teenagers and adults, i.e., a multi-purpose sport court, gazebo, jogging trail, etc.;
 - d) A minimum of one (1) bench of durable weather resistant construction material shall be provided within the portion of the park(s);
 - e) A minimum 42-inch wide, all-weather pedestrian path, which shall connect the recreational facilities, i.e., tot lot, gazebo, sport court, etc., with the plat street sidewalks;
 - f) The park tract shall be separated from future lots with a chainlink fence or other type of barrier, with a minimum height of 3-4 feet;
 - g) An on-site water line provided for maintenance of the park sites by the homeowners association or a designated caretaker; and
 - h) Additional permitted amenities and features which may be added to the recreation facility at the discretion of the developer or subdivision homeowners association.
8. If a tot lot/playground is required, it shall comply with the following standards:
- a) The playground shall be provided with a minimum of one (1) outside toy of durable weather resistant construction;
 - b) Outside toys shall be connected to the ground with posts mounted in concrete or another permanent method. An outside toy play area shall be covered with a minimum of twelve (12) inches of playground-type gravel, wood chips, or other approved material. The graveled area shall extend beyond the edge of the farthest reaching outside toy element by a minimum of six (6) feet in all directions and shall be contained within a bordering material. For swings, surfacing material shall extend, in back and front, twice the height of the suspending bar;
 - c) The surface surrounding the tot lot/playground area shall be smooth, without loose rocks, depressions, holes, hills, or sight-obscuring vegetation; and

- d) A minimum of two (2) benches of durable weather resistant construction material shall be provided adjacent to the outside toy location.
9. If a sport court is the form of teenager/adult recreational facility to be provided, the sport court shall comply with the following standards:
 - a) The facility shall include a 4 inch thick concrete pad a minimum of 46 x 36 feet in size;
 - b) The pad will serve as a multiple use recreation surface for sports and other neighborhood activities;
 - c) A sturdy outdoor basketball backboard and hoop (with net) shall be mounted with the backboard 3 feet inside the edge of the concrete pad at mid-point on one of the 46 foot long sides of the pad;
 - d) A minimum of one (1) bench of durable weather resistant construction material shall be provided adjacent to the sport court; and
 - e) The surface surrounding the recreation pad area shall be smooth, without loose rocks, depressions, holes, hills, or sight-obscuring vegetation.
 10. A note shall be placed on the final plat stating:
 - a. "The landscaping/open space tracts shall be maintained by the residents of plat of Rita for the life of the project. All plant materials shall be pruned and trimmed as necessary to maintain a healthy growing condition. The landscaping area shall be kept free of trash. Any plant material shall be replaced within the spring or fall growing season following plant loss but not greater than 180 days from time of loss, and
 - b. All lot ownership shall have an equally undivided interest in all private tracts for tax purposes."
 11. Prior to issuance of a site development permit, the applicant shall undertake the soil sampling and analysis for lead and arsenic as set forth in the Department of Ecology (DOE) letter of December 31, 2003, and forward the results of such testing to Pierce County Planning and Land Services and the Washington State Department of Ecology for review. No activity shall take place until such time that DOE and the Planning Department have accepted and approved the soil sampling analysis report for this site.
 12. All structures shall comply with the City of Gig Harbor's design manual requirements for single family structures.
 13. All site lighting shall be constructed with the City of Gig Harbor Engineering Department's standard fixture.
 14. The landowner/timber owner should contact the Washington State Department of Revenue, Forest Tax Section, prior to harvest, to register with the Department RCW 84.33.

In accordance with Pierce County Code, 1.22., Appeals of Administrative Decisions to the Examiner, any person aggrieved, or affected by any decision of an administrative official may file a notice of appeal. A notice of appeal, together with the appropriate appeal fee, shall be filed within 14 days of the date of an Administrative Official's decision, at the Public Services Building, Development Center, Planning and Land Services Department, 2401 So. 35th, Tacoma, Washington.


David L. Rosenkranz, Assistant Director

for: Chuck Kleeberg, Director,
Planning and Land Services

TRANSMITTED TO:

OWNER/ Burnham Builders LLC.
APPLICANT: Attention: Joe Cederaland
 P.O Box 778
 Burley, WA 98322

AGENT: Matthew L. Sweeney
 P.O. Box 7935
 Tacoma, WA 98406

Pierce County Fire Marshal
Pierce County Building Official
Pierce County Development Engineering, Lawrence Onorati, CE2
Tacoma-Pierce County Health Department
Pierce County Public Works and Utilities
Pierce County Environmental Biologist, Scott Sissons
Pierce County Cartography
Pierce County Council
Pierce County Hearing Examiner
Pierce County Assessor-Treasurer
Pierce County Fire Protection District #5
Sheriff's South Hill Precinct, Lt. Jim Jenkins
Peninsula School District
Washington State Department of Natural Resources
Washington State Department of Ecology
Washington State Department of Revenue
Washington State Department of Transportation
City of Gig Harbor
Nisqually Indian Tribe
Squaxin Island Indian Tribe

Parties of Record:

Trilogy Development Group
Guy Barrett
David & Margaret Southwell

6750 Kimball Drive
Tacoma Plume Site Manager
12217-64th Ave. Ct. NW

Gig Harbor WA 98335
Department of Ecology
Gig Harbor WA 98332

MC:sl

Rita MIA-MC.doc



Office of the Pierce County Hearing Examiner
902 South 10th Street
Tacoma, Washington 98405
(253) 272-2206

STEPHEN K. CAUSSEUX, JR.
Pierce County Hearing Examiner

February 19, 1999

Trilogy Development Group
6750 Kimball Drive
Gig Harbor, WA 98335

RE: PLANNED DEVELOPMENT DISTRICT/PRELIMINARY PLAT: Rita

Dear Applicant:

Transmitted herewith is the report and decision of Pierce County Hearing Examiner relating to the above-entitled matter.

Very truly yours,

STEPHEN K. CAUSSEUX, JR.
Hearing Examiner

SKC/llm

cc: Parties of record
PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT



OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.: PLANNED DEVELOPMENT DISTRICT/PRELIMINARY PLAT: Rita

APPLICANT: Trilogy Development Group
6750 Kimball Drive
Gig Harbor, WA 98335

AGENT: Ray Frey and Associates
Attn: Carl Halsan
P. O. Box 1447
Gig Harbor, WA 98335

SUMMARY OF REQUEST:

Applicant proposes to subdivide, within a Planned Development District, a 7.11 acre site into 26 two-family, duplex zero lot line lots and 3 single-family residential lots, on 29 lots, with 5 open space tracts, to be served by City of Gig Harbor sanitary sewers, Harbor Water Company, and a private road, in the Moderate Density Single-Family (MSF) zone classification, located at 119th and Goodnough Drive, in the NE 1/4 of Sec. 25, T22N, R1E, W.M., in Council District #7.

SUMMARY OF DECISION:

Request granted, subject to conditions.

PUBLIC HEARING:

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on September 30, 1998, at 10:03 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "1" - Planning and Land Services Staff Report and Attachments

- EXHIBIT "2" - Parcel Map
- EXHIBIT "3" - Topographic Map
- EXHIBIT "4" - Artists rendition planned view street level
- EXHIBIT "5" - Site plan dated September 8, 1998
- EXHIBIT "6" - Easement
- EXHIBIT "7" - Letter to property owner to Mr. and Mrs. Greeson from Carl Halsan
- EXHIBIT "8" - Drainage improvements shown on site plan
- EXHIBIT "9" - Mr. Greeson's submittal
- EXHIBIT "10"- Excerpt from comprehensive plan
- EXHIBIT "11"- Excerpt from comprehensive plan
- EXHIBIT "12"- Aerial photograph
- EXHIBIT "13"- Geotechnical report
- EXHIBIT "14"- Conceptual Storm Drainage Design dated October, 1998
- EXHIBIT "15"- Letter from Tom Morfee to Examiner dated October 15, 1998
- EXHIBIT "16"- Letter from Phil Arenson to Examiner dated October 15, 1998
- EXHIBIT "17"- Letter from Jeffrey Sharp, Development Engineer, to Greg Heath dated October 22, 1998
- EXHIBIT "18"- Letter from Jeffrey Sharp to Greg Heath dated November 5, 1998
- EXHIBIT "19"- Letter from Jeffrey Sharp to Examiner dated December 23, 1998
- EXHIBIT "20 Letter from Phil Arenson to Examiner dated December 29, 1998
- EXHIBIT "21- Letter from Tom Morfee to Examiner dated January 4, 1999
- EXHIBIT "22- Letter from Examiner to Tom Morfee dated January 4, 1999

- EXHIBIT "23-** Letter from Tom Morfee to Examiner dated January 18, 1999
- EXHIBIT "24-** Letter from Jeffrey Sharp to Examiner dated January 20, 1999
- EXHIBIT "25-** Letter from Tom Morfee to Examiner dated January 26, 1999

RAYMOND HOFFMAN appeared and presented the Planning Division Staff Report. A second revision to the preliminary plat was presented at the PAC meeting. The request is for 26 duplex lots and three single-family residential lots for a total of 29 homes which will be served by sanitary sewers and public water. No appeals were filed to the DNS, but the PAC unanimously recommended denial. The creek is 50 to 75 feet off-site, and the parcel is located within the MSF classification. Vacant parcels are to the west and single-family dwellings to the south. The average lot size is 5,000 square feet and the density is four dwelling units per acre. The open space equals 2.2 acres and a storm drainage pond is in the southwest corner which will be sized per the engineer. Setbacks include ten feet to the main plat private road, zero to the driveway, zero to the side yard, a possible reduction from Goodnough Drive, and ten to 15 foot rear yard setbacks. He is concerned about the setback on lots 21 through 24 for an easement which serves properties to the west. He understands that they will rewrite the easement to end at the private road through the gate. The site meets most of the comprehensive plan policies and includes a large open space and fence. It meets all of the requirements of the MSF classification. The main issue is the PDD criteria and the site meets all but one. They have not designed recreational amenities into the plat, and while showing sidewalks, must add street trees and lighting. They should also move the homes away from the easement. The property to the west is in one to two acre lots.

Appearing was CARL HALSAN on behalf of the request who stated that the two lots to the west have not been developed. Exhibit "3" is the drainage map showing the creek and the site. Exhibit "4" is an artist's rendition of the plat, and Exhibit "5" is the revised site plan. The site is within an urban growth area and urban services are available. The applicant could request 43 units, but is proposing 29 which calculates to a density of four dwelling units per acre. They submitted a new site plan on September 8, 1998, and changed the proposal to meet staff concerns. The site contains 7.25 acres. When SR-16 was constructed the State relocated Burnham Drive, but it was not surveyed so the west property line of the road is not set. They are working with the County Public Works Department to establish a firm location. However, the most recent calculation is 7.25 acres. The revised site plan reduces the density from 32 to 29 lots, and they have eliminated triplexes and will now build all duplex structures with the except of lots 29, seven, and eight. Open space has been increased from 1.6 to 2.4 acres. They are proposing a moderate density, neo-traditional, pedestrian friendly subdivision. They starting planning with an architect, not an engineer with the objectives of obtaining a sense of privacy, ownership, as much open space and landscaping as possible, low maintenance, large kitchens, and great rooms. Sidewalks will be located on the front and each unit accesses from an alley.

It will have the maximum curb appeal and only eight curb cuts are necessary for the 29 units. The site has no unbuildable steep slopes and the 30% slopes which are usable have been retained as open space. The slope area shown on Exhibit "3" is not part of the site. They are asking no reduction in exterior setbacks. He introduced the easement as Exhibit "6" and stated that it is a 30 foot easement for access and utilities and they will work with the property owner to terminate it at the private road. Exhibit "7" is a letter to the easement holder. The engineer looked at the site and soils, and catch basins will bring storm water through bioswales and into a pond. The Santa Barbara Unit Hydrograph Method is used for sizing the pond. The PAC recommended several conditions should the Examiner decide to approve the plat. The property sits 10 to 25 feet below the travel portion of SR-16 and he is unsure of the effectiveness of buffering. They could do a berm/fence if noise is an issue. However, they are not opposed to the condition, but need direction. They agree with the proposed condition regarding street trees and street lights. They do not want a sport court as a recreational amenity as they probably will market the site to older people or young families. Barbeques and tot lots would be more appropriate. They could also post a bond to allow the homeowners to determine the type of park. Concerning the fence along the west property lines, about 75 to 100 linear feet separate the edge of the property and the top of the bank. It is not possible to develop this area and the next possible development is across the creek, but they will fence the property line if the Examiner desires. They will provide a five foot setback for the easement and only four lots can use the 30 foot easement for access. They should be able to reduce the setback to zero for a 50 foot easement. They are proposing two car garages and will also have on-street parking as they will have a 50 foot wide private road with parking strips on one side. One car can be located between the garage door and the sidewalk. Gates will be at both ends.

Appearing was TOM MORFEE, Peninsula Neighborhood Association, who stated that the site is on Burnham Drive.

Appearing was SKIP GREESON who owns two parcels to the west and his easement concerns were addressed this morning. Footprints on the site plan show zero lot line setbacks. With no access from the interior plat road it could limit development of adjoining properties. He wants the record to remain open until the access easement and gates are resolved. These issues should be resolved prior to preliminary plat approval.

Appearing was TOM MORFEE who introduced Exhibit "4" which was presented to the County this morning, but not to PAC. He wants the record open to review new information. He ascertained from Ray Hoffman that he had not talked with the City of Gig Harbor, but had received two letters. Mr. Morfee's discussions have been with the city and he intends to review a County package and make comments and recommendations as to whether or not it complies with city standards. It is possible that the extension of sewers is contingent on compliance with city standards. There is not a clear interlocal agreement between the city and the county.

CARL HALSAN stated that he had met with the city three times and that the proposal must go through the City Council, but not until the County has approved the plat.

TOM MORFEE then continued by stating that the sidewalk is 200 feet from the creek, but is close to the steep slope and water will discharge to the creek. He wants to see a conceptual storm drainage plan as the discharge will be to a salmon bearing stream which has had substantial restoration efforts. The Santa Barbara method does a better job of analyzing the detention pond, but also creates large manmade ponds. The effect is that we will now have a large pond in a natural open space area. The pond and storm system will require substantial degradation of the area. It is critical that the conceptual plan be provided. The lots should also be larger than 50 feet by 35 feet. The record should remain open for review and response. History shows enough mistakes in the past and we need reasonable requirements. The County has historically required buffering on SR-16 to maintain the screening along the corridor. The protection is for the scenic corridor and it is possible to provide trees and shrubs to break up an urban development. Some vegetation should be planted between the road and development which will also make the development more attractive. A pending ordinance requires a 50 foot vegetative buffer along SR-16. He supports extensive natural buffering with native trees and the applicant is not opposed if it is reasonable. He is correct that he needs direction. He cannot support a future bond for recreational improvements and he would prefer as much open space as possible be in the natural condition which is the general setting of the community. He would not want something drastic in the future, and we should identify the type and scale of the recreational facility before the plat leaves County jurisdiction. The local community should dictate whether it needs a fence or not. The easement needs more hashing out and we do not have a firm site plan until the easement issues are resolved as Mr. McCarthy required in the Davis subdivision. We need to fix the boundaries of Burnham Drive and we need to think about pedestrian access to other areas. A new park is proposed north of Zehmel Drive to the south, and Gig Harbor North will be to the southeast. We should explore pedestrian access to these areas or at least get it started. Each piece should provide its own contribution as such will reduce car traffic. Emergency vehicle access to the west properties should also be addressed.

Appearing was SAM YEHALAM who owns property to the west of the Greeson parcel and is confused as to the notice that was given and also as to the number of units proposed. The fence is ideal for him because of the creek watershed. Three acres to the west can develop into a maximum of 18 lots. Also, an additional parcel is to the north and could add traffic to the easement or to Burnham Drive. He has not spoken to anyone at Pierce County regarding the project. The properties to the west were zoned Conservancy and Natural, and then in 1992 Rural Special which authorized a five acre minimum lot size. Provisions in the comprehensive plan protect ecology in critical areas. We are required to protect the environment which includes the watershed by such things as reduction of densities. While normally a plat must meet the minimum density, it can be reduced in

consideration of the environment. He then introduced Exhibit "11", excerpts from the comprehensive plan. He built a home on 1.5 acres on a site where only 70 feet could be used. Most of the site was in the canyon. Much wildlife is in the canyon and the State planted fish in the creek. The creek flows constantly, but at different rates. The southwest corner of the parcel is near the top of the canyon. A fence is appropriate to protect the creek and canyon. This site is different from others and he submitted pictures. They are developing the flat portion, but should reduce the density and allow a greater setback from the west property line. He requested the record remain open for review.

Appearing was DAVID BENTLEY, a partner of the applicant, who introduced Exhibit "12", an aerial photograph. They have conceptually designed a storm plan. Where are people to live if not in the urban areas of the County? This neighborhood will work. It is not their job to provide sidewalks to Gig Harbor North. Density is an issue. They have decreased the density, and if it is lowered The plat will not work. Some points of the site will directly discharge. Water flows from their site to the creek at present and the pond will mean less flow during flooding events. It is a better system for the creek.

Appearing was PEGGY SOUTHWELL who owns property on the west boundary toward the north end. She has two major concerns which includes density. While the site is in the urban growth area, it doesn't conform with the surrounding area. Homes here are on one to two acres and some have maintained four acres in their natural state. It bothers her that this development will be in her rear yard. She agrees that the fence will not preserve the land. She would want the boundary there, but is unsure what it should be. Will it prevent children from going to the creek? It could encourage trespassing all the way down to the Sound. What about liability of adjoining properties? What about the environmental sensitivity of McCormick Creek? The water will go somewhere and erosion will occur. Her parcel is on the east side of the creek.

Appearing was KEN MANNING who stated that the salmon enhancement has been occurring since 1992. The creek is heavily impacted from SR-16 and other projects. It is a ten cfs stream in normal flows, but increases to 75 cfs in a matter of hours during a large storm which wipes out the salmon beds. They have released natural salmon into the creek as natural salmon are better than hatchery fish. Andy Greatwood has not reviewed the comprehensive plan. This project is appropriate for Port Orchard or Spanaway, but not this area.

Appearing was CINDY MANNING who encouraged the Examiner to walk down to the creek at the Harbor Water Company road. Twenty-nine units will equal 290 vehicle trips per day. Burnham Drive ends in a sharp corner onto SR-16 to the north. It is not an urban area except as zoned. Do we really want a fence, but what else can we put there to keep people off the road? They will naturally access the creek. She likes the idea of a sidewalk that actually goes somewhere.

Reappearing was TOM MORFEE who stated that he has not seen the work on the conceptual drainage plan. His purpose is to protect member's rights as existing property owners. The property is located in a sensitive area and we are suffering now due to past projects. We want the balance of the maximum feasible density and still protect the area.

Reappearing was CARL HALSAN who stated that the property is near the fringe, but is still within the urban growth area. The property is between 200 feet and 500 feet from the creek. The Southwell property is on the east side of the creek, but the house is on the west side. The SEPA determination was done, a DNS was issued, and no appeals were filed. The revised plan was submitted on September 8, 1998, and there is no need to leave the record open. The geotechnical engineer has stated no steep slopes are on the site. They have reduced the density to 29 from 43 lots. A preliminary storm drainage plan would delay the project. Mr. Greatwood did not require a preliminary plan, but he will not object to providing a copy of the final plan to PNA. Resolution of the easement is not necessary before plat approval. Concerning the fence, the Examiner should reserve a decision until he sees the site.

MR. HOFFMAN reappeared to refer to Condition 43 which requires DOE review of the storm drainage plan.

No one spoke further in this matter. The Examiner then decided to require a preliminary storm drainage plan and left the record open for preparation of such plan, review by the County, and review by PNA. The hearing was concluded at 12:05 p.m.

NOTE: A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, viewed the property, heard testimony, and taken this matter under advisement.
2. Pursuant to the State Environmental Policy Act and the Pierce County Environmental Regulations (Pierce County Code, Chapter 17.08), the Pierce County Environmental Official designate has reviewed this project and issued a Determination of Nonsignificance (DNS) on July 24, 1998 with a comment period ending on August 10, 1998. No new issues were discovered during the comment period, and no appeals were filed.
3. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published two (2) weeks

prior to the hearing in the official County newspaper. Property owners within 300 feet of the site were sent written notice. Notice has been posted on the site.

4. The Peninsula Advisory Commission (PAC) heard the request at its regularly scheduled meeting on September 9, 1998. The Commission voted 4-0 with one abstention to recommend denial based on lack of information to make the PDD findings. If the proposal is approved, the Commission recommends conditions be added to provide the following:

- A buffer along SR-16;
- Street trees and lights;
- Recreational amenities; and
- A fence along the west boundary.

5. The applicant has a possessory ownership interest in a 7.25 acre, pie shaped parcel of unimproved property abutting the west side of Burnham Drive approximately halfway between it's intersection with Zehmel Drive and Purdy Drive (SR-302). The site is approximately 350 feet deep at the southern boundary and narrows to approximately 60 feet at the northern boundary. The applicant is requesting preliminary plat and planned development district (PDD) approval to allow subdivision of the site into 29 single-family residential lots and five open space tracts.
6. A review of the site plan establishes that all lots are served by a looped, internal road with two accesses onto Burnham Drive. Large open space tracts are located on the north and south ends of the parcel with smaller interior open space areas. Shared driveways limit the accesses onto the internal plat road. A 30 foot wide easement transversing the plat between Burnham Drive and the west property line provides access to parcels abutting the west property line. While the full length of the easement is shown on the preliminary plat, the applicant proposes to maintain the easement only from the west property line to the internal plat road at its present location, and then complete the access to Burnham Drive by granting a new easement over the internal plat road. The portion of the easement extending from Burnham Drive to the east edge of the internal plat road would be terminated. Amenities include gated entries, recreational tracts, sidewalks, street lights, street trees, and buffering along Burnham Drive.
7. The southwest corner of the site is approximately 150 feet from McCormick Creek, a salmon bearing stream which has been the subject of salmon enhancement programs by private individuals and the Peninsula School District. Because of the large open space tract on the southern portion of the site, the nearest impervious surfaces are approximately 350 feet from the creek. The southwest corner of the plat is at elevation 105 feet, while McCormick Creek is at elevation 60 feet.

Separating the creek from the site is a one lane gravel road designated on the Pierce County Public Works Comprehensive Drainage Program Map (Exhibit 3) as Burnham Drive.

8. A visit to the site reveals a moderately treed parcel with attractive ground cover. The portion proposed for development is relatively flat with steeper portions located in the north and south portions of the site and preserved as permanent open space. The site is heavily impacted by traffic noise from SR-16, a short distance and up hill to the east. Commercial uses are located along Burnham Drive south of the site, and undeveloped property and homes on large parcels about the north, west and south property lines.
9. The applicant filed a completed application for preliminary plat and PDD approval on January 30, 1998. On January 1, 1995, the 1994 Pierce County Comprehensive Plan became effective. The 1994 plan implemented the State of Washington Growth Management Act which required the Pierce County Council to divide the county into rural and urban growth areas. The Council placed this parcel and others in the immediate area along Burnham Drive within the urban growth area, and designated most residential properties therein as Moderate Density Single-Family (MSF). The Council adopted the Development Regulations - Zoning (Title 18A of the Pierce County Code) in July, 1995, and classified the site and other nearby residential areas within the urban growth area as MSF.
10. LU-Re Objective 34 of the Comprehensive Plan states that a variety of residential densities is contemplated in the urban growth areas based upon community values, development type and compatibility, proximity to facilities and services, densities in the plan, affordability, critical area protection and capability, and development techniques. Standard 34.1.1 states:

In moderate density single-family areas, the density for single-family and two-family developments should be up to four dwelling units per acre until sewer service is available. When sewer service is available, the density should be allowed to increase up to six dwelling units per acre.

The Density and Dimension Tables set forth in Section 18A.35.020(B)(2) of the Pierce County Code (PCC), provide that the base density for the MSF classification is four dwelling units per acre while the maximum density is six dwelling units per acre. The base density is authorized if an applicant follows the development standards set forth in Chapter 18A.35 PCC while the maximum density may be achieved through utilizing a planned development district, the transfer of development rights, or the provision of sanitary sewers. The MSF classification requires neither a minimum lot size nor minimum lot width. In the present case, all facilities and services are available to serve the proposed plat, including sanitary

sewers. The only critical areas on the site (the steep slopes to the north) are preserved as permanent open space. Even though the applicant is providing sanitary sewers and requesting a PDD, the proposed density is the minimum authorized by the development regulations and Comprehensive Plan. Site built single-family attached and detached residential dwellings are consistent with contemplated future development in the area and with single-family development in general. The project will provide a quality, affordable housing opportunity with numerous amenities and substantial open space consistent with community values of the Gig Harbor Peninsula. Therefore, the proposed plat satisfies the principles and standards of LU-Re Objective 34.

11. LU-Re Objective 33 of the Comprehensive Plan sets forth location criteria for residential areas. The location of the preliminary plat is consistent with virtually all of the eight principles set forth in said section. The plat is in convenient proximity to work, shopping, and leisure time areas as it is a short distance from a full service SR-16 interchange which provides access to the City of Gig Harbor to the south and the City of Port Orchard to the north. The site is also a short distance from Purdy which provides limited shopping opportunities, and significant leisure time activities along the Purdy Spit. Peninsula High School, with its play fields and recreational activities, is located a short distance to the north on 144th Street N.W. Burnham Drive, a County arterial which also provides access into Gig Harbor, can accommodate efficient, regular transit service when and if such service becomes economical. The site is in convenient proximity to large open spaces, which includes the McCormick Creek corridor and the Purdy Spit area. The plat itself proposes 2.2 acres (31% of the site) as open space. While the plat is not within walking distance of shopping areas and parks, it is within a short commute thereof. No physical hazards, unhealthful conditions, traffic, or incompatible uses abut or are located in the immediate vicinity. While traffic noise from SR-16 impacts the area, the applicant may mitigate such impact by employing soundproofing construction techniques. The parcel is economical and energy efficient to develop as the portion proposed for development is virtually flat, and no resource lands are located in the immediate area.

12. LU-Re Objective 35 of the Comprehensive Plan states that urban density living should be accommodated only within an urban growth area. As previously found, the site is located within an urban growth area. Principle 35.1 states that urban level facilities and services must be provided prior to or concurrent with development. These services include water, adequate sewage treatment, surface water management, roads, schools, pedestrian trails, paths or sidewalks, and parks. Harbor Water Company will provide both domestic water and fire flow to the site and the City of Gig Harbor will provide sanitary sewer service to each lot. Conditions of approval require the applicant to construct a concrete pathway or sidewalk along both sides of the internal plat road and to provide a bus waiting area if desired by

the Peninsula School District. Conditions of approval also require the applicant to provide an improved community park and retain the open space in it's natural condition with the exception of storm drainage facilities and other utilities authorized within said area. Principle 35.2 encourages a range of housing designs and densities within the MSF designation and urban growth areas to include small lot single-family, zero lot line developments, clustered housing, duplexes, triplexes, and apartments. The applicant is proposing a small lot, single-family attached and detached subdivision with conventional, site-built homes. Principle 35.3 encourages the facilitation of access and circulation by transit, car and van pools, pedestrians, bicyclists, and other alternative transportation modes. The applicant is providing a sidewalk or pathway along both sides of the internal plat road.

13. Principle 34.5 of the Comprehensive Plan states that infill densities should be consistent with the established neighborhood. The project is not considered infill since it is abutted on three sides by either undeveloped or underdeveloped properties.
14. Concerns were raised by abutting and nearby property owners regarding the significantly greater density proposed by this subdivision as compared with development in the area. Property owners are concerned that dense subdivisions will change the character of the area and adversely affect their lifestyles and property values. These concerns are akin to those addressed by the Washington Supreme Court in the case of SORE v. Snohomish County, 99 Wn.2d 363 (1983). In SORE, Snohomish County adopted a new comprehensive plan which identified appropriate land for industrial development and business parks. At the time of plan adoption, an area identified by the plan for industrial development consisted of agricultural land and houses on substantial acreage. The applicant requested a zone reclassification to industrial uses which would implement the newly adopted comprehensive plan. The court quoted favorably from the Snohomish County Hearing Examiner's decision as follows:

If such implementation [of the plan] were not allowed to occur until physical or developmental circumstances in the area had changed, a new comprehensive plan might never be fulfilled: If an area is presently undeveloped and the newly amended comprehensive plan calls for industrial development, no industrial development may occur until at least one industrial rezone has been granted. If that rezone itself cannot occur because land development patterns have not changed in the area, then the industrial development most likely will never have the opportunity to occur.

99 Wn.2d 363 at 370.

In the present case, the applicant is not requesting a zone reclassification, but is requesting approval of a subdivision consistent with both the Comprehensive Plan and the zoning regulations adopted by the Pierce County Council. As in SORE, supra, this area cannot develop in accordance with the Council's determination unless subdivisions in accordance with authorized densities are approved. Even though the first subdivisions will be inconsistent with the existing development, the Council has determined that this area of the County is appropriate for densities of four to six dwelling units per acre. While all agree that the subdivision proposes smaller lot sizes than abutting properties, the subdivision is consistent with the MSF zone classification and future development of the area as contemplated by the Comprehensive Plan.

15. As previously found, the applicant is maintaining 2.2 acres or 31% of the site in open space. Conditions of approval require that said open space remain as a natural buffer area with the exception of the installation of drainage facilities and other necessary utilities. A second condition requires that a portion of the internal open space be improved with a community park. The plat makes appropriate provision for open spaces, parks and recreation, and playgrounds.

16. Substantial concerns were raised by Penins̄ula Neighborhood Association (PNA), and residents regarding potential adverse impacts of the storm drainage system on the McCormick Creek salmon enhancement programs. At the close of the hearing, the Examiner left the record open for the applicant to prepare a conceptual storm drainage analysis for review by Development Engineering and PNA. The applicant commissioned Greg Heath, a professional engineer, to prepare a conceptual storm drainage design and Mr. Heath submitted such in October, 1998. Development Engineering found the design incomplete for a number of reasons and Mr. Heath submitted a second and then third conceptual design which, while not totally complete, was deemed an "approved design" by Development Engineering. Development Engineering finds that no significant or unique storm drainage concerns exist on the site and that the requirements of Ordinance 96-46s2 will adequately mitigate downstream impacts. Further design will require extensive soil tests and a downstream analysis which will determine the eventual type and location of the facilities. While PNA argues that such should be provided prior to preliminary plat approval in accordance with previous Examiner decisions in such plats as Horizon West and Morningside, the Examiner is satisfied that the present storm drainage plan is sufficient to warrant preliminary plat approval. The plat of Horizon West was significantly larger and created substantially more impervious surfaces than Rita. This proposal creates a total of 111,200 square feet of imperious surfaces, all of which are located on the flat area of the site. The plat of Morningside was located adjacent to a steep bluff overlooking Colvos Passage, below which were single-family residential dwellings. A condition has been added requiring Development Engineering and the applicant to provide PNA with copies

of future storm drainage submittals for its review and comment prior to final approval. The new County storm drainage standards require significantly larger retention/detention ponds sized in accordance with the Santa Barbara Unit Hydrograph method as opposed to the previous Y and W method. Such ponds have worked well in other areas of the County during the wettest three month period on record. Designing and constructing the storm drainage facilities in accordance with Ordinance 96-46s2 will ensure that the plat makes appropriate provision for drainage ways.

17. The applicant will construct internal plat roads to Pierce County private road standards and all lots will access onto the internal plat road. Adequate entering and stopping sight distance is available at each plat access onto Burnham Drive. Burnham Drive provides access to SR 302 to the north and to a full service SR-16 interchange to the south. A 30 foot wide easement extends west from Burnham Drive through the center of the plat to the west property line and provides access to properties to the west. The applicant will authorize property owners to the west to use the internal plat road and will maintain the portion of the easement from the west edge of the plat road to the west property line (between lots 21, 22 and 23, 24). Until such time as the plat roads are complete, the easement will remain intact. The recorded ingress/egress and utilities easement apparently grants the applicant the authority to relocate the easement at its own expense. The preliminary plat reflects no setback for structures on lots 21 through 24 from the easement, and for public safety purposes the applicant must maintain the same setback from said easement as from the internal plat road (10 feet). Withholding preliminary plat approval until such time as all issues surrounding the easement are resolved is unnecessary since the applicant must comply with the terms of the easement, and regardless of its eventual location must provide an adequate access for parcels to the west. Furthermore, the applicant cannot subject the right to use internal plat roads to the discretion of the homeowner's association, but must replace the existing easement with an easement over the internal plat roads. The plat makes appropriate provision for streets, roads, alleys, and other public ways.
18. Harbor Water Company will provide both potable water and fire flow to the site, and the City of Gig Harbor will provide sanitary sewer service to each lot. The site is located within Fire Protection District No. 5, which has a fire station within a reasonable response time. The plat makes appropriate provision for potable water supplies, sanitary waste, and fire protection.
19. The applicant must comply with the Pierce County School Impact Fee Ordinance and make a payment for each lot to the Peninsula School District. The applicant will also construct concrete sidewalks or pathways along both sides of the internal plat road. While requests were made that the applicant also construct sidewalks along the west side of Burnham Drive across the plat frontage, no party of record nor

Pierce County presented evidence that Pierce County had any long or short term plans for constructing sidewalks in the area. Furthermore, no parks, retail commercial uses, or public facilities are within reasonable walking distance of the plat. Constructing a sidewalk to nowhere would violate the decision of the State of Washington Court of Appeals in Burton v. Clark County, 91 Wn.App. 505 (1998).

20. The applicant is requesting a PDD pursuant to Section 18A.75.050 PCC to allow reduction of the front yard setback from the private road from 25 feet to 10 feet and reductions in the setback for three lots from Burnham Drive from 25 feet to 20, 15 and 10 feet respectively. The applicant is also requesting a reduction in the side yard setback to zero to accommodate attached homes and the combined driveways.

21. A PDD is a flexible zoning concept which allows the County the opportunity to mold a project so that it creates a more desirable environment and results in as good or better use of the land than that produced by the underlying zone classification. Prior to obtaining approval of a PDD, the applicant must establish that the request satisfies the criteria set forth in Section 18A.75.050(J) PCC. Findings on each criteria are hereby made as follows.
 - A. As previously found, the proposed development is in substantial conformance with the 1994 Comprehensive Plan.

 - B. The exceptions from the standards of the MSF classification are warranted by the design and amenities incorporated in the development plan and program. The applicant is providing significant open space, a recreational facility, sidewalks, street lights, and a gated community. These amenities are sufficient to allow the exceptions requested by the applicant and the clustering of the lots away from steeper slopes.

 - C. The proposal is in harmony with the potential future use of the area which is also within the MSF zone classification. Conditions of approval require the applicant to provide a vegetative screen along the eastern boundary of the plat to provide buffering from SR-16. The Examiner has also added a condition which requires the applicant to fence the west and south property lines with either an attractive, six foot high, solid board fence or with a vegetative fence in accordance with a plan approved by the Planning Division. The vegetative fence should consist of native plants which rapidly grow into a screen, difficult to penetrate.

 - D. Maintaining, developing and preserving the open space by means of a homeowner's association is suitable.

- E. Assuming compliance with conditions of approval, the PDD will result in a beneficial effect upon the area that could not be achieved under other zoning districts.
- F. No evidence was presented that the applicant would not pursue and complete the project in a conscientious and diligent manner.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The proposed preliminary plat and PDD of Rita is consistent with the MSF designation of the 1994 Pierce County Comprehensive Plan and the MSF zone classification of the Pierce County Code.
3. The proposed plat/PDD makes appropriate provision for the public health, safety, and general welfare for open spaces, drainage ways, streets, roads, alleys, other public ways, transit stops, potable water supplies, sanitary waste, parks and recreation, playgrounds, schools and school grounds, and safe walking conditions.
4. The request for a PDD satisfies the criteria set forth in Section 18A.75.050(J) PCC.
5. The proposed preliminary plat/PDD will serve the public use and interest by providing an attractive location for a single-family residential subdivision at the minimum density authorized in the MSF zone classification, and, therefore, should be approved subject to the following conditions:
 1. Both on-building and off-building signs shall be regulated, installed and designed in accordance with the Pierce County Sign Code, Chapter 15.28, Pierce County Code.
 2. Sign areas, setbacks and locations shall be consistent with the provisions of the Pierce County Sign Code and the State Department of Transportation requirements. The most restrictive of the two regulations shall always apply.
 3. Noise emanating from the site shall be regulated and abated in accordance with Chapter 8.76 of the Pierce County Code, "Noise Pollution Control." In this regard, all properties which abut the property boundary lines of this site shall be considered to be "EDNA" Class A classification as residential in nature.
 4. All requirements of the Pierce County Building Department must be met prior

to the issuance of building permits for this proposal. Buildings should be constructed with consideration of the UBC standards that incorporate materials and methods to take into account noise emanating from off-site sources. (e.g., in this case State Highway 6)

5. Fire flow requirements for one- and two-family dwellings are 750 GPM at 20 psi for 45 minutes, except that 1000 GPM at 20 psi for 60 minutes is required when the total floor area including attached garages is 3600 sq. ft. or more. A hydrant shall be located within 350 feet of the middle of the street frontage of each lot, except that no hydrant is required on a dead-end street not exceeding 600 feet in length when a hydrant is installed at the intersection of the cross street. Hydrant spacing shall not exceed 700 feet. Pierce County Code, Sec. 15.12.083(D) (Ord. #95-91)
6. Prior to final plat approval, requirements of Minimum Standards for Fire Flows, Water Mains and Fire Hydrants, Pierce County Code, Sec. 15.40.060 Procedure for Compliance shall be met. (Ord. #95-91)
7. Hydrant flow test results and water system "As Built" plans shall be submitted to and approved by the Office of Fire Prevention and Arson Control prior to final plat/plan approval. Pierce County Code, Section 15.40.060 (Ord. 95-91)
8. A storm drainage plan must be submitted to the Development Engineering Section as part of the site development plans.
9. A site stabilization plan must be submitted to the Development Engineering Section as part of the site development plans.
10. The site stabilization plan must include erosion control measures for development of the project up through completion of all structures.
11. Erosion control facilities must be installed, and subsequently, inspected and approved by Pierce County prior to site clearing. All necessary erosion control facilities must be properly maintained during all phases of site development to prevent debris, dust, and mud from accumulating on the County right-of-way and/or adjacent property.
12. All work associated with stabilizing slopes and other disturbed areas shall be in accordance with the Pierce County Site Development Regulations Ordinance 90-132.
13. If cleared, the County right-of-way must be seeded, mulched, and stabilized as required by the County.

14. The intent of the erosion control facilities is to protect downstream property owners from landslides, sediment buildup, and downstream channel scouring. If the intent of the requirement is not met, then all building and construction activity on site shall be discontinued and directed to meeting the intent of the requirement.
15. A clearing and grading plan must be submitted to the Development Engineering Section as part of the site development plans.
16. All clearing and grading limits outside of the road easement/right-of-way shall be shown on the site development plans.
17. All proposed accesses must be accurately depicted on the applicable plan and submitted to the Development Engineering Section for review and approval. The following information must be provided on the plans: distance from the proposed approach to the nearest side street, approach or intersection (on the opposite side of the street); two spot elevations at the edge of the existing pavement; measured distance from right-of-way line to existing edge of pavement; any above ground utilities within 50 feet of the approach; and all applicable approach dimensions. Each driveway must be constructed or placed under a \$4,310. financial guarantee prior to project approval. The easterly driveway onto Burnham Drive must be removed.
18. Entering sight distance from the southerly driveway onto Burnham Drive is not adequate. Vegetation removal is necessary to provide the adequate entering sight distance. Adequate entering sight distance must be available prior to plat approval or issuance of building permits.
19. All lots must access off internal plat roads.
20. The proposed project has a direct impact on the Washington State Department of Transportation's road system. A site plan shall be sent to the State by the applicant. All requirements of the State must be incorporated into the project design. If applicable, an access permit must be obtained from the State prior to project approval by Pierce County.
21. All roads must be completed and approved by the County prior to issuance of building permits on individual lots.
22. All private roads within and providing access to this plat must conform to Ordinance 92-120, The Pierce County Private Road and Emergency Vehicle Access Standards. The accesses that branch off the main loop road are considered to be private roads. If these private roads provide access to four

lots or less, the minimum road width is 25 feet. If these private roads provide access to more than four lots, the minimum road width must be 30 feet. The setback between private roads and homes is 25 feet. The access road does not meet the curve radius requirements. Therefore, this plat must be reconfigured to meet the Private Road Standards.

23. Any work in the County right-of-way will require a permit.
24. All the comments from the Washington State Department of Transportation must be incorporated into the project design.
25. Prior to issuance of a permit, the applicant will be required to submit a financial guarantee to the County to ensure compliance with the provisions of the Site Development Regulations, the permit, and accepted plans.
26. All fences, pillars, signs, structures, etc., must be located on private property and must not impair sight distance to the County road.
27. This project shall conform to all the applicable sections of the following ordinances that were in effect at the time of application: the Pierce County Road Standards, the Pierce County Private Road and Emergency Vehicle Access Standards, the Geologically Hazardous Areas Ordinance, and the Pierce County Stormwater Management and Site Development Manual, Ordinance 96-46S2.
28. Prior to approval of the water supply for this development, a Certificate of Water Availability is required as per WAC 246-290 and Pierce County Ordinance 86-116S4. The final plat portion of the Certificate of Water Availability must be signed by the water purveyor prior to final subdivision approval.
29. Should this project not be served by sanitary sewer, the Tacoma-Pierce County Health Department will require a review of potential adverse environmental impacts and justification for utilization of on-site sewage treatment and disposal.
30. Because this proposal will require a sewer utility extension contract with the City of Gig Harbor, the applicant will be required to conform to city standards for this development.
31. The combination final plat and Planned Development District final development plan for this proposal shall be submitted to the Pierce County Hearing Examiner for approval and signature within three (3) years of the effective

date of the Hearing Examiner's decision on the preliminary plat/PDD, subject to the conditions for time extensions as outlined in Sections 16.08.040 and Section 18A.75.050 of the Pierce County Development Regulations-Zoning. Failure to submit said plans shall automatically render all approvals granted herein null and void. Final development plans shall include, but not be limited to, site plan, professional landscape/tree retention and screening plan, parking area, signage, building elevations, and exact location and labeling of recreation facilities in open space tracts. Final development plans shall include, but not be limited to, final plat, professional landscape/tree retention and perimeter screening/buffering plan, parking area, signage and show exact locations of recreation facilities in open space areas.

32. Any reduction in the amount of area devoted shown open areas, tracts, and road location, shall warrant re-evaluation of the required planned development district findings by filing and obtaining an approved major amendment (a public hearing required for this process).
33. The Tacoma/Pierce County Health Department shall be notified, concerning any requirements for the removal and disposal of the solid waste present on the site, prior of final plat approval.
34. Street lighting, allowed replacement landscaping in open space areas, and fencing shall be maintained by a homeowners association.
35. The open space easement area must be clearly delineated on the face of the plat. A heavy dashed line shall mark the limits of the easements and the easements shall be shaded and clearly labeled "NATURAL VEGETATION OPEN SPACE EASEMENT AREA."
36. The following note shall appear on the face of the final plat:

"There are natural vegetation open space easements, appearing on this plat. No clearing, grading, fill or construction of any kind will be allowed within these tracts area except where the water supply line accesses the site and except for the removal of diseased or dangerous trees which must be approved by Pierce County Planning and Land Services in advance. A diseased tree shall be defined as one that has a strong likelihood of infecting other trees or brush in the area or becoming dangerous as a result of the disease, as determined by an expert approved by Pierce County. A dangerous tree shall be any tree which, in the opinion of an expert approved by Pierce County, has a strong likelihood of falling in the event of a 60 mph wind."


37. The following note shall appear on the face of the final plat:
- "Each owner of property within this subdivision shall retain a fractional share of undivided ownership in the allocated open space."
38. The following note shall appear on the face of the final plat:
- "No logging, clearing, grading or filling shall be conducted on the property until such time as erosion control and storm water drainage plans have been approved by the Development Engineering Section. Subsequent to said approval, tree removal, clearing, grading and filling shall be limited to those areas reasonably necessary to construct roads and utilities, and to clear building footprints. This restriction shall not be read to prohibit or limit tree removal or vegetation clearing by lot purchasers where applicable."
39. When encroachments or conflicts are known prior to submittal of the final plat, Pierce County encourages resolution to these issues so that final plat approval will not be delayed by disputes. Specifically, all issues relating to the revision of the existing private easement owned by parcels 0122256004 and 0122252099 or revising the design of the plat around the easement must occur prior to final plat submittal. Development shall be substantially in conformance with the approved preliminary site plan. Minor deviations may be approved by the Planning Director. Major changes will require a major amendment and additional hearings.
40. A Class IV forest practices permit will be required for the harvest of timber associated with this project.
41. The storm drainage plan shall incorporate a design that considers the sensitive nature of McCormick Creek. The State Department of Ecology shall be forwarded a copy the plan for their review and comment. State permits may be required for the direct discharge to McCormick Creek. The applicant shall also submit the final storm drainage plan to the Peninsula Neighborhood Association for review and comment prior to final approval; provided, however, that the decision to approve said design is solely that of Development Engineering.
42. The applicant shall construct concrete sidewalks or pathways along both sides of the internal plat road and a bus waiting area if requested by the Peninsula School District. The applicant shall also install street lights at the intersections of the plat road and Burnham Drive and at the intersection of the plat road and the easement extending to the west property line.

43. The applicant must improve the open space area between lots 19 - 22 with a community park to include benches, seats, barbeque, and other appropriate amenities in accordance with a plan to be approved by the Planning Division.
44. The applicant shall construct an attractive, six foot high, solid board, fence or a vegetative fence or combination of the two along the west and south property lines. The vegetative fence shall consist of native plantings which will rapidly form a thick, difficult to penetrate screen.
45. All requested setback reductions are granted pursuant to the PDD with the exception of the zero setbacks for lots 21 - 24 from the private easement. These setbacks shall be a minimum of 10 feet.
46. The applicant shall plant screening trees along the east property line for the purpose of providing a thick vegetative buffer between the subdivision and SR-16.

DECISION:

The request for preliminary plat and planned development district approval for Rita is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 19th day of February, 1998.⁹



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 19th day of February, 1998,⁹ to the following:

APPLICANT: Trilogy Development Group
6750 Kimball Drive
Gig Harbor, WA 98335

AGENT: Ray Frey and Associates
Attn: Carl Halsan
P.O. Box 1447
Gig Harbor, WA 98335

OTHERS:

R.A. Cisco
18311 40th Avenue E.
Tacoma, WA 98446

Peggy Southwell
12217 64th Ave. Ct. N.W.
Gig Harbor, WA 98332

Ken and Cindy Manning
6325 Woodhill Drive
Gig Harbor, WA 98332

Tom Morfee
PNA Box 507
Gig Harbor, WA 98335

New Home Trends
8034 118th Avenue N.E.
Kirkland, WA 98033

PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

**CASE NO: PLANNED DEVELOPMENT DISTRICT/
PRELIMINARY PLAT: Rita**

NOTICE

1. **RECONSIDERATION:** Any aggrieved person feeling that the decision of the Examiner is based on errors of procedure or errors of misinterpretation of fact may make a written request for review by the Examiner. The request must be filed with the Planning and Department with a reconsideration fee as required by the Department of Planning and Land Services, and filed not later than 4:30 p.m. on, March 2, 1999 with the Planning Department. This request shall set forth the alleged errors or misinterpretations, and the Examiner may, after review of the record, take such further action as he deems proper and may render a revised decision.

2. **APPEAL OF EXAMINER'S DECISION:** The final decision by the Examiner may be appealed in accordance with the Land Use Petition Act, Chapter 347, Laws of 1995, Sections 701-719, and Pierce County Ordinance No. 95-112.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.

**Subject: First Reading of Ordinance
Providing for the Issuance and Sale
of Water and Sewer Revenue Bonds
For the Purpose of Providing
Financing for Treatment Plant
Improvements**

Dept. Origin: Finance

Prepared by: David Rodenbach, Finance Director

For Agenda of: February 22, 2010

Exhibits: Ordinance

Initial & Date

Proposed Council Action:

Adopt the ordinance after second reading

Concurred by Mayor:

CLH 2/16/10

Approved by City Administrator

PK

Approved as to form by City Atty:

e-mail

Approved by Finance Director:

DR 2/12/10

Approved by Department Head:

Expenditure	Amount	Appropriation
Required 0	Budgeted 0	Required 0

INFORMATION / BACKGROUND

This is the first reading of an ordinance providing for the issuance and sale of revenue bonds in the amount of approximately \$6,010,000. These are 20-year taxable Build America Bonds that will mature in 2030 and are estimated to save the City \$400,000 over traditional tax-exempt revenue bonds. The bonds will carry an estimated average coupon of 5.98% and True Interest Cost of 3.85%.

The proceeds of these bonds will be used to fund completion of waste water treatment plant Phase 1 and pump station improvements and water system improvements such as water main replacements for Harborview Drive and Stinson Avenue.

FISCAL CONSIDERATION

The net proceeds after issuance costs and reserve account funding requirements are \$5.5 million. Annual debt service requirements are expected to be approximately \$425,000. The water and sewer rates, as approved by Council in December 2009, appear to be sufficient to meet debt coverage requirements.

These bonds will have no impact on the city's general obligation debt capacity.

RECOMMENDATION / MOTION

Move to: Adopt ordinance after a second reading.

CITY OF GIG HARBOR, WASHINGTON

WATER AND SEWER REVENUE BONDS, 2010
(TAXABLE BUILD AMERICA BONDS – DIRECT PAYMENT TO ISSUER)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF WATER AND SEWER REVENUE BONDS OF THE CITY IN THE PRINCIPAL AMOUNT OF \$6,010,000 TO PROVIDE FINANCING FOR CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY; FIXING THE DATE, FORM, TERMS, MATURITIES AND COVENANTS OF THE BONDS; APPROVING A PURCHASE CONTRACT FOR THE BONDS; APPROVING AN AGREEMENT FOR ONGOING DISCLOSURE; AND RESERVING THE RIGHT TO ISSUE REVENUE BONDS ON A PARITY WITH THE BONDS HEREIN AUTHORIZED UPON COMPLIANCE WITH CERTAIN CONDITIONS.

APPROVED ON MARCH 8, 2010

PREPARED BY:

K&L GATES LLP

CITY OF GIG HARBOR, WASHINGTON
ORDINANCE NO. _____
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* This Table of Contents and the cover page are not a part of this ordinance; they are included for convenience of the reader only.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF WATER AND SEWER REVENUE BONDS OF THE CITY IN THE PRINCIPAL AMOUNT OF \$6,010,000 TO PROVIDE FINANCING FOR CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY; FIXING THE DATE, FORM, TERMS, MATURITIES AND COVENANTS OF THE BONDS; APPROVING A PURCHASE CONTRACT FOR THE BONDS; APPROVING AN AGREEMENT FOR ONGOING DISCLOSURE; AND RESERVING THE RIGHT TO ISSUE REVENUE BONDS ON A PARITY WITH THE BONDS HEREIN AUTHORIZED UPON COMPLIANCE WITH CERTAIN CONDITIONS.

WHEREAS, the City of Gig Harbor needs to make certain improvements to its combined water and sewerage system (the "System"); and

WHEREAS, the City is in need of improvements (herein further defined as the "Project") and it is in the best interests of the citizens of the City to finance the Project by means of the revenue bonds authorized herein (the "Bonds"); and

WHEREAS, the City has outstanding its Water and Sewer Revenue and Refunding Bond, 2003 issued under date of December 2, 2003 pursuant to Ordinance No. 946 (the "Outstanding Parity Bond Ordinance"), bearing interest at the rate of 3.89% and maturing on September 1, 2013 in the principal amount of \$1,811,000 (the "Outstanding Parity Bond"); and

WHEREAS, the Outstanding Parity Bond Ordinance permits the City to issue revenue bonds on a parity of lien with the Outstanding Parity Bond upon compliance with certain conditions; and

WHEREAS, it appears that the conditions imposed by the Outstanding Parity Bond Ordinance will be satisfied on or prior to the date of delivery of the bonds herein authorized; and

WHEREAS, the City has received an offer from D.A. Davidson & Co. to purchase such revenue bonds on terms and conditions that are acceptable to this Council; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON DOES ORDAIN, as follows:

Section 1. Definitions. As used in this ordinance, unless a different meaning clearly appears from the context:

Annual Debt Service means, with respect to any issue of Parity Bonds, the amount required in a given calendar year for the payment of the principal of and interest on such Parity Bonds. From and after the New Date (absent a written election by the Designated Representative to the contrary), the Annual Debt Service shall be calculated net of any federal subsidy legally available to pay the principal of or interest on Parity Bonds in the year of calculation.

Assessments means any assessments levied in any utility local improvement district of the City created for the acquisition or construction of additions and improvements to and extensions of the System, if such assessments are pledged to be paid into the Bond Fund. The word *Assessments* shall also include any installments of assessments and any interest or penalties which may be due thereon.

Assessment Income means the principal of and interest on assessments levied in any utility local improvement district and pledged to be paid into the Bond Fund. In the case of assessments payable in installments, Assessment Income shall be allocated to the years in which it would be received if the unpaid principal balance of each assessment roll were paid in equal principal amounts over the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance confirming the assessment roll.

Average Annual Debt Service means the average amount of annual debt service which will become due in any fiscal year hereafter on all Parity Bonds then outstanding. From and after the New Date (absent a written election by the Designated Representative to the contrary), the Average Annual Debt Service shall be calculated net of any federal subsidy legally available to pay the principal of or interest on Parity Bonds in the year of calculation.

Bond Fund means the City of Gig Harbor Utility Bond Redemption Fund created in the office of the Treasurer of the City pursuant to Section 13 of Ordinance No. 468.

[Bond Insurance Policy means the municipal bond insurance policy issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.]

Bond Register means the books or records maintained by the Bond Registrar containing the name and mailing address of the owner of each Bond or nominee of such owner and the principal amount and number of Bonds held by each owner or nominee.

Bond Registrar means the fiscal agency of the State of Washington, for the purposes of registering and authenticating the Bonds, maintaining the Bond Register, effecting transfer of ownership of the Bonds, and paying the principal of, premium, if any, and interest on the Bonds.

Bond Year means each one-year period that ends on the date selected by the City. The first and last Bond Years may be short periods. If no day is selected by the City before the earlier of the final maturity date of the Bonds or the date that is five years after the date of issuance of the Bonds, Bond Years end on each anniversary of the date of issue and on the final maturity date of the Bonds.

Bonds means the City of Gig Harbor, Washington Water and Sewer Revenue Bonds, 2010 (Taxable Build America Bonds – Direct Payment to Issuer), issued pursuant to this ordinance.

Build America Bonds means bonds issued under authority of Section 54AA of the Code, enacted by the American Recovery and Reinvestment Act of 2009.

City means the City of Gig Harbor, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Washington.

Code means the Internal Revenue Code of 1986, as amended, and shall include all applicable regulations and rulings relating thereto.

Costs of Maintenance and Operation mean all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expenses with respect to the System, but excludes depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the System, municipal taxes or payments to the City in lieu of taxes.

Council means the City Council as the general legislative authority of the City as the same shall be duly and regularly constituted from time to time.

Debt Service Account means the account of that name created in the Bond Fund by Ordinance No. 468.

Designated Representative means the Finance Director or City Administrator or any official or employee of the City designated in writing by either of them.

DTC means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York, as depository for the Bonds pursuant to Section 4 hereof.

Future Parity Bonds means any water and sewer revenue bonds which the City may hereafter issue having a lien upon the Revenue of the System for the payment of the principal thereof and interest thereon equal to the lien upon the Revenue of the System of the Bonds.

Government Obligations has the meaning given such term in RCW Ch. 39.53, as amended to date and as the same may hereinafter be amended and shall include any successor statute thereto.

[Insurer means _____, or any successor thereto or assignee thereof, as issuer of a Bond Insurance Policy for the Bonds.]

Letter of Representations means the blanket issuer letter of representations from the City to DTC.

Maximum Annual Debt Service means the highest remaining Annual Debt Service requirement for outstanding Parity Bonds. From and after the New Date (absent a written election by the Designated Representative to the contrary), the Maximum Annual Debt Service shall be calculated net of any federal subsidy legally available to pay the principal of or interest on Parity Bonds in the year of calculation.

MSRB means the Municipal Securities Rulemaking Board or any successors to its functions. Until otherwise designated by the MSRB or the Securities and Exchange Commission, any information, reports or notices submitted to the MSRB in compliance with the Rule are to be submitted through the MSRB's Electronic Municipal Market Access system ("EMMA"), currently located at www.emma.msrb.org.

Net Revenue means the Revenue of the System less the Costs of Maintenance and Operation.

New Date means the date on which the Outstanding Parity Bond is no longer outstanding.

Outstanding Parity Bond means the City's outstanding Water and Sewer Revenue and Refunding Bond, 2003, authorized by the Outstanding Parity Bond Ordinance, issued December 2, 2003 and currently outstanding in the amount of \$824,000.

Outstanding Parity Bond Ordinance means Ordinance No. 946 approved by the Council on November 24, 2003.

Parity Bonds means the Bonds, the Outstanding Parity Bond and any Future Parity Bonds.

Project means capital improvements to the water and sewer system of the City.

Project Account means the fund established in Section 15 of this ordinance.

Private Person means any natural person engaged in a trade or business or any trust, estate, partnership, association, company or corporation.

Private Person Use means the use of property in a trade or business by a Private Person if such use is other than as a member of the general public. Private Person Use includes ownership of the property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management or incentive payment contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use of property as a member of the general public includes attendance by the Private Person at municipal meetings or business rental of property to the Private Person on a day-to-day basis if the rental paid by such Private Person is the same as the rental paid by any Private Person who desires to rent the property. Use of property by nonprofit community groups or community recreational groups is not treated as Private Person Use if such use is incidental to the governmental uses of property, the property is made available for such use by all such community groups on an equal basis and such community groups are charged only a *de minimis* fee to cover custodial expenses.

Rate Covenant means the covenants described in Section 10(c) of this ordinance.

Registered Owner means the person named as the registered owner of a Bond in the Bond Register. For so long as the Bonds are held in book-entry only form, DTC shall be deemed to be the sole Registered Owner.

Reserve Account means the account created in the Bond Fund by Section 15 of Ordinance No. 468 and shall include any subaccount created therein.

Reserve Account Requirement means the lesser of (A) 10% of the net proceeds of each series of Parity Bonds, (B) Maximum Annual Debt Service, (C) 1.25 times average Annual Debt Service, or (D) such amount as shall be required to maintain the exemption of interest of any series of Parity Bonds from taxation under the Code.

Revenue Fund means the “City of Gig Harbor Utility Revenue Fund” authorized to be created by Section 12 of Ordinance No. 468, into which fund all of the Revenue of the System is to be deposited, as collected. The Revenue Fund may be maintained as one or more separate funds of the City into which all of the Revenue of the System shall be deposited.

Revenue of the System means all earnings, revenue and moneys received by the City from or on account of the operation of the System, including the income from investments of money in the Revenue Fund and the Bond Fund or from any other investment thereof. “Revenue of the System” shall also include any federal or state reimbursements of operating expenses to the extent such expenses are included as “Costs of Maintenance and Operation.” From and after the New Date, unless declined by a written election by the Designated Representative, the term **Revenue of the System** shall not include any federal subsidy legally available to pay the principal of or interest on Parity Bonds.

Rule means the Securities and Exchange Commission’s Rule 15c2-12 under the Securities Exchange Act of 1934, as the same may be amended from time to time.

System means the existing sanitary sewerage collection and treatment system of the City, as it now exists and as it may later be added to, extended and improved, and the existing water supply and distribution system of the City, as it now exists and as it may later be added to, extended and improved for as long as any Parity Bonds remain outstanding.

Term Bonds means any Parity Bonds identified as such in the ordinance authorizing the issuance thereof, the payment of which is provided for by a requirement for mandatory deposits of money into a “sinking fund account” in the Bond Fund.

Underwriter means D.A. Davidson & Co., Seattle, Washington.

Rules of Interpretation. In this ordinance, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several articles and sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect;

(e) All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

(f) Words importing the singular number include the plural number and vice versa.

Section 2. Compliance with Parity Conditions. The Council hereby finds and determines, as required by Section 11 of the Outstanding Parity Bond Ordinance, that:

(a) the City has not been in default of its Rate Covenant for the immediately preceding fiscal year 2009;

(b) this ordinance provides that the Reserve Account Requirement shall be funded no later than the date of delivery of the Bonds; and

(c) there will have been filed a certificate of an independent professional engineer, certified public accountant or City representative demonstrating fulfillment of Section 11(a)(5) of the Outstanding Parity Bond Ordinance.

The conditions contained in Section 11 of the Outstanding Parity Bond Ordinance having been complied with or assured, the payments required herein to be made out of the Revenue Fund into the Bond Fund and the Reserve Account to pay and secure the payment of the principal of and interest on the Bonds shall constitute a lien and charge upon the money in the Revenue Fund equal in rank with the lien and charge thereon for the payments required to be made for the Outstanding Parity Bond.

Section 3. Authorization of Bonds. The Council hereby finds that the public interest, welfare and convenience require capital improvements to the water and sewer system of the City (the “Project”). The City shall now issue and sell \$6,010,000 of water and sewer revenue bonds (the “Bonds”) for the purpose of paying the costs of the Project and paying the costs of issuance of the Bonds. The Bonds shall be designated as the “City of Gig Harbor, Washington, Water and

Sewer Revenue Bonds, 2010 (Taxable Build America Bonds – Direct Payment to Issuer),” shall be dated as of their date of original issuance and delivery; shall be fully registered as to both principal and interest; shall be in the denomination of \$5,000 each, or any integral multiple thereof, provided that no Bond shall represent more than one maturity; shall be numbered separately in such manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification; and shall bear interest from their date payable semiannually on the first days of each April and October, commencing on October 1, 2010. The Bonds shall be numbered separately in the manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification and shall mature on April 1 of the following years in the following amounts and bear interest at the following rates per annum:

<u>Maturity Dates</u> <u>(April 1)</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>
	\$	%

The Bonds shall be obligations only of the Bond Fund and shall be payable and secured as provided herein. The Bonds do not constitute an indebtedness or general obligation of the City within the meaning of the constitutional provisions and limitations of the State of Washington.

Section 4. Registration, Exchange and Payments.

(a) *Bond Registrar/Bond Register.* The City hereby specifies and adopts the system of registration approved by the Washington State Finance Committee from time to time through the appointment of state fiscal agencies. The City shall cause a bond register to be maintained by the Bond Registrar. So long as any Bonds remain outstanding, the Bond Registrar shall make all necessary provisions to permit the exchange or registration or transfer of Bonds at its principal corporate trust office. The Bond Registrar may be removed at any time at the option of the City upon prior notice to the Bond Registrar and a successor Bond Registrar appointed by the City. No resignation or removal of the Bond Registrar shall be effective until a successor shall have been appointed and until the successor Bond Registrar shall have accepted the duties of the Bond Registrar hereunder. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of such Bonds and this ordinance and to carry out all of the Bond Registrar's powers and duties under this ordinance. The Bond Registrar shall be responsible for its representations contained in the Certificate of Authentication of the Bonds.

(b) *Registered Ownership.* The City and the Bond Registrar, each in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes (except as provided in Section 16 of this ordinance), and neither the City nor the Bond Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 4(h) hereof, but such Bond may be transferred as herein provided. All such payments made as described in Section 4(h) shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

(c) *DTC Acceptance/Letters of Representations.* The Bonds initially shall be held in fully immobilized form by DTC acting as depository. To induce DTC to accept the Bonds as eligible for deposit at DTC, the City has executed and delivered to DTC a Blanket Issuer Letter of Representations. Neither the City nor the Bond Registrar will have any responsibility or obligation to DTC participants or the persons for whom they act as nominees (or the participants of any successor depository or those for who any such successor acts as nominee) with respect to the Bonds in respect of the accuracy of any records maintained by DTC (or any successor depository) or any DTC participant, the payment by DTC (or any successor depository) or any DTC participant of any amount in respect of the principal of or interest on Bonds, any notice which is permitted or required to be given to Registered Owners under this ordinance (except such notices as shall be required to be given by the City to the Bond Registrar or to DTC (or any successor depository)), or any consent given or other action taken by DTC (or any successor depository) as the Registered Owner. For so long as any Bonds are held in fully-immobilized form hereunder, DTC or its successor depository shall be deemed to be the Registered Owner for all purposes hereunder, and all references herein to the Registered Owners shall mean DTC (or any successor depository) or its nominee and shall not mean the owners of any beneficial interest in such Bonds.

If any Bond shall be duly presented for payment and funds have not been duly provided by the City on such applicable date, then interest shall continue to accrue thereafter on the unpaid principal thereof at the rate stated on such Bond until it is paid.

(d) *Use of Depository.*

(1) The Bonds shall be registered initially in the name of "Cede & Co.", as nominee of DTC, with one Bond maturing on each of the maturity dates for the Bonds in a

denomination corresponding to the total principal therein designated to mature on such date. Registered ownership of such immobilized Bonds, or any portions thereof, may not thereafter be transferred except (A) to any successor of DTC or its nominee, provided that any such successor shall be qualified under any applicable laws to provide the service proposed to be provided by it; (B) to any substitute depository appointed by the Designated Representative pursuant to subsection (2) below or such substitute depository's successor; or (C) to any person as provided in subsection (4) below.

(2) Upon the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or a determination by the Designated Representative to discontinue the system of book entry transfers through DTC or its successor (or any substitute depository or its successor), the Designated Representative may hereafter appoint a substitute depository. Any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it.

(3) In the case of any transfer pursuant to clause (A) or (B) of subsection (1) above, the Bond Registrar shall, upon receipt of all outstanding Bonds, together with a written request of the Designated Representative, issue a single new Bond for each maturity then outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such written request of the Designated Representative.

(4) In the event that (A) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (B) the Designated Representative determines that it is in the best interest of the beneficial owners of the Bonds that such owners be able to obtain such bonds in the form of Bond

certificates, the ownership of such Bonds may then be transferred to any person or entity as herein provided, and shall no longer be held in fully-immobilized form. The Designated Representative shall deliver a written request to the Bond Registrar, together with a supply of definitive Bonds, to issue Bonds as herein provided in any authorized denomination. Upon receipt by the Bond Registrar of all then outstanding Bonds together with a written request of the Designated Representative to the Bond Registrar, new Bonds shall be issued in the appropriate denominations and registered in the names of such persons as are requested in such written request.

(e) *Registration of Transfer of Ownership or Exchange; Change in Denominations.*

The transfer of any Bond may be registered and Bonds may be exchanged, but no transfer of any such Bond shall be valid unless it is surrendered to the Bond Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Bond Registrar. Upon such surrender, the Bond Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Registered Owner or transferee therefor, a new Bond (or Bonds at the option of the new Registered Owner) of the same date, maturity and interest rate and for the same aggregate principal amount in any authorized denomination, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond. Any Bond may be surrendered to the Bond Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same date, maturity and interest rate, in any authorized denomination. The Bond Registrar shall not be obligated to register the transfer or to exchange any Bond during the 15 days preceding any interest payment or principal payment date any such Bond is to be redeemed.

(f) *Bond Registrar's Ownership of Bonds.* The Bond Registrar may become the Registered Owner of any Bond with the same rights it would have if it were not the Bond Registrar, and to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as member of, or in any other capacity with respect to, any committee formed to protect the right of the Registered Owners of Bonds.

(g) *Registration Covenant.* The City covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

(h) *Place and Medium of Payment.* Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be calculated on the basis of a year of 360 days and twelve 30-day months. For so long as all Bonds are in fully immobilized form, payments of principal and interest thereon shall be made as provided in accordance with the operational arrangements of DTC referred to in the Letter of Representations. In the event that the Bonds are no longer in fully immobilized form, interest on the Bonds shall be paid by check or draft mailed to the Registered Owners at the addresses for such Registered Owners appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date, or upon the written request of a Registered Owner of more than \$1,000,000 of Bonds (received by the Bond Registrar at least 15 days prior to the applicable payment date), such payment shall be made by the Bond Registrar by wire transfer to the account within the United States designated by the Registered Owner. Principal of the Bonds shall be payable upon presentation and surrender of such Bonds by the Registered Owners at the principal office of the Bond Registrar.

Section 5. Redemption and Purchase.

(a) *Optional Redemption.* The Bonds maturing on and prior to April 1, 2020 are not subject to optional redemption in advance of their scheduled maturity. The Bonds maturing on and after April 1, 2021 are subject to redemption at the option of the City on and after April 1, 2020 in whole or in part (and if in part, with maturities to be selected by the City) on any date at a price of par plus accrued interest to the date of redemption.

(b) *Purchase of Bonds for Retirement.* The City reserves the right to use at any time any surplus Gross Revenue available after providing for the payments required by paragraphs First, through Fifth of Section 6 of this ordinance, or other available funds, to purchase any of the Bonds at any price deemed reasonable by the City to purchase for retirement any of the Bonds offered to the City at any price deemed reasonable to the City.

(c) *Selection of Bonds for Redemption.* For as long as the Bonds are held in book-entry only form, the selection of particular Bonds within a maturity to be redeemed shall be made in accordance with the operational arrangements then in effect at DTC. If the Bonds are no longer held in uncertificated form, the selection of such Bonds to be redeemed and the surrender and reissuance thereof, as applicable, shall be made as provided in the following provisions of this subsection (c). If the City redeems at any one time fewer than all of the Bonds having the same maturity date, the particular Bonds or portions of Bonds of such maturity to be redeemed shall be selected by lot (or in such manner determined by the Bond Registrar) in increments of \$5,000. In the case of a Bond of a denomination greater than \$5,000, the City and the Bond Registrar shall treat each Bond as representing such number of separate Bonds each of the denomination of \$5,000 as is obtained by dividing the actual principal amount of such Bond by \$5,000. In the event that only a portion of the principal sum of a Bond is redeemed, upon

surrender of such Bond at the principal office of the Bond Registrar there shall be issued to the Registered Owner, without charge therefor, for the then unredeemed balance of the principal sum thereof, at the option of the Registered Owner, a Bond or Bonds of like maturity and interest rate in any of the denominations herein authorized.

(d) *Notice of Redemption.*

(1) Official Notice. For so long as the Bonds are held in uncertificated form, notice of redemption (which notice may be conditional) shall be given in accordance with the operational arrangements of DTC as then in effect, and neither the City nor the Bond Registrar will provide any notice of redemption to any Beneficial Owners. Thereafter (if the Bonds are no longer held in uncertificated form), notice of redemption shall be given in the manner hereinafter provided. Unless waived by any owner of Bonds to be redeemed, official notice of any such redemption (which redemption shall be conditioned by the Bond Registrar on the receipt of sufficient funds for redemption) shall be given by the Bond Registrar on behalf of the City by mailing a copy of an official redemption notice by first class mail at least 20 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Bond Registrar. Mailed notices will also be sent within the same period to the Underwriter or its business successor, if any.

All official notices of redemption shall be dated and shall state:

- (A) the redemption date,
- (B) the redemption price,

(C) if fewer than all outstanding Bonds are to be redeemed, the identification by maturity (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,

(D) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and

(E) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Bond Registrar.

On or prior to any redemption date, unless the redemption notice was conditional and the City shall thereafter have determined not to proceed with the redemption, the City shall deposit with the Bond Registrar an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

(2) Effect of Notice; Bonds Due. If an unconditional official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Bond Registrar at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. All Bonds which have been redeemed shall be canceled and destroyed by the Bond Registrar and shall not be reissued.

(3) Additional Notice. In addition to the foregoing notice, further notice shall be given by the City as set out below, but no defect in said further notice nor any failure to give

all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed. Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (A) the CUSIP numbers of all Bonds being redeemed; (B) the date of issue of the Bonds as originally issued; (C) the rate of interest borne by each Bond being redeemed; (D) the maturity date of each Bond being redeemed; and (E) any other descriptive information needed to identify accurately the Bonds being redeemed. Each further notice of redemption may be sent at least 35 days before the redemption date to [the Insurer,] each party entitled to receive notice pursuant to Section 16, and to the Underwriter or to its business successor, if any, and to such persons and with such additional information as the Designated Representative shall deem appropriate, but such mailings shall not be a condition precedent to the redemption of such Bonds.

(4) CUSIP Number. Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

(5) Amendment of Notice Provisions. The foregoing notice provisions of this Section 5, including but not limited to the information to be included in redemption notices and the persons designated to receive notices, may be amended by additions, deletions and changes in order to maintain compliance with duly promulgated regulations and recommendations regarding notices of redemption of municipal securities.

Section 6. Priority of Payments from Revenue Fund There has heretofore been established in the office of the Treasurer a special fund of the City known as the “City of Gig Harbor Utility Revenue Fund” (the “Revenue Fund”), into which the Revenue of the System is

deposited as collected. The Revenue Fund shall be held separate and apart from all other funds and accounts of the City, and the Revenue of the System shall be used only for the following purposes and in the following order of priority:

First, to pay the Costs of Maintenance and Operation of the System;

Second, to make all payments required to be made into the Bond Fund to pay the interest on any Parity Bonds;

Third, to make all payments required to be made into the Bond Fund to pay the maturing principal of any Parity Bonds;

Fourth, to make all payments required to be made into the Reserve Account created to secure the payment of the Parity Bonds;

Fifth, to make all payments required to be made into any other revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the City having a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

Sixth, to retire by redemption or purchase any outstanding revenue bonds or revenue warrants of the City, to make necessary additions, betterments and improvements and repairs to or extensions and replacements of the System, or for any other lawful City purposes.

Section 7. Bond Fund. A special fund of the City known as the "Utility Bond Redemption Fund" (the "Bond Fund") has heretofore been created by the City for the sole purpose of paying and securing the payment of Parity Bonds.

(a) *Payments into Debt Service Account.* A special account to be known as the “Debt Service Account” has heretofore been created in the Bond Fund for the purpose of paying the principal of, premium, if any, and interest on Parity Bonds.

As long as any Parity Bonds remain outstanding, the City hereby obligates and binds itself to set aside and pay from the Bond Fund into the Debt Service Account those amounts necessary, together with such other funds as are on hand and available in the Debt Service Account, to pay the principal of and the interest on such Parity Bonds on or prior to the respective dates the same become due (and if such payment is made on the due date, such payment shall be made in immediately available funds):

(1) Such amounts as are required to pay the interest scheduled to become due on outstanding bonds; and

(2) Such amounts with respect to outstanding bonds as are required (A) to pay maturing principal, (B) to make any required sinking fund payments, and (C) to redeem outstanding bonds in accordance with any mandatory redemption provisions.

(b) *Payments into Reserve Account.* A Utility Reserve Account has heretofore been created in the Bond Fund for the purpose of securing the payment of the principal of and the interest on all bonds payable out of such Fund.

In the event that the City issues any Term Bonds in the future and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the term Average Annual Debt Service shall be deemed to exclude from principal an amount of Term Bonds equal to such mandatory payments, and from interest, the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the

mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the dates of the respective deposits.

The City hereby covenants and agrees that on the date of issuance of the Bonds it will pay into the Reserve Account (out of Revenue of the System or any funds on hand legally available for such purpose) one fifth of the Reserve Account Requirement, and thereafter not less than approximately equal additional annual payments so that by five years from the date of issuance of the Bonds there will have been paid into the Reserve Account an amount which, with the money already on deposit therein (or any insurance policy(ies) or letter(s) of credit), will be equal to the Reserve Account Requirement.

The City hereby further covenants and agrees that in the event it issues any Future Parity Bonds that it will provide in the ordinance authorizing the issuance of the same that it will pay into the Reserve Account out of the Revenue of the System or Assessments (or, at the option of the City, out of any other funds on hand legally available for such purpose) not less than approximately equal additional annual payments so that by five years from the date of such Future Parity Bonds there will have been paid into the Reserve Account an amount which, with the money already on deposit therein (or any insurance policy(ies) or letter(s) of credit), will be equal to the Reserve Account Requirement.

The City further covenants and agrees that when the required deposits have been made into the Reserve Account, it will at all times maintain therein an amount at least equal to the Reserve Account Requirement. Whenever there is a sufficient amount in the Revenue Bond Fund, including the Reserve Account and the Debt Service Account, to pay the principal of, premium if any, and interest on all outstanding Parity Bonds, the money in the Reserve Account may be used to pay such principal, premium and interest. Money in the Reserve Account may

also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any outstanding Parity Bonds, as long as the moneys left remaining on deposit in the Reserve Account are equal to the Reserve Account Requirement.

In the event there shall be a deficiency in the Debt Service Account to meet maturing installments of either interest on or principal of and interest on the outstanding bonds payable out of such Account, such deficiency shall be made up from the Reserve Account by the withdrawal of moneys therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up out of Revenue of the System or Assessments after making necessary provision for the payments required to be made by subparagraphs First, Second, Third, Fourth and Fifth of Section 6 hereof.

(c) *Priority of Lien of Payments into Bond Fund.* The amounts so pledged to be paid into the Bond Fund are hereby declared to be a lien and charge upon the Revenue of the System junior in lien to the Costs of Maintenance and Operation, equal to the lien of the charges upon such Revenue to pay and secure the payment of the principal of and interest on the Outstanding Parity Bond and any Future Parity Bonds, and prior and superior to all other charges of any kind or nature whatsoever.

(d) *Application and Investment of Money in the Bond Fund.* Moneys in the Bond Fund shall be invested in any investments that are permitted by law for the investment of City funds. Investments in the Debt Service Account shall mature prior to the date on which such money shall be needed for required interest or principal payments. Investments in the Reserve Account shall mature not later than the last maturity of the Parity Bonds secured thereby. All interest earned and income derived by virtue of such investments shall remain in the Bond Fund and be used to meet the required deposits into any account therein.

(e) *Sufficiency of Revenues.* The Council hereby finds that in fixing the amounts to be paid into the Bond Fund out of the Revenue of the System, it has exercised due regard for the Costs of Maintenance and Operation and has not obligated the City to set aside and pay into such Fund a greater amount of such Revenue than in its judgment will be available over and above the Costs of Maintenance and Operation.

Section 8. Defeasance. In the event that money and/or Government Obligations maturing at such time or times and bearing interest to be earned thereon in amounts (together with such money, if necessary) sufficient to redeem and retire part or all of the Bonds authorized hereunder in accordance with their terms, are set aside in a special account of the City to effect such redemption and retirement, and such moneys and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Bond Fund of the City for the payment of the principal of and interest on the Bonds so provided for, and such Bonds shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the moneys so set aside and pledged, and except the right to receive the moneys so set aside and pledged, such Bonds shall be deemed not to be outstanding hereunder.

Section 9. Tax Covenants.

(a) *Arbitrage Covenant.* The City hereby covenants that it will not make any use of the proceeds of sale of the Bonds or any other funds of the City which may be deemed to be proceeds of such Bonds pursuant to Section 148 of the Code which will cause the Bonds to be “arbitrage bonds” within the meaning of said section and said Regulations. The City will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Bonds) and the applicable Regulations thereunder throughout the term of the Bonds.

(b) *Private Person Use Limitation for Bonds.* The City covenants that for as long as the Bonds are outstanding, it will not permit:

(1) More than 10% of the Net Proceeds of the Bonds to be used for any Private Person Use; and

(2) More than 10% of the principal or interest payments on the Bonds in a Bond Year to be directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use.

The City further covenants that, if:

(3) More than five percent of the Net Proceeds of the Bonds are to be used for any Private Person Use; and

(4) More than five percent of the principal or interest payments on the Bonds in a Bond Year are (under the terms of this ordinance or any underlying arrangement) directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use, then, (i) any Private Person Use of the Project or Private Person Use payments described in subsection (4) hereof that is in excess of the five percent limitations described in such subsections (3) or (4) will be for a Private Person Use that is related to the state or local governmental use of the Project, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Bonds used for the state or local governmental use portion of the Project to which the Private Person Use of such portion of the

Projects relates. The City further covenants that it will comply with any limitations on the use of the projects by other than state and local governmental users that are necessary, in the opinion of its bond counsel, to preserve the tax exemption of the interest on the Bonds. The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bonds.

(c) *No Designation under Section 265(b) of the Code.* The Bonds are not “qualified tax-exempt obligations” for investment by financial institutions under Section 265(b) of the Code.

Section 10. Bond Covenants.

(a) *Maintenance of System.* The City shall at all time maintain, preserve and keep the properties of the System in good repair, working order and condition and will from time to time make all necessary and proper repairs, renewals, replacements, extensions and betterments thereto, so that at all times the business carried on in connection therewith will be properly and advantageously conducted and said properties of the System and the business in connection therewith administered in an efficient manner and at a reasonable cost.

(b) *Collection and Application of Assessments.* The City will promptly collect all Assessments levied in utility local improvement districts that have been heretofore created by the City and all Assessments levied in utility local improvement districts heretofore created, and all utility local improvement districts that are hereafter created to secure the payment of the principal of and interest on Parity Bonds and will pay the same into the Bond Fund. The same may be used to meet required payments into any Account of the Bond Fund and may be used to pay the principal of and interest on any Parity Bonds without said Assessments being particularly allocated to the payment of any particular series of bonds payable out of such Fund. It is hereby

further provided, however, that nothing in this ordinance or in this subsection shall be construed to prohibit the City from issuing revenue bonds having a lien on the Revenue of the System and the money in the Revenue Fund junior to the lien on such revenue and money for the payment of the principal of and interest on the Bonds and pledging as security for the payment of such junior lien bonds assessments levied in any utility local improvement district that may have been created to pay part or all of the cost of improvements to the System for which such junior revenue bonds were specifically issued.

(c) *Rates and Charges.* The City shall fix, maintain and collect rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the System, which shall be fair and nondiscriminatory and shall adjust such rates and charges from time to time so that:

(1) the Revenue of the System derived therefrom, together with Assessments collected, will at all times be sufficient (A) to pay the Costs of Maintenance and Operation, (B) to pay the principal of and interest on all Parity Bonds, as and when the same shall become due and payable, (C) to make adequate provision for the payment of any Term Bonds, (D) to make when due all payments which the City is obligated to make into the Reserve Account and all other payments which the City is obligated to make pursuant to this ordinance, and (F) to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the revenue therefrom or payments in lieu thereof and any and all other amounts which the City may now or hereafter become obligated to pay from the Revenue of the System by law or contract; and

(2) the Net Revenue together with Assessment Income in each calendar year will equal at least 1.25 times the maximum amount required to be paid in any succeeding

calendar year for the principal of and interest on all Parity Bonds then outstanding. In the event the City issues any Term Bonds, and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the words “principal of and interest on all outstanding Parity Bonds” in the preceding sentence shall be deemed to exclude from “principal” an amount of Term Bonds equal to such mandatory payments, and from “interest” the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the date of the respective deposits.

(d) *Net Revenue.* After making or providing for the monthly payments from the Revenue Fund as required by Section 6 hereof, there shall be maintained in the Revenue Fund sufficient moneys to enable the City to meet the Costs of Maintenance and Operation of the System on a current basis. The City shall not change any rate or charge for service of the System as now established by the existing rate ordinance or ordinances that will reduce substantially the annual Net Revenues below that which would have been obtained before such change, unless the City shall have on file a certificate from a licensed professional engineer experienced in the design, construction and operation of municipal utilities or from an independent certified public accountant stating that the rates and charges as so changed will provide Net Revenues sufficient to comply with all the covenants and requirements of this ordinance.

(e) *Sale of Properties.* The City will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition, provision is made for the payment into the Bond Fund of cash or Government Obligations sufficient (taking into account interest to be earned on any such Government Obligations) to pay the principal of and interest on all then outstanding Parity Bonds, nor will it sell or otherwise dispose of any part of the useful

operating properties of the System unless such facilities are replaced or provision is made for payment into the Bond Fund of the greatest of the following:

(1) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and Accounts therein) that the Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Revenue of the System for such period; or

(2) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and Accounts therein) that the Net Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Net Revenue of the System for such period; or

(3) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined above) that the depreciated cost value of the facilities sold or disposed of bears to the depreciated cost value of the entire System immediately prior to such sale or disposition.

The proceeds of any such sale or disposition of a portion of the properties of the System (to the extent required above) shall be paid into the Reserve Account in the Bond Fund.

Notwithstanding any other provision of this paragraph, the City may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Bond Fund.

(f) *No Encumbrances.* The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the System or the Revenue of the System, or any part thereof, prior or superior to the lien thereon for the payment of Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, or upon any funds in the hands of the City, prior to or superior to the lien of Parity Bonds, or which might impair the security of Parity Bonds.

(g) *Insurance.* The City will keep the works, plants and facilities comprising the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents or casualties, at least to the extent that insurance is usually carried by private corporations operating like properties, or will implement a self-insurance program with reserves adequate, in the judgment of the Council, to protect City and the owners of the Bonds against loss. In the event of any loss or damage, the City will promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the System, the proceeds of such insurance shall be paid into the Reserve Account to the extent that such transfer shall be necessary to make up any deficiency in said Reserve Account and the balance, if any, shall at the option of the City, be used either for repairs, renewals, replacements, or capital additions to the System, for the redemption of Parity Bonds, or for deposit into the Reserve Account.

(h) *Books and Accounts.* The City shall keep proper books of account which shall be kept in accordance with any applicable rules and regulations prescribed by the State of Washington. The City shall prepare, and any owner of Parity Bonds may obtain copies of,

balance sheets and profit and loss statements showing in reasonable detail the financial condition of the System as of the close of each year, and the income and expenses of such year, including the amounts paid into the Revenue Fund, the Bond Fund, and into any and all special funds or accounts created pursuant to the provisions of this ordinance, and the amounts expended for maintenance, renewals, replacements, and capital additions to the System.

(i) *No Free Service.* The City will not furnish or supply or permit the furnishing or supplying of any commodity, service or facility furnished by or in connection with the operation of the System, free of charge to any person, firm or corporation, public or private, so long as any Bonds are outstanding and unpaid.

(j) *Sound Expenditures.* The City will not expend any of the Revenue derived by it from the operation of the System or the proceeds of any indebtedness payable from Revenue of the System for any extensions, betterments and improvements to the System which are not legally required or economically sound, and which will not properly and advantageously contribute to the conduct of the business of the System in an efficient manner.

(k) *Enforcement of Collection of Service Charges and Assessments.* The City shall promptly take action to enforce the payment of delinquent service charges and Assessments by such means as are legally available.

Section 11. Issuance of Future Parity Bonds. The City hereby further covenants and agrees with the owners of each of the Bonds for as long as any of the same remain outstanding as follows:

The City will not issue any bonds having a greater or equal priority of lien upon the Revenue of the System to pay and secure the payment of the principal of and interest on such bonds than the priority of lien created on such bonds than the priority of lien created on such

Revenue to pay and secure the payment of the principal of and interest on the Parity Bonds except as follows:

(a) The City reserves the right to issue Future Parity Bonds for the purposes of

First, providing funds to acquire, construct, reconstruct, install, or replace any equipment, facilities, additions, betterments, or other capital improvements to the System for which it is authorized by law to issue revenue bonds, or

Second, refunding at or prior to their maturity, any revenue bond anticipation notes, or outstanding revenue bonds or other obligations payable out of the Revenue of the System and to pledge that payments will be made out of the Revenue of the System and into the Bond Fund and the Reserve Account therein to pay and secure the payment of the principal of and interest on such Future Parity Bonds on a parity with the payments required herein to be made out of such Revenue into such Fund and Account to pay and secure the payment of the principal of and interest on any Parity Bonds then outstanding, upon compliance with the following conditions:

(1) At the time of the issuance of any Future Parity Bonds there is no deficiency in the Bond Fund or the Reserve Account.

(2) If there are Assessments levied in any utility local improvement district to pay for additions and improvements to and extensions of the System which will be constructed from the proceeds of such Future Parity Bonds, the ordinance authorizing such Future Parity Bonds shall require that such Assessments be paid into the Bond Fund.

(3) If there are Assessments pledged to be paid into a warrant or bond redemption fund for revenue bonds or warrants being refunded by Future Parity Bonds, the

ordinance authorizing the Future Parity Bonds shall require such Assessments to be paid into the Bond Fund.

(4) The principal of and interest on the Future Parity Bonds shall be payable out of the Bond Fund and the requirements for Reserve Account payments in Section 14(b) hereof shall be met.

(5) Prior to the delivery of any Future Parity Bonds the City shall have on file a certificate of an independent professional engineer, certified public accountant or City representative dated not earlier than 90 days prior to the date of delivery of such Future Parity Bonds and showing that the Net Revenue determined and adjusted as hereafter provided for each calendar or fiscal year after the issuance of such Parity Bonds (the "Adjusted Net Revenue") together with Assessment Income will equal at least 1.25 times the amount required in any such year for the payment of the principal of and interest on all Parity Bonds then outstanding, including the Future Parity Bonds proposed to be issued, except that the certificate of a City representative shall be based on actual historical Net Revenue of the System and no adjustments to that revenue shall be allowed. In the event the City issues any Term Bonds, and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the words "principal of and interest on all outstanding Parity Bonds" in the preceding sentence shall be deemed to exclude from "principal" an amount of Term Bonds equal to such mandatory payments, and from "interest" the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the dates of the respective deposits.

The Adjusted Net Revenue shall be the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of such proposed Parity Bonds as adjusted by such engineer or accountant to take into consideration changes in Net Revenue estimated to occur under one or more of the following conditions for each year after such delivery for so long as any Parity Bonds, including the Future Parity Bonds proposed to be issued, shall be outstanding:

(i) any increase or decrease in Net Revenue which would result if any change in rates and charges adopted prior to the date of such certificate and subsequent to the beginning of such 12-month period, had been in force during the full 12-month period;

(ii) any increase or decrease in Net Revenue estimated by such Engineer or Accountant to result from any additions, betterments and improvements to and extensions of any facilities of the System which (a) became fully operational during such 12-month period, (b) were under construction at the time of such certificate or (c) will be constructed from the proceeds of the Parity Bonds to be issued;

(iii) the additional Net Revenue which would have been received if any customers added to the System during such 12-month period were customers for the entire period;

Such Engineer or Accountant shall base his or her certification upon, and his or her certificate shall have attached thereto, financial statements of the System audited by the State Examiner (unless such an audit is not available for a 12-month period within the preceding 24 months) and certified by the City Administrator, showing income and expenses for the period upon which the same is based.

The certificate of such Engineer or Accountant shall be conclusive and the only evidence required to show compliance with the provisions and requirements of this subsection (5).

Notwithstanding the foregoing requirement, if Future Parity Bonds are to be issued for the purpose of refunding at or prior to their maturity any part or all of the then outstanding Parity Bonds and the issuance of such refunding Parity Bonds results in a debt service savings and does not require an increase of more than \$5,000 in any year for principal and interest on such refunding Parity Bonds, the certificate required by subsection (a)(5) of this section need not be obtained.

(b) Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations which are a charge upon the Revenue of the System junior or inferior to the payments required by this ordinance to be made out of such Revenue into the Bond Fund and Reserve Account to pay and secure the payment of any outstanding Parity Bonds.

(c) Nothing herein contained shall prevent the City from issuing revenue bonds to refund maturing Parity Bonds for the payment which moneys are not otherwise available.

Section 12. Form of Bond and Certificate of Authentication. The Bond shall be in substantially the following form:

[Statement of Insurance]

UNITED STATES OF AMERICA

No. R-1

\$ _____

STATE OF WASHINGTON
CITY OF GIG HARBOR
WATER AND SEWER REVENUE BOND, 2010
(TAXABLE BUILD AMERICA BONDS – DIRECT PAYMENT TO ISSUER)

INTEREST RATE:

MATURITY DATE:

CUSIP NO.:

REGISTERED OWNER: CEDE & Co.

PRINCIPAL AMOUNT: _____ AND NO/DOLLARS

THE CITY OF GIG HARBOR, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington (the “City”), promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, solely from the special fund of the City known as the “Utility Bond Redemption Fund” (the “Bond Fund”), the Principal Amount indicated above and to pay interest thereon from the Bond Fund from March __, 2010, or the most recent date to which interest has been paid or duly provided for or until payment of this bond at the Interest Rate set forth above, payable on October 1, 2010, and semiannually thereafter on the first days of each April and October. Both principal of and interest on this bond are payable in lawful money of the United States of America. For so long as the bonds of this issue are held in fully immobilized form, payments of principal and interest thereon shall be made as provided in accordance with the operational arrangements of The Depository Trust Company (“DTC”) referred to in the Blanket Issuer Letter of Representations (the “Letter of Representations”) from the City to DTC. The fiscal agency of the state of Washington is acting as the registrar, authenticating agent and paying agent for the bonds of this issue (the “Bond Registrar”).

This bond is one of an authorized issue of bonds of the City of like date and tenor except as to number, amount, rate of interest and date of maturity in the aggregate principal amount of \$6,010,000. This issue of bonds is authorized by the Bond Ordinance for the purposes of paying the costs of capital improvements to the water and sewer system (the “System”).

The bonds of this issue are subject to redemption prior to their scheduled maturity as provided in the Bond Ordinance.

The bonds of this issue are not general obligations of the City. The City hereby covenants and agrees with the owner and holder of this bond that it will keep and perform all the covenants of this bond and the Bond Ordinance.

The bonds of this issue are not "private activity bonds" as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"). The bonds of this issue are not "qualified tax-exempt obligations" under Section 265(b) of the Code.

This bond is payable solely out of the Revenue of the System, and does not constitute a general obligation of the City. Both principal of and interest on this bond are payable solely out of the special fund of the City known as the Bond Fund. The City does hereby pledge and bind itself to set aside and pay into the Bond Fund the amounts required by the Bond Ordinance to be paid therein on or prior to the maturity of the Bond as the same shall become due from the proceeds of the Bonds (as authorized in the Bond Ordinance) or from the sources and in the priority specified in the Bond Ordinance.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

It is hereby certified that all acts, conditions, and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done, and performed precedent to and in the issuance of this bond have happened, been done, and performed.

IN WITNESS WHEREOF, the City of Gig Harbor, Washington has caused this bond to be signed with the facsimile or manual signature of the Mayor, to be attested by the facsimile or manual signature of the City Clerk, and the corporate seal of the City to be impressed, imprinted or otherwise reproduced hereon, all as of this ____ day of March, 2010.

CITY OF GIG HARBOR, WASHINGTON

By _____ /s/ manual or facsimile
Mayor

(SEAL)

ATTEST:

_____/s/ manual or facsimile
City Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This bond is one of the bonds described in the within-mentioned Bond Ordinance and is one of the Water and Sewer Revenue Bonds, 2010 (Taxable Build America Bonds – Direct Payment to Issuer) of the City of Gig Harbor, Washington, dated March ____, 2010.

WASHINGTON STATE FISCAL AGENCY,
Bond Registrar

By _____
Authorized Signer

Section 13. Execution and Delivery of Bond. The Bonds shall be executed on behalf of the City with the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk, and the seal of the City shall be impressed, imprinted or otherwise reproduced on the Bonds.

Only such Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bonds shall cease to be an officer or officers of the City before the Bonds so signed shall have been authenticated or delivered by the Bond Registrar, or issued by the City, such Bonds may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. Any Bond may also be signed and attested on behalf of the City by such persons who

are at the actual date of delivery of such Bond the proper officers of the City although at the original date of such Bond any such person shall not have been such officer of the City.

Section 14. Sale of Bonds. The Bonds shall be sold as Build America Bonds and shall be sold by negotiated sale to D.A. Davidson & Co., Seattle, Washington (the "Underwriter"). The Bonds shall be sold to the Underwriter under the terms of a bond purchase agreement dated as of this date. The Designated Representative is hereby authorized and directed to execute and deliver such bond purchase agreement.

The Designated Representative is hereby authorized to review and approve on behalf of the City the preliminary and final Official Statements relative to the Bonds with such additions and changes as may be deemed necessary or advisable to them. The preliminary Official Statement for the Bonds dated March ___, 2010, is hereby deemed final within the meaning of SEC Rule 15c2-12. The proper City officials are hereby authorized and directed to do everything necessary for the prompt execution and delivery of the Bonds to said Underwriter, in accordance with the purchase agreement, and for the proper application and use of the proceeds of sale thereof

Section 15. Disposition of Bond Proceeds. From the proceeds of the Bonds, a sum sufficient to meet the Reserve Account Requirement shall be deposited in the Reserve Fund. The Designated Representative shall establish an account within the Revenue Fund to be designated as the "Project Account" (the "Project Account"). The balance of the proceeds of sale of the Bonds shall be deposited in the Project Account and shall be expended solely to pay the cost of issuing and selling the Bonds and, together with other available moneys of the City, shall be used to undertake the Project. Money in the Project Account shall be invested by the Designated Representative, pending disbursement, in any legal investment for City funds.

Section 16. Undertaking to Provide Ongoing Disclosure.

(a) *Contract/Undertaking.* This section constitutes the City's written undertaking for the benefit of the owners of the Bonds as required by Section (b)(5) of the Rule.

(b) *Financial Statements/Operating Data.* The City agrees to provide or cause to be provided to the Municipal Securities Rulemaking Board ("MSRB"), the following annual financial information and operating data for the prior fiscal year (commencing in 2011 for the fiscal year ended December 31, 2010):

1. Annual financial statements, which statements may or may not be audited, showing ending fund balances for the City's water and sewer funds prepared in accordance with the Budgeting Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) and generally of the type included in the official statement for the Bonds under the heading "Historical Operating Results and Debt Service Coverage";
2. Statement of authorized, issued and outstanding Parity Bonds;
3. Number of water utility and sewer utility customers; and
4. Debt service coverage ratios for Parity Bonds.

Items 2-5 shall be required only to the extent that such information is not included in the annual financial statements.

The information and data described above shall be provided on or before nine months after the end of the City's fiscal year. The City's current fiscal year ends December 31. The City may adjust such fiscal year by providing written notice of the change of fiscal year to the MSRB. In lieu of providing such annual financial information and operating data, the City may cross-reference to other documents available to the public on the MSRB's internet website.

If not provided as part of the annual financial information discussed above, the City shall provide the City's audited annual financial statement prepared in accordance with the Budgeting Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) when and if available to the MSRB.

(c) *Material Events.* The City agrees to provide or cause to be provided, in a timely manner, to the MSRB notice of the occurrence of any of the following events with respect to the Bonds if material:

- Principal and interest payment delinquencies;
- Non-payment related defaults;
- Unscheduled draws on debt service reserves reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers, or their failure to perform;
- Adverse tax opinions or events affecting the tax-exempt status of the Bonds;
- Modifications to rights of owners;
- Optional, contingent or unscheduled Bond calls other than scheduled sinking fund redemptions for which notice is given pursuant to Exchange Act Release 34-23856;
- Defeasances;

- Release, substitution or sale of property securing the repayment of the Bonds; and
- Rating changes.

Solely for purposes of disclosure, and not intending to modify this undertaking, the City advises that there is no property securing repayment of the Bonds, and there is no debt service reserve fund or account securing the repayment of the Bonds.

(d) *Notification Upon Failure to Provide Financial Data.* The City agrees to provide or cause to be provided, in a timely manner, to the MSRB, if any, notice of its failure to provide the annual financial information described in subsection (b) above on or prior to the date set forth in subsection (b) above.

(e) *Emma; Format for Filings with the MSRB.* Until otherwise designated by the MSRB or the Securities and Exchange Commission, any information or notices submitted to the MSRB in compliance with the Rule are to be submitted through the MSRB's Electronic Municipal Market Access system ("EMMA"), currently located at www.emma.msrb.org. All notices, financial information and operating data required by this undertaking to be provided to the MSRB must be in an electronic format as prescribed by the MSRB. All documents provided to the MSRB pursuant to this undertaking must be accompanied by identifying information as prescribed by the MSRB.

(f) *Termination/Modification.* The City's obligations to provide annual financial information and notices of material events shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. This section, or any provision hereof, shall be null and void if the City (1) obtains an opinion of nationally recognized bond counsel to the effect that those portions of the Rule which require this section, or any such provision, are

invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (2) notifies the MSRB, if any, of such opinion and the cancellation of this section. Notwithstanding any other provision of this ordinance, the City may amend this Section 16 and any provision of this Section 16 may be waived, with an approving opinion of nationally recognized bond counsel.

In the event of any amendment of or waiver of a provision of this Section 16, the City shall describe such amendment in the next annual report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (I) notice of such change shall be given in the same manner as for a material event under Subsection (c), and (II) the annual report for the year in which the change is made should present a comparison (in narrative form and also, if practical, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

(g) *Bond Owner's Remedies Under This Section.* A Bond owner's right or Beneficial Owner's to enforce the provisions of this section shall be limited to a right to obtain specific enforcement of the City's obligations hereunder, and any failure by the City to comply with the provisions of this undertaking shall not be an event of default with respect to the Bonds under this ordinance.

Section 17. Lost or Destroyed Bonds. In case any Bond or Bonds shall be lost, stolen or destroyed, the Bond Registrar may execute and deliver a new Bond or Bonds of like date, number and tenor to the Registered Owner thereof upon the Registered Owner's paying the

expenses and charges of the City in connection therewith and upon his/her filing with the City evidence satisfactory to the City that such Bond was actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the City with indemnity satisfactory to the City.

[Section 18. Bond Insurance. In accordance with the offer of Underwriter to purchase the Bonds, the Council hereby approves the commitment of the Insurer to provide a bond insurance policy guaranteeing the payment when due of principal of and interest on the Bonds (the “Bond Insurance Policy”). The Council further authorizes and directs all proper officers, agents, attorneys and employees of the City to cooperate with the Insurer in preparing such additional agreements, certificates, and other documentation on behalf of the City as shall be necessary or advisable in providing for the Bond Insurance Policy.]

Section 19. Supplements and Amendments.

(a) *Without Consent.* The Council from time to time and at any time may adopt an ordinance or ordinances supplemental hereof, which ordinance or ordinance thereafter shall become a part of this ordinance, for any one or more or all of the following purposes:

(1) To add to the covenants and agreements of the City contained in this ordinance other covenants and agreements thereafter to be observed, which shall not adversely affect the interests of the owners of any Parity Bonds, or to surrender any right or power herein reserved to or conferred upon the City.

(2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this ordinance or any ordinance authorizing Parity Bonds in regard to matters or questions arising under such ordinances as the Council may deem necessary or desirable and not inconsistent with such ordinances and which shall not adversely affect the interest of the owners of Parity Bonds.

Any such supplemental ordinance of the Council may be adopted without the consent of the owners of any Parity Bonds at any time outstanding, notwithstanding any of the provisions of subsection (b) of this section.

(b) *With Consent.* With the consent of the owners of not less than 65% in aggregate principal amount of the Parity Bonds at the time outstanding, the Council may adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:

(1) Extend the fixed maturity of any Parity Bonds, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof without the consent of the owner of each Bond so affected; or

(2) Reduce the aforesaid percentage of owners of Bonds required to approve any such supplemental ordinance, without the consent of the owners of all of the Parity Bonds then outstanding.

It shall not be necessary for the consent of the Bondowners under this subsection (b) to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

(c) *Effect of Supplemental Ordinance.* Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this ordinance and all owners of Parity Bonds outstanding hereunder shall thereafter be determined, exercised and enforced thereunder, subject in all respect to such

modification and amendments, and all the terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this ordinance for any and all purposes.

(d) *Notation on Future Parity Bonds.* Parity Bonds executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this section may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new bonds so modified as to conform in the opinion of the Council, to any modification of this ordinance contained in any such supplemental ordinance, may be prepared by the City and delivered without cost to the owners of any affected Parity Bonds then outstanding.

Section 20. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 21. Effect of Covenants, Etc.. All covenants, obligations and agreements of the City contained in this ordinance shall be deemed to be covenants, obligations and agreements of the City to the full extent authorized by the Act and permitted by the Constitution of the State of Washington. No covenant, obligation or agreement contained herein shall be deemed to be a covenant, obligation or agreement of any present or future official, member, agent or employee of the City in his or her individual capacity, and neither the members of the Council nor any officer thereof executing the Bond shall be liable personally on the Bond or be subject to any

personal liability or accountability by reason of the issuance thereof. No member, officer, agent or employee of the City shall incur any liability in acting or proceeding or in not acting or proceeding, in good faith in accordance with the terms of this ordinance.

Section 22. Effective Date. This ordinance shall be effective five days after its passage and publication in the manner required by law.

PASSED by the Council of the City of Gig Harbor, Washington at a regular meeting held on the 8th day of March, 2010.

CITY OF GIG HARBOR, WASHINGTON

Mayor

ATTEST:

City Clerk

First Reading: February 22, 2010

Date Adopted: March 8 2010

Date of Publication: _____, 2010

Effective Date: March 15, 2010

CERTIFICATE

I, the undersigned, City Clerk of the City of Gig Harbor, Washington (the "City") and keeper of the records of the City Council (the "Council"), DO HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. ____ of the Council (the "Ordinance"), duly passed at a regular meeting thereof held on the 8th day of March, 2010.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of March, 2010.

Molly Towslee, City Clerk



Subject: Clarifier No. 2 - Plans & Specifications - Consultant Services Contract Amendment/Cosmopolitan Engineering Group

Proposed Council Action: Authorize the Mayor on behalf of Council to execute Amendment #4 to the Consultant Services Contract for Cosmopolitan Engineering Group

Dept. Origin: Public Works/Engineering

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

For Agenda of: February 22, 2010

Exhibits: Amendment #4 to Consultant Services Contract

Initial & Date

Concurred by Mayor: *CLH 2/17/10*
Approved by City Administrator: _____
Approved as to form by City Atty: *via email 2/17/10*
Approved by Finance Director: *OR 2/17/10*
Approved by Department Head: *stm 2/17/10*

Expenditure	Amount	Appropriation
Required \$153,019	Budgeted \$5,800,000	Required \$0

INFORMATION / BACKGROUND

This contract provides for the final design and preparation of plans, specifications, and related construction management services during construction for the additional fourth clarifier, Clarifier No. 2 at the Wastewater Treatment Plant. This additional clarifier was not included in the current scope of work and was deleted during the preparation of final bid documents as the City was uncertain about bidding climate at the time of bid opening. The engineer's original contract estimate for construction was \$15,176,000. The awarded construction contract including one minor change order equaled \$10,885,000. Currently, the construction of the plant improvements is underway and work is at about seventy percent completed. Additionally, there IS NOT ANY OUTSTANDING UNRESOLVED construction issues on this project.

Ideally staff would like to have the current contractor perform this additional work by change order. The City Attorney has indicated concern that the addition of this work by change order may not meet the factors considered by the State Auditor, but staff is presently in communication with the State Auditor's office to determine whether the proposal would be acceptable.

As presented and in order of time, the Contract Amendment as presented would provide for the full Plan, Specifications, and Bidding Documents for a competitive bid, along with construction management services during construction for this additional Clarifier.

Should the City receive a determination to Change Order this additional work, the City would then delete the associated tasks from the proposed Scope and fee estimate for those items that would no longer apply.

Summarized below are major reasons why the Clarifier No. 2 System **Design** differs from the recently constructed Clarifier No. 4, which necessitates a predominately new design from the ground up:

Geotechnical

The subgrade of Clarifier No. 2 differs from Clarifier No. 4. The area of Clarifier No. 2 may consist of unconsolidated fill materials from past construction. An example of remedial measures may include over excavation and backfill with controlled density fill, as was done for the construction of the Clarifier Distribution Box located immediately to the west.

The active and passive earth pressures will differ, since the degree of burial of Clarifier No. 2 is different from Clarifier No. 4. This will also relate to additional structural engineering design and reinforcing analysis.

Structural

Reinforcing requirements will differ for Clarifier No. 2 due to differing active and passive earth pressures from the degree of burial. Separate, complete structural calculations will be completed for Clarifier No. 4. Clarifier No. 4 structural calculations cannot be directly applied.

The access stairs and walkway are different, are of longer span, and more complex for Clarifier No. 2 than for Clarifier No. 4.

Location of bridge, scum box, feedwell, sludge withdrawal, and other structural components of Clarifier No. 2 will differ from Clarifier No. 4.

A separate, new building permit will be required for the work, including time spent in submittal preparation, review, and comment responses.

Mechanical

Scum withdrawal methodology and piping will be different from Clarifier No.4. The locations of various utility water and appurtenances and other piping will differ from the configuration of Clarifier No. 4.

Electrical

The electrical boxes, conduit runs and wire sizes will be different from Clarifier No. 4 due to proximity to electrical gear and the specific configuration of Clarifier No. 2.

FISCAL CONSIDERATION

The 2009-2010 Sewer Capital Fund has allocated \$5,800,000 for this project. See attached budget summary sheet for project related costs. It is recommended that the City complete the design and preparation of full contract drawings for the additional Clarifier at this time to take advantage of the very competitive bidding environment.

BOARD OR COMMITTEE RECOMMENDATION

The merits and benefits of proceeding with the design and preparation of final design documents for the additional clarifier were discussed at the November 2009 Public Works Committee meeting and the Committee members supported staff in proceeding with a formal contract amendment for the final design and preparation of final plans for the additional clarifier.

RECOMMENDATION / MOTION

Move to: Authorize the Mayor on behalf of Council to execute Amendment #4 to the Consultant Services Contract with Cosmopolitan Engineering Group in the not-to-exceed amount of One Hundred Fifty Three Thousand and Nineteen Dollars (\$153,019), resulting in a contract amended total not to exceed \$2,127,197.00.

**AMENDMENT #4 TO CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
COSMOPOLITAN ENGINEERING GROUP**

THIS FOURTH AMENDMENT is made to the AGREEMENT, dated March 12, 2007, subsequent AMENDMENT #3, dated September 22, 2008, subsequent AMENDMENT #2, dated September 22, 2008, subsequent AMENDMENT #1, dated August 13, 2007, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Cosmopolitan Engineering Group, a corporation organized under the laws of the State of Washington, located and doing business at 711 Pacific Avenue, Tacoma, Washington 98402, (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in Wastewater Treatment Plant Phase 1 Improvement Project and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agreed to perform the services, and the parties executed an Agreement on March 12, 2007, as modified by Amendment #1 dated August 13, 2007 and Amendment #2 and Amendment #3 dated September 22, 2008 (hereinafter the "Agreement"); and

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

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

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

Section 2. **Amendment to Compensation.** Section II(A) of the Agreement is amended to require the City to pay compensation to the Consultant for the work described in **Exhibit B** to the Amendment in the amount of One Hundred Fifty Three Thousand Nineteen Dollars and no cents (\$153,019.00). This Amendment shall not modify any other of the remaining terms and conditions in Section II, which shall be in effect and fully enforceable.

Section 3. **Effectiveness of all Remaining Terms of Agreement.** All of the remaining terms and conditions of the Agreement between the parties shall be in effect and be fully enforceable by the parties. The Agreement shall be incorporated herein as

if fully set forth, and become a part of the documents constituting the contract between the parties.

Section 4. **Amendment to Duration of Work.** Section IV of the Agreement is amended that the parties agree that the work described in **Exhibit A** shall be completed by March 31, 2012.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2010.

THE CITY OF GIG HARBOR

By: David McBride
Its Principal

By: _____
Mayor

Notices to be sent to:

CONSULTANT
David McBride, PE, Principal
Cosmopolitan Engineering Group
711 Pacific Avenue
Tacoma, Washington 98402
(253) 272-7220

Stephen Misiurak, P.E.
City Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

CITY OF GIG HARBOR

**EXHIBIT A – AMENDMENT NO. 4 SCOPE OF WORK
TASK 8 – WASTEWATER TREATMENT PLANT
PHASE I IMPROVEMENTS**

**DESIGN AND ENGINEERING SERVICES DURING BIDDING,
CONSTRUCTION, AND TWO-YEAR WARRANTY PERIOD FOR
ADDITIONAL CLARIFIER [#2] AND RETURN ACTIVATED SLUDGE (RAS) PUMP**

This amendment provides administration, design, and services during construction and 2-year warranty periods for a fourth clarifier (Clarifier #2) and 5th RAS pump and ancillary facilities at the Gig Harbor Wastewater Treatment Plant (the added Work). The premise of this amendment is that construction of the added improvements will be by separate construction contract publicly advertised and bid, with on-site Work for the separate contract to commence following substantial completion of the current Gig Harbor Wastewater Treatment Plant Phase I Improvements Construction Contract. The separate construction contract will be a period of 4 calendar months. The added Work will not adversely affect achieving the permitted capacity of 1.6 mgd as currently scheduled in the current Phase I Improvements Construction Contract. If the City elects to complete the added Work by Change Order to Prospect Construction, then this scope of work and budget will be amended to reflect a reduction in required engineering services during design and construction.

The added facilities under this amendment will be fully functioning mechanical and electrically and will be placed on-line following substantial completion of the work. A site plan of the added Work, showing how it fits into the overall Phase I and II WWTP Improvements projects is included as Figure 1. The advantage of design and construction of Clarifier #2, RAS pump, and ancillary facilities in 2010 is as follows:

- Clarifier #2 (and associated RAS pump) is the largest component necessary to reach a WWTP capacity of 2.4 mgd (average maximum monthly flow).
- The current design team can provide economy in the design of the additional clarifier, RAS pumping facilities, and ancillary improvements by use of materials prepared under the Phase I Improvements design (i.e. specifications, drawings, and calculations) as appropriate. However, separate, complete, new drawings and specifications must be prepared for the added work under this amendment, with reference to ongoing improvements under the existing Phase I Construction Contract shown as existing.

- The current design team is familiar with City goals for the added improvements, including incorporating an elevated walkway between Clarifiers #1, #2, and #3 for improved access, operations and maintenance.
- Constructing the added improvements now will assure compatibility of the added equipment with equipment already being installed as part of the Phase I Improvements. In the time spanning treatment plant upgrades, equipment designs/quality can change and manufacturers can go out of business, particularly under the current economic climate.
- Current materials prices are at levels lower than seen in the past 5 years.
- When completed, the additional clarifier will provide operators needed flexibility to do proper maintenance to the other three clarifiers. Clarifier #1 and #3 mechanisms need major structural maintenance requiring long term shut down.
- Constructing the added improvements now will avoid destruction of final grade, pavement, fencing, and other new improvements under the Phase I Improvements in the future. To accomplish this benefit, the current Phase I Improvements Construction Contract will be extended to allow completion of this work following construction of Clarifier #2, RAS pump, and ancillary facilities.

Task 8.1 – Project Administration

This task encompasses project management responsibilities:

- Maintaining project files
- Project correspondence
- Subconsultant team coordination and progress meetings
- Invoicing and project tracking
- Technical Quality Assurance reviews

This task consists of:

- Monthly status/kick-off meeting (1 total) by the design team's Project Administrator, held at the City Civic Building. Design team members will participate by conference call, as needed, for status reporting.
- One other meeting over the duration of the design for coordination with City Planning, Building, Operations and other Departments.
- Day-to-day oversight and correspondence to meet overall project needs, including:
 - Gathering information for dissemination
 - Schedule tracking
 - Obtaining consultant and vendor services

- Facilitating communication between City staff, design team, and regulatory agencies
- QA/QC review of the project as a whole

Task 8.2 – Permitting and Coordination with Local Agencies

Under this task, relevant codes, standards, permits and other requirements will be reviewed (i.e., IBC, ADA, OSHA, NFPA, etc.). A building permit application will be made to the City Planning Department according to departmental standards. City Planning Department review comments will be addressed via memoranda and revision to design drawings. This task includes local agency coordination as required.

This task also includes submittal of the bid package to the Washington State Department of Ecology for review and approval under WAC 173-240-070.

Deliverables:

- Building Permit application materials (2 copies of original full size stamped and signed drawings).
- Response memoranda to City and agency review comments.
- Washington State Department of Ecology approval letter.
- Drawing markups for Building Department Approval and procurement of approved City Building Permit by Design Team.

Task 8.3 – Design

The design development and design submittal will include:

- Site visits to gather information for, and office development of 3-D CADD model, including coordinate reference system.
- General sheets, index sheets, and detail sheets for each discipline.
- Facilities structural and mechanical layout in 3-D model and plans, sections, and details.
- Electrical and controls design, plans, sections and details.
- Complete Specifications in CSI format, including General and Supplementary Conditions, Bid Forms, and Contracting Forms.
- Design of common stairway between Clarifiers #2 and #3 (and replacement of current Clarifier #3 stairway).

This task includes presentation of the draft design development and design submittal to the City. City comments will be incorporated into the final design submittal.

Deliverables:

- Final drawings wet stamped with Engineer's seal on 22x34 full sized Mylar sheets. 11x17 half-size drawings will be delivered to design team. Full size reproductions will be made by Tacoma reprographics on City of Gig Harbor account.
- Specifications book.
- 11x17 drawings will be distributed to the Design Team.
- An electronic version of Bidding and Contracting documents will be created on a labeled CD.
- Sheet List as follows:
 - O1 – Cover Sheet
 - O2 – Index to Drawings
 - O3 – Drawing System Keys and Legends
 - OP1 – Hydraulic Profile
 - OP2 – Design Criteria, Mechanical Equipment List & Piping Schedule
 - ST1 – Temporary Erosion & Sediment Control Plan
 - ST2 – ESC Details
 - S1 – Overall Site Isometric
 - SP1 – Yard Piping Overall Plan
 - SC1 – Site Grading, Drainage and Surfacing Plan
 - SC2 – Civil Details
 - CP2 – Clarifiers Process Plan
 - CP3 – Existing Clarifiers Piping Plan
 - CP4 – Clarifiers New Piping Plan
 - CP9 – Clarifier #2 Process Plan & Sections
 - CP10 – Clarifier #2 Process Details
 - CS4 – Foundation Plan, Details Clarifier #2
 - CS5 – Structural Section Clarifier #2
 - CS6 – Clarifier #2 and #3 Stairs and Walkways
 - CS7 – Stairs and Walkways Details
 - RP3 – Sludge Pump Room Sections
 - GP1 – Process and Piping Details
 - GP2 – Piping Support Details

- GA1 – Guardrail Profiles and Details, Concrete Stair Details
- GA2 – Grating and Support Details
- GS1 – General Structural Notes, Quality Assurance
- GS2 – Typical Concrete and Misc. Details
- E1 – Symbols Legend, Partial Electrical Site Plan
- E2 – Electrical/Pump Building – Power and Signal Plan
- E3 – Elevations – MCC-1, P-461, Handrail Mounted Pole Light
- E4 – Clarifier No.s 1,2,3 Plan
- E5 – Partial Power One-Line Diagram, Notes
- EIC1 – Wiring Diagram Legend, Typical Wiring Diagram 14
- EIC2 – Typical Wiring Diagrams 17

Note: Sheet numbering system may be changed to avoid redundancy with Phase I Improvements Construction Contract

Assumptions:

- Ecology will approve the 20-Year Engineering Report currently submitted to WDOE and WDOH. Clarifier #2 may be constructed, but not placed into operational service without Ecology approval of the Engineering Report.
- SEPA Checklist has already been prepared and MDNS issued by the City in conjunction with the 2008 Site Plan and Design Review process of the Phase I Improvements.
- As part of the Design Engineering Services, CEG will assist the City in negotiating with Prospect Construction, Inc. a contract extension and delay of the following work under the Phase I Improvements Construction Contract:
 - Paving
 - Gravel around Clarifiers #1, #2 and #3
 - Turf Block Driveway and Grass to east of RAS/WAS Pump Building
 - Ornamental Fencing and Automatic Slide Gate
 - Storm Pond and Bioswale (areas will be used for TESC and laydown areas until completion of Clarifier #2).
 - Sidewalk on South Side of Plant Entry Road.
- Design Services do not include SCADA/PLC programming and SCADA integration associated with new clarifier and RAS pump.

Task 8.4 – Engineering Services During Bidding, Construction, and Warranty Period

This task includes engineering services during bidding, construction and warranty periods required for the Clarifier #2 foundation, underslab piping, concrete walls, clarifier mechanism,

clarifier electrical, and site piping, including provision in the pump/electrical building for the fourth RAS pump; for a fully functioning Clarifier #2 system.

Engineering Services During Bidding consist of:

- Attendance at mandatory Pre-Bid Conference
- Response to requests for information (RFIs) during bidding period
- Preparation of addenda during bidding including specification and plan modification. Contract addenda will be delivered in electronic format to the City for disbursement to planholders.
- Bid evaluation and recommendation consisting of reviewing bids for completeness, informalities and irregularities, reviewing contractor references, prepare certified bid tabulation, and provide recommendation to City.
- Providing one original of conformed documents to City for reproduction and delivery to Contractor.
- It is assumed that the City will administer the bidding process, including advertisement, selling of bidding documents, reproduction, and bid opening.

Engineering Services During Construction consist of:

- Coordination with Owner's Construction Project Manager.
- Civil, structural, mechanical and electrical submittal review.
- Geotechnical site visit(s) for evaluation of Clarifier #2 subgrade and compaction.
- Administrative submittals review (i.e. schedule, schedule of values, contractor's work plan).
- Design Engineer periodic inspections, as detailed in individual firm proposals.
- Design Team Project Administrator attendance of bi-monthly construction meetings over 4 month duration.
- Responses to City and Contractor RFCs.
- Preparation of change documentation (Field Orders).
- Start-Up and Testing Support.
- Substantial completion certification and punch list preparation.
- Final inspection walkthroughs and reports by each discipline.

Engineering Services Two-Year Warranty Period consist of:

- Record drawings review and comment for revised and added drawings under this amendment in accordance with Task 7.2 of Amendment No. 3 dated September 22, 2008.
- Inclusion of Clarifier #2 and RAS Pump, Controls and other added elements in Engineer's Operation and Maintenance Manual.
- Inclusion of added Work in 2-year warranty review services.

Engineering Services Fee Summary – Exhibit B and Supporting Information – Exhibit C

Exhibit B contains a summary of engineering services fees broken down by consultant. The attached Exhibit C – *Supporting Scope, Cost and Rate Schedule Information* contains further breakdown of labor and expenses by individual firm.

EXHIBIT B
 AMENDMENT NO. 4 TO WWTP MARCH 12, 2007 CONSULTANT SERVICES CONTRACT BETWEEN CITY OF GIG HARBOR
 AND COSMOPOLITAN ENGINEERING GROUP

		H.R. Esvelt Engineering	Structural Research Co.	Cosmopolitan Engr. Group	Richard Sample Engr.	HWA Geosciences	Sub-Mark Up 10%	TOTAL
TASK 8	Additional Clarifier (#2) and RAS Pump							
8.1	Engineering Project Administration	\$ 2,500.00	\$ 1,120.00	\$ 3,658.20	\$ -	\$ -	\$ 362	\$ 7,640.20
8.2	Permitting and Coordination with Local Agencies	\$ -	\$ 1,120.00	\$ 1,971.30	\$ -	\$ -	\$ 112	\$ 3,203.30
8.3	Design	\$ 13,940.00	\$ 35,660.00	\$ 16,305.10	\$ 10,928.00	\$ 380.00	\$ 6,091	\$ 83,303.90
	8.3.1 Drawings							
	8.3.2 Specifications							
	8.3.3 Provide Contract Documents/Document Production							
8.4	Engineering Services During Bidding, Construction and Warranty Periods	\$ 6,300.00	\$ 5,960.00	\$ 27,654.00	\$ 13,539.00	\$ 2,581.00	\$ 2,838	\$ 58,872.00
	8.4.1 Engineering Services During Bidding							
	8.4.2 Administrative and Technical Submittal Reviews							
	8.4.3 Provide Design Engineer Periodic Inspections							
	8.4.4 Biweekly Construction Meetings							
	8.4.5 Provide Design Interpretation/Change Order Support							
	8.4.6 Startup/Punchlist and Completion Monitoring							
	8.4.7 Record Drawings Review and Comment							
	8.4.8 Operation and Maintenance Manual Revisions							
	8.4.9 Warranty Period Assistance and 23rd Month Review							
TOTAL TASK 8		\$ 22,740.00	\$ 43,860.00	\$ 49,589.00	\$ 24,467.00	\$ 2,961.00	\$ 9,403.00	\$ 153,019.00

Exhibit C

Supporting Scope, Cost, and Rate Schedule Information

H. R. ESVELT ENGINEERING
Environmental Engineering

February 3, 2010

Cosmopolitan Engineering Group
117 South Eight Street
Tacoma, WA 98402

Attention: Dave McBride, P.E.

Subject: City of Gig Harbor Wastewater Treatment Plant Construction

Reference: Proposal for providing process and lead design services for Construction Bid Documents for Addition of Clarifier #2, 5th RAS Pump, interconnecting piping and appurtenances

Scope of Services:

1. Process Lead and Direction for Design team.
2. Production of drawings Clarifier #2 Process Plan and Sections, including drafting, to be furnished with signed P.E stamp to Cosmopolitan Engineering Group in electronic format as half-size PDF files.
3. The revision of project process drawings into Bid Documents, including drafting, to be furnished with signed P.E stamp to Cosmopolitan Engineering Group in electronic format as half-size PDF files.
4. Production of Contract Specifications and estimate of probable construction costs.
5. Assist in bid documents submittal to the Owner at the completion of the revisions.
6. Submittal Review.
7. Site visits for construction observation of clarifier #2.

I will bill my services as time and materials billing format each month, for the not-to-exceed amount of \$22,800, without written approval of Cosmopolitan Engineering Group.

Sincerely,
H. R. Esvelt Engineering

APPROVED:

H. Richard Esvelt, P.E.

Cosmopolitan Engineering Group

Attachment: Fee proposal spreadsheet

City of Gig Harbor						
ENGINEERING FEE PROPOSAL SUMMARY						
H. R. Esvelt Engineering						
Engineering Services for WWTP Clarifier No. 2 / 5th RAS Pump BID DOCUMENTS						
City of Gig Harbor WWTP Phase 1 Improvements				HRE	drafting	
				\$150	\$65	
NO	DESCRIPTION OF PHASE SERVICES	BUDGET				
		ENGR	DRAFT	Expense	Total	
Design revision services						
T 8.1	1 Process Lead for Design team	16	-	\$100.00	\$2,500.00	
	2 New drawings three Revised drawing CP6 & CP9 (to call)	24	30	\$100.00	\$5,500.00	
T 8.3	3 Drawings SP1, CP2, CP3, CP4 & RP3, std. details rev	16	30	\$100.00	\$4,300.00	
	4 Specifications and estimate of proable costs	16			\$2,400.00	
	4 Document submittal	10	4		\$1,740.00	
	5 Review of Submittals	12			\$1,800.00	
T 8.4	6 Trips to site for construction observation (See)	28		\$200.00	\$4,500.00	
				\$120.00		
DESIGN REVISION TOTALS		122	64	\$800.00	\$22,800.00	

\$420.00 \$22,740.00

Structural Research Company

PO Box 8, Rice, WA 99167
T: 509-738-4483 • E: src@ultraplix.com

Amendment to Scope of Work Gig Harbor WWTP Improvements, Phase 2

Amendment to the General Agreement between City of Gig Harbor, Washington and Cosmopolitan Engineering Group, Inc.

Structural Research Company (SRC), P.O. Box 8, Rice, WA 99167, working in the capacity of sub-consultant to Cosmopolitan Engineering Group will participate in the development of a Change Order including design and contract documents, to construct a new Clarifier No. 2 including a new RAS pump.

Services During Design:

1. SRC will develop and produce architectural and structural design and contract documents for the following structures:
 - a) Clarifier No. 2
 - b) Access facilities to Clarifiers No. 1 and 3.
2. Design Activities
 - a) Assist in the layout of structures and facilities.
 - b) Structural design and contract documents for major components listed above.
 - c) Architectural design and contract documents for major components listed above.
 - d) Specifications for architectural and structural aspects of the project as required.
 - e) Develop structural QA/QC for the project.
3. Coordination Activities
 - a) Work closely with Cosmopolitan Engineering Group, HR Esvelt Engineering, and the rest of the Design Team.
 - b) Coordinate with City officials, including Building Department as required.

The fee during the Design Phase for services delineated in items 1 through 3 above will be on a time and materials basis, not to exceed \$37,900.

Services During Bidding and Construction:

1. SRC will answer questions from bidders during the bid period, and prepare any necessary addendums.
2. SRC will provide architectural and structural engineering services for the following activities during construction of Clarifier No. 2 and the access facilities to Clarifiers 1 and 3.
 - a) Review and approve contractor's submittals (shop drawings) for architectural and structural aspects of the project.
 - b) Make one on-site visit during construction to verify the design intent.
 - c) Participate in preparation of punch list items for architectural and structural aspects of the project.
 - d) Participate in final inspection and certification for architectural and structural aspects of the project.

The fee for services during construction delineated in 1 and 2 above will be time and materials based on hourly rates as shown in the attached spreadsheet, plus actual expenses, if any. The maximum amount of the fee for services during bidding and construction is \$5,960.

Structural Research Company									
PROJECT: WWTP Phase 2, Clarifier No. 2 / 5th RAS Pump							DATE: 2/3/10		
OWNER: CITY OF GIG HARBOR									
NO	DESCRIPTION OF PHASE SERVICES	BILLING RATE				COST (\$)			TASK
		\$140	\$110	\$60		Total	Expense	TOTAL	
		Prin Engr	Sr Engr	Draft					
Design Services									
a	Coordination with Design team	8	-			1,120	-	1,120	8.1
b	Calculations & Details	28	28		-	7,000	-	7,000	8.3
c	Drawings	20	26	72		9,980	-	9,980	8.3
d	Typical Details Sheets (3) "O", (5) "G"	64	24	48		14,480	-	14,480	8.3
e	Coordinate with Building Department	8				1,120	-	1,120	8.2
f	New Specification Sections (10)	30				4,200	-	4,200	8.3
Total During Design		158	78	120	-	37,900	-	37,900	
g	Answer Questions From Bidders, Addendums, etc.	4	2			780	-	780	
h	Work During Construction--Submittals, RFCs, etc.	14	14			3,500	-	3,500	
i	One Site Visit During Construction & Report	12				1,680	-	1,680	
Total Bidding and Construction		26	14	-		5,960	-	5,960	8.4
TOTAL		184	92	120	-	43,860	-	43,860	

New "G" Sheets

- QA/QC Plan (GS1) for Clarifier
- (3) "O" sheets
- (3) GA Sheets
- (1) GS Sheets

Specifications

- 03100
- 03200
- 03300
- 03360
- 05500
- 05511
- 05521
- 05530
- 06500
- 07190

**GIG HARBOR WASTEWATER TREATMENT PLANT EXPANSION
PHASE I Amendment #4**

**Engineering Scope and Engineering Cost Estimate
Cosmopolitan Engineering Group - CEG**

	Personnel: Billing Rate/Hour:	LABOR					Total Labor Hours	Total Labor Cost	EXPENSES			COMMENTS
		Principal	Project ENGR	CAD/CE Tech	ADM	WP			Mileage \$	Other \$	Total Expenses	
	\$ 177.25	\$ 123.35	\$ 110.25	\$ 52.00	\$ 102.75							
TASK 3 PHASE 1 IMPROVEMENTS DESIGN												
8.1	Engineering Project Administration	16	2		5	2	25	\$ 3,548.20	\$ 60.00	\$ 50.00	\$ 110.00	Meeting travel allowance and mailings
8.2	Permitting and Coordination with Local Agencies	4	8			2	14	\$ 1,901.30	\$ 20.00	\$ 50.00	\$ 70.00	Mailings, Meeting with CBO
8.3	Design											
	8.3.1 Drawings (O1, ST1, ST2, SC1,SC2)	12	16	24			52	\$ 6,746.60		\$ 40.00	\$ 40.00	
	8.3.2 Specifications (Div 0,1 and 2)	20	10			16	46	\$ 6,422.50				
	8.3.3 Provide Contract Documents/Document Production	2		10	3	12	27	\$ 2,846.00		\$ 250.00	\$ 250.00	Mylar Originals, All reproduction by City
8.4	Engineering Services During Bidding, Construction and Warranty Periods											
	8.4.1 Engineering Services During Bidding	16			2		18	\$ 2,940.00				City will Administer Bidding Process
	8.4.2 Administrative and Technical Submittal Reviews	20	8				28	\$ 4,531.80		\$ 20.00	\$ 20.00	Mailings, Etc
	8.4.3 Provide Design Engineer Periodic Inspections	12					12	\$ 2,127.00	\$ 45.00		\$ 45.00	3 Trips for Construction Observation
	8.4.4 Biweekly Construction Meetings	36					36	\$ 6,381.00	\$ 135.00		\$ 135.00	9 Trips for Construction Meetings
	8.4.5 Provide Design Interpretation/Change Order Support	16	6	6		4	32	\$ 4,648.60				
	8.4.6 Startup/Punchlist and Completion Monitoring	10					10	\$ 1,772.50				
	8.4.7 Record Drawings Review and Comment	8		8			16	\$ 2,300.00				
	8.4.8 Operation and Maintenance Manual Revisions	3	6			4	13	\$ 1,682.85		\$ 50.00	\$ 50.00	Added Reproduction Expense
	8.4.9 Warranty Period Assistance and 23rd Month Review	5			2		7	\$ 990.25	\$ 30.00		\$ 30.00	2 Trips During Warranty Period
SUBTOTALS		180	56	48	12	40	336	\$ 48,838.60	\$ 290.00	\$ 460.00	\$ 750.00	



Richard Sample Engineering

1197 Magnolia Ave Redding, CA 96001 (530) 242-1134 Fax (530) 242-1136 email rse@integrity.com

February 4, 2010

Mr. David McBride
Cosmopolitan Engineering Group
117 South Eight Street
Tacoma, WA 98402

SUBJECT: ELECTRICAL ENGINEERING SERVICES PROPOSAL FOR CITY OF GIG HARBOR WWTP CLARIFIER NO. 2 & FIFTH RAS PUMP ADDITION

Dear David,

I am submitting this letter of proposal for additional Design, Bidding, Construction Support Engineering services for the Gig Harbor Wastewater Treatment Plant modifications associated with the provision of Clarifier No. 2 and the fifth Return Activated Sludge pump. The requirement for additional services is due to City's decision to put this portion of the project out for separate bid.

This proposal includes the scope of services and associated fee for control system modifications to be performed by Jon Mathison of Advanced Industrial Automation as a sub-consultant to RSE.

I have attached an (3) estimate data sheet schedules that give a breakdown of the services that I will perform.

This contract is for lump sum payment per phase of the following amounts:

Design Development Services	\$10,900
Bid Support Services	\$3,500
Construction Support Services	\$10,000
	<hr/>
Total	\$24,400

I will bill my services for each task individually by monthly billing invoices based on the percentage of work performed during each given month.

Richard Sample Engineering will maintain the following minimum insurance limits:

1. Errors and Omissions Liability - \$2,000,000
2. Comprehensive General Liability - \$1,000,000
3. Automotive Liability - \$500,000

Thank you for the opportunity to assist you on this work. Please contact me if you have any comments or questions regarding this proposal.

Sincerely,

APPROVED:

Richard A. Sample, P.E.

Cosmopolitan Engineering Group

Attachment: (3) Fee proposal data sheets

ELECTRICAL ENGINEERING FEE PROPOSAL DATA SHEET								
Richard Sample Engineering								
PROJECT: WWTP Clarifier No. 2 / 5th RAS Pump Addition					DATE: 2/4/10			
OWNER: CITY OF GIG HARBOR					JOB NO: 1003			
ESTIMATE BY: RICHARD A. SAMPLE, P.E.					BILLING RATE			
					\$135	\$85	\$120	\$90
NO	DESCRIPTION OF PHASE SERVICES	RSE hours		AIA hours		COST IN \$		
		ENGR	DRAFT	ENGR	DRAFT	RSE	AIA	TOTAL
DESIGN DEVELOPMENT SERVICES								
a	Coordination with Design team	2	-			270	-	270
b	Drawing revision (7) drwgs. (see drwg schedule)	20	38	4	10	5,930	1,380	7,310
c	Specification development	7		6		945	720	1,665
d	Conduit and Cable Schedule revision	1				135	-	135
e	Contract document submittal for review	6		4		810	480	1,290
f	Administration expenses @ 10% of AIA expenses					258.0	-	258
TOTALS		36	38	14	10	8,348	2,580	10,928
BID SUPPORT SERVICES								
a	Bid submittal - Drawings and specification	4	6	4	6	1,050	1,020	2,070
b	Pre-bid conference support by phone	2		2		270	240	510
c	Bid support by phone, addendum issue	4		2		540	240	780
d	Administration expenses @ 10% of AIA expenses					150.0	-	150
BID SUPPORT TOTALS		10	6	8	6	2,010	1,500	3,510
CONSTRUCTION SUPPORT SERVICES								
a	Pre-construction meeting telephone support	2	-	2		270	240	510
b	Submittal review - Contractor, general materials	4	-		-	540	-	540
c	Submittal review - MCC / VFD Equipment	6	-		-	810	-	810
d	Submittal review - PCP100 modifications		-	4	-	-	480	480
e	Coordination with Contractor / Integrator, review RFIs	8	-		-	1,080	-	1,080
f	Develop revision documentation	4	-		-	540	-	540
g	Final inspect & startup, checklist, punchlist	16	-	12	-	2,160	1,440	3,600
h	Punchlist verification site visit		-	12	-	-	1,440	1,440
i	Review Manufacturers O & M manual & comment	2	-	2	-	270	240	510
j	Develop O & M manual electrical text (draft copy)	1	-		-	135	-	135
k	Administration expenses @ 10% of AIA expenses					384.0	-	384
TOTALS		43	-	32	-	6,189	3,840	10,029

ELECTRICAL ENGINEERING FEE PROPOSAL DATA SHEET						
<i>Richard Sample Engineering</i>						
Gig Harbor WWTP Clarifier No. 2 / 5th RAS Pump Addition					DATE: 2/4/10	
DRWG. NO.	DESCRIPTION OF DRAWING	DRWG.	RSE HRS		AIA HRS	
		SCALE	ENGR	DRAFT	ENGR	DRAFT
	Design Development Services					
E1	Symbols Legend, Partial Electrical Site Plan	1"=40"	4	8		
E2	Electrical / Pump Building - Power and Signal Plan	3/16"	2	6		
E3	Elevations - MCC-1, P-461, Handrail mounted polelight	1/4"	4	8		
E4	Clarifier Nos. 1,2,3 Plan	3/16"	4	8		
E5	Partial Power One-line Diagram, Notes	none	4	8		
EIC1	Wiring diagram Legend, Typical wiring diagram 14	none	1		2	6
EIC2	Typical wiring diagrams 17	none	1		2	4
	TOTALS		20	38	4	10

ELECTRICAL ENGINEERING FEE PROPOSAL DATA SHEET					
<i>Richard Sample Engineering</i>					
Gig Harbor WWTP Clarifier No. 2 / 5th RAS Pump Addition				2/4/10	
SPEC. NO.	SPECIFICATION SECTION TITLE	EXIST	Developed	HOURS	
		NEW	By	RSE	AIA
16010	General	E	RSE	1	
16110	Raceways	E	RSE	1	
16120	Wire and Cable	E	RSE	1	
16920	Motor Control Center (MCC) Equipment	E	RSE	2	
16921	Variable Frequency Drive	E	RSE	2	
16931	Plant Control Panel (PCP-100) Modifications	E	AIA		4
16951	Human-Machine Interface (HMI) Modifications	E	AIA		2
	TOTALS			7	6

Project Cost Estimate
Clarifier Tank #2
Gig Harbor, WA



HWA Ref: 2007-14-21
Date: 12-Jan-10
Prepared by: Sn H Hong

Cost Proposal for Clarifier #2

BACKGROUND:

We understand and assumed the following:
The tank will be founded 14 feet below the existing ground surface.
The tank will be located between the existing tanks.

SCOPE OF WORK:

No drilling will be conducted.
We recommend the design parameters based on the existing information.
Soil foundation soil conditions will be verified with field observation during construction.
Our report will include;
1) bearing capacity, earthquake design criteria, backfill soil using the on site soils
2) excavation slope and shoring
3) construction monitoring for backfill and bearing soil verifications.

ESTIMATED HWA LABOR:

WORK TASK DESCRIPTION	PERSONNEL & 2009 HOURLY BILLING RATES					TOTAL HOURS	TOTAL AMOUNT
	Principal \$190.00	Sr. Engr. \$157.00	Geologist \$110.00	CAD \$75.00	Admin. \$65.00		
1. Engineering Analyses	2					2	\$380
2. Reporting (correspondence, memos, etc.)	6			2		8	\$1,290
3. Field Visit		8				8	\$1,256
TOTAL LABOR:	8	8	0	2	0	18	\$2,926

SOIL LABORATORY TEST SUMMARY:

Test	Est. No. Tests	Unit Cost	Total Cost
Natural Moisture Content		\$12	\$0
Grain Size Distribution		\$80	\$0
Atterberg Limits (plasticity index)		\$110	\$0
Modified Proctor (compaction)		\$180	\$0
LABORATORY TOTAL:			\$0

HWA DIRECT EXPENSES:

Mileage at \$0.55/mile \$74 \$35
Miscellaneous Field Supplies
HWA Lab Testing (detail to left) \$0

\$74 \$35

SUBCONTRACTOR EXPENSES:

Drilling

State Tax 9.50% \$0
HWA Markup on Subcontractors (15%) \$0
SUB EXPENSE TOTAL: \$0

PROJECT TOTALS:

HWA Labor \$2,926
HWA Direct Expenses \$74 \$35
Subcontractor Expense \$0

\$3,000

CONDITIONS:

- Geotechnical evaluation includes physical soil properties only; does not include evaluation of potentially contaminated ground water, or the identification of wetland areas.
- HWA's project manager has the discretion to transfer labor and budget dollars between tasks to satisfy project objectives.

\$2,961

[Signature]
2/16/10



WWTP Phase 1 Expansion Budget Estimate Summary (CSSP-0702)

January 2010

			Amount Spent by end of 2009	Balance for 2010
Design				
Design Services Incl Pre Engineering Report	Cosmopolitan Engineering Group	\$1,261,651	\$1,261,651	\$0
Design Review Services	Parametrix, Inc.	\$185,090	\$185,090	\$0
Cultural Resources Services	CRC	\$3,795	\$3,795	\$0
City Engineering Staff Time	City of Gig Harbor	\$10,000	\$5,000	\$5,000
<i>subtotal</i>		\$1,460,536	\$1,455,536	\$5,000

Construction				
Project Management				
Project Management	Cosmopolitan Engineering Group-Amend#3	\$712,527	\$366,000	\$346,527
Material Testing	CTL	\$53,612	\$27,000	\$26,612
Project Assistance	Parametrix, Inc. Amend. #1 9/22/08	\$875,884	\$520,180	\$355,704
SCADA Design & Programming	AIA	\$221,816	\$89,000	\$132,816
Cultural Resource Consultants	CRC	\$13,500	\$0	\$13,500
Surveying Services	Prizm	\$5,580	\$1,700	\$3,880
City Engineering Staff Time	City of Gig Harbor	\$10,000	\$5,000	\$5,000
<i>subtotal</i>		\$1,892,919	\$1,008,880	\$884,039

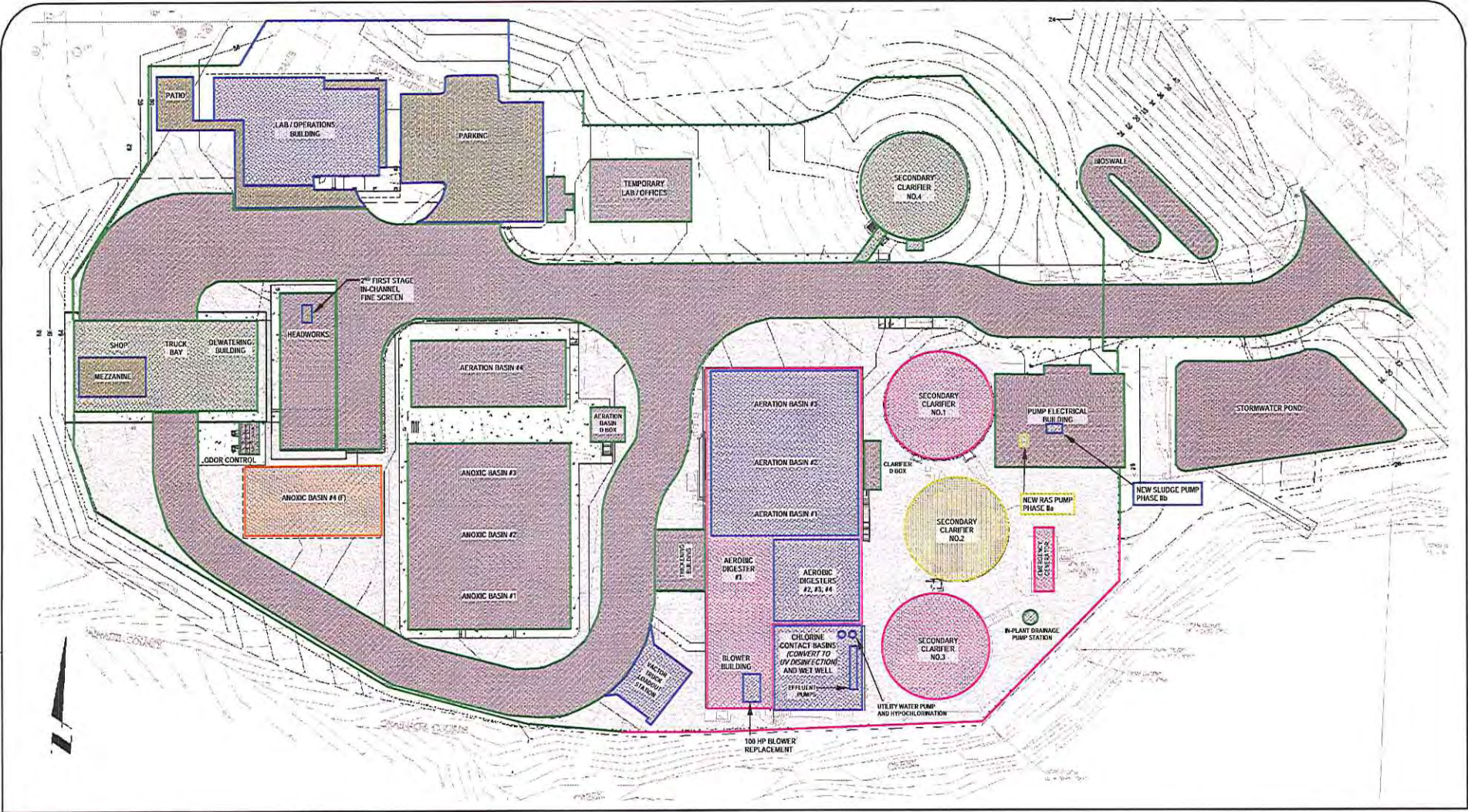
Construction				
Construction Contract (Apparent low bidder)	Prospect Construction Co.	\$10,884,958	\$7,300,000	\$3,584,958
10% contingency *	Assumes Competitive Bid, not CO.	\$1,300,000	\$0	\$1,300,000
Centrifuge	Purchased by City (Alfa Laval)	\$270,458	\$240,852	\$29,606
Blowers	Purchased by City (APG Neuros)	\$333,148	\$299,833	\$33,315
Austin St. detour improvements	TBD	\$54,642	\$0	\$54,642
Waterline Extension (constr. complete)	Pape & Sons	\$76,955	\$76,955	\$0
City Building Permit Fees		\$96,244	\$96,244	\$0
<i>subtotal</i>		\$13,016,405	\$8,013,884	\$5,002,521

Total Estimated Design & Construction Costs **\$16,369,860** **\$10,478,300** **\$5,891,560**

Funding Sources	
PWTF Loan	\$10,000,000
DOE Grant + CTED Grant	\$3,500,000
PWTF Design Loan (already rec'd & spent by City)	\$765,000
Costs already paid by City through 2009 (above the PWTF Design Loan amount)	
Revenue Bond 2009	\$2,104,860

Revised: February 16, 2010

Total Funding **\$16,369,860**



GIG019/figure 1 WWTP Site Plan.ppt



- Phase I
- Phase IIa
- Phase IIb

- Beyond 20-Year Planning Horizon
- Existing

Figure 1: WWTP Site Plan

February 10, 2010

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

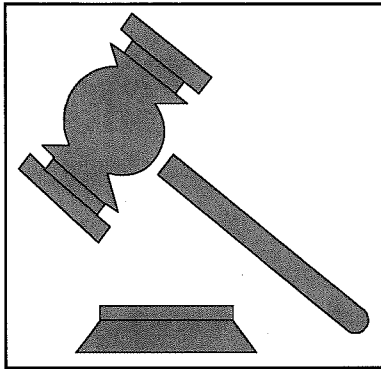
Dear Mayor Hunter:

The position on the Board of Commissioners for Pierce Transit, elected by the fourteen small cities and towns within the Pierce Transit boundary, will be up for renewal May 1, 2010. Mayor Dave Enslow, from the City of Sumner, has represented these municipalities since May 2001. The Board of Commissioners is requesting your cooperation in the nomination and selection of one representative to fill this at-large position. Accordingly, we ask that you please present this item at your next Council meeting for action.

As information, the Pierce Transit Board meets the second Monday of each month at 4:00 p.m. in the Rainier Room of the Pierce Transit Training Center, located at 3720 - 96th Street SW, Lakewood. Board members also have committee responsibilities that require additional meeting commitments. All Board members' terms are for a three-year period; this position's term will expire on April 30, 2013.

In accordance with our bylaws, the following election procedure will be followed:

1. If your council wishes to submit a nomination, the enclosed nomination form must be submitted to Treva Percival, Pierce Transit Clerk of the Board, no later than **5 p.m. on Wednesday, March 24, 2010.**
2. On **March 26, 2010**, a ballot listing the prospective nominees will be mailed to the fourteen town and city councils. Your council will have until **5 p.m. on April 30, 2010**, to return your ballot to the Pierce Transit Clerk of the Board.
3. A certified copy of the council resolution or motion must accompany all ballots. The Clerk of the board shall count the ballots and announce the results of the balloting to the Board of Commissioners. A plurality of ballots cast will determine the successful candidate.
4. In the event of a tie, the city and town councils will have an additional thirty days to reconsider. The ballot procedure will be repeated until a candidate is selected by a plurality vote.



NOMINATION FORM

The town/city of _____ wishes to nominate
Councilmember/Mayor _____ to serve as a member of
the Board of Commissioners for Pierce Transit for a three-year term, May 1, 2010, to April 30,
2013, representing the following towns and cities within the Pierce Transit boundary:

Auburn	Gig Harbor
Bonney Lake	Milton
Buckley	Orting
DuPont	Pacific
Edgewood	Ruston
Fife	Steilacoom
Fircrest	Sumner

Date: _____ By: _____

**This form must be received by Pierce Transit's Clerk of the Board by 5 p.m., Wednesday,
March 24, 2010.**

City of Gig Harbor
Building/Fire Safety Department
3510 Grandview St.
Gig Harbor, WA 98335

Memo

To: Mayor Hunter and City Council Members
From: Dick J. Bower, CBO – Building/Fire Safety Director
CC: Rob Karlinsey, file
Date: February 22, 2010
Re: Staff report – Update of GHMC Title 15, Buildings and Construction

On July 1, 2010 the regularly scheduled triennial update to the State Building Code (SBC) will go into effect. In accordance with state law, all local jurisdictions with responsibility for enforcement of the SBC must, at a minimum, adopt and enforce the updated SBC.

In the 2010 update, the State will be adopting the 2009 editions of the *International Building, Residential, Fire, Mechanical, Fuel Gas and Existing Building Codes* promulgated by the International Code Council as well as the *Uniform Plumbing Code* promulgated by the International Assn. of Plumbing and Mechanical Officials, with particular state amendments. In addition the state will be adopting some form of the WA State Energy Code (WSEC). The term “some form” is used because at this time updating of the energy code is questionable.

Significant changes in energy efficiency standards proposed in the updated code, and approved by the State Building Code Council (SBCC), have been questioned relative to their economic impacts to the construction industry. The state Legislature has thus questioned the SBCC’s economic impact analysis and has directed the SBCC to revisit the issue. Two bills are currently under consideration that would require that the WSEC remain essentially unchanged until the impacts of increased energy efficiency standards can be further studied. A decision on this issue is expected prior to the July 1st implementation date.

Two significant changes for 2010 will be the repeal of the State Historic Building Code, and the State Ventilation and Indoor Air Quality codes. It was the consensus of the SBCC, local regulators, and the public testimony at the hearings that these codes are no longer necessary because model code language (*International Existing Building and Mechanical Codes*) provides superior guidance than that provided under the State codes.

At the local level, we propose to adopt the codes in advance of the State implementation date. An ordinance will be coming before the Council for a first reading at the March 22, 2010 meeting. As in the past, local amendments to the codes have been kept to a minimum, concentrating mainly on administrative requirements peculiar to Gig Harbor processes, procedures, and terminology and for the most part consistent with past amendments.

Two changes are being proposed to the codes that should be noted. One, wording has been added to all of the model codes that clarifies the time limitation on permit applications. Such language was inconsistent between the model codes in the past, and was generally unclear. New language has been

added that clearly describes when and why an application expires, the procedure for requesting extension, and for renewing an expired application.

Similarly, the language related to permit expiration after issuance has been clarified and coordinated between the model codes. In both cases, the code provides for 180 day extensions upon written request from the applicant/permittee as long as the request is received prior to the expiration date. No fee is charged for these extensions. And the language clarifies that when an expired permit is renewed, a fee equal to ½ the original permit fee is required as long as the permit has not been expired for longer than 1 year. A new permit must be applied for where an existing permit has been expired for over one year.

The second substantive change to the administrative provisions is proposed language implementing the incident management and investigation fee that was approved by council under the 2009 fee resolution. Language has been added to the codes to clarify the authority to charge this cost recovery related fee.

Within the technical sections of the codes, language has been added to the building and fire codes clarifying where manual fire alarm boxes (pull stations) are required in buildings required to have fire alarm systems and clarifying requirements for where visible fire alarm notification appliances (strobes) are required to be installed in buildings having fire alarm systems.

With specific regard to the fire code, two substantive technical amendments are proposed. The first will require that all buildings be provided with emergency responder radio coverage (ERRC) capability. This will improve responder safety by assuring that emergency responders working inside of a building for any reason have radio communications with personnel operating outside of the building. ERRC is included in the 2009 model fire code for the first time and is included in the retroactive requirements of Chapter 46. A local amendment provides for a January 1, 2015 due date for all buildings to assure compliance with ERRC requirements.

The second substantive change to the fire code includes the adoption of additional appendix chapters providing improved guidance on ERRC, hazard rankings of hazardous materials, and non-compliant conditions related to fire protection systems and assemblies.

The City's Building Code Advisory Board met on January 28th to consider the update ordinance. The Board provided guidance resulting in a minor modification to the text that has been incorporated into the draft accompanying this report. The Board also expressed some concern for the record with the imposition of the emergency response and investigation fee, believing that these services should be included in the taxes paid by the citizens for emergency services.

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO BUILDINGS AND CONSTRUCTION; ADOPTING THE 2009 EDITIONS OF THE INTERNATIONAL BUILDING CODE, THE INTERNATIONAL RESIDENTIAL CODE, THE INTERNATIONAL MECHANICAL CODE, THE INTERNATIONAL FIRE CODE, THE INTERNATIONAL EXISTING BUILDING CODE AND THE UNIFORM PLUMBING CODE BY REFERENCE; ADOPTING THE WASHINGTON STATE ENERGY CODE, THE WASHINGTON STATE VENTILATION AND INDOOR AIR QUALITY CODE AND WASHINGTON STATE HISTORIC BUILDING CODE BY REFERENCE, AS WELL AS MAKING CERTAIN CLEAN-UP AMENDMENTS TO CHANGE THE TITLE OF THE CODE ENFORCEMENT OFFICER, UPDATE SECTION NUMBERS, DELETE REDUNDENT LANGUAGE, CORRECT TYPOGRAPHICAL ERRORS; CREATING NEW SECTIONS 15.02.050 FEES, 15.08.083 AMENDMENT TO IBC SECTION 901.1, 15.08.084 AMENDMENT TO IBC SECTION 907.2, 15.08.085 AMENDMENT TO IBC SECTION 907.5.2.3.2, , 15.08.086 AMENDMENT TO IBC SECTION 907.4, 15.08.087 AMENDMENT TO IBC SECTION 912.3.1, 15.08.095 AMENDMENT TO IBC SECTION 1612.3, 15.08.096 AMENDMENT TO IBC SECTION 3409.2 EXCEPTION 3, 15.12.020 AMENDMENT TO IMC SECTION 106.3.3, 15.12.026 AMENDMENT TO IMC SECTION 106.4.3, 15.12.028 AMENDMENT TO IMC 106.4.4, 15.16.015 AMENDMENT TO IFC SECTION 104.10, 15.16.043 AMENDMENT TO IFC SECTION 105.2.3, 15.16.045, AMENDMENT TO IFC SECTION 113, 15.16.145 AMENDMENT TO IFC SECTION 510, 15.16.147 AMENDMENT TO IFC SECTION 901.1, 15.16.170 AMENDMENT TO IFC SECTION 907.2, 15.16.172 AMENDMENT TO IFC SECTION 907.6.2.3.2, 15.16.174 AMENDMENT TO IFC SECTION 907.5, 15.16.176 AMENDMENT TO IFC SECTION 912.3.1, 15.16.200 AMENDMENT TO IFC CHAPTER 4603.6, 15.16.210 AMENDMENT TO IFC APPENDIX

**CHAPTER C, TABLE C105.1, 15.18.055
AMENDMENT TO IEBC SECTION 105, 15.22.045
AMENDMENT TO UPC SECTION 103; 15.16.186,
AMENDMENT TO IFC SECTION 4603.6;
AMENDING GIG HARBOR MUNICIPAL CODE
SECTIONS 15.06.020, 15.08.020 15.08.021,
15.08.030, 15.08.040, 15.08.041, 15.08.050,
15.08.060, 15.08.070, 15.08.080, 15.08.090,
15.10.020, 15.10.060, 15.12.020, 15.14.020,
15.14.030, 15.16.010, 15.16.040, 15.16.090,
15.16.120, 15.16.130, 15.16.150, 15.16.160,
15.16.162, 15.16.170, 15.16.180 15.16.190,
15.18.060, 15.18.062, 15.18.064 15.22.070;
PROVIDING FOR SEVERABILITY AND
ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the Washington State Legislature adopted the state building code, to be effective in all counties and cities in Washington (RCW 19.27.031); and

WHEREAS, the state building code is comprised of a number of published codes, which are adopted by reference in the 2006 9 editions; and

WHEREAS, the City needs to adopt the 2006 9 editions locally, for enforcement purposes; and

WHEREAS, the City of Gig Harbor may adopt local amendments to the building code, consistent with chapter 19.27 RCW; and

Whereas, the City finds that the local amendments contained herein are desirable to protect the public;

Now, therefore:

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

Section 1. A new section 15.02.050 is added to the Gig Harbor Municipal Code to read as follows:

15.02.050 Fees.

15.02.050 Fees. A fee shall be paid for all appeals of administrative determinations to the Building Code Advisory Board. The amount of the fee shall be as specified in the City's currently adopted fee schedule.

Section 2. Section 15.06.020 of the Gig Harbor Municipal Code is amended as follows:

15.06.020 State building code adoption.

The following codes, together with the specifically identified appendices and the amendments in the Washington Administrative Code (WAC), ~~Second~~ Third Edition (dated ~~July 1, 2005~~ August 5, 2009) and as further amended in this title, are hereby adopted by reference:

A. The International Building Code, 2006 9 Edition, as published by the International Code Council, Inc., including Appendix J, and as amended pursuant to Chapter 51-50 WAC;

B. The International Residential Code, 2006 9 Edition, as published by the International Code Council, Inc., including Appendix Chapter G, as amended pursuant to Chapter 51-51 WAC;

C. The International Mechanical Code, 2006 9 Edition, as published by the International Code Council, Inc., including Appendix A, as amended pursuant to Chapter 51-52 WAC;

D. The International Fuel Gas Code, 2009 Edition as published by the International Code Council Inc. as amended pursuant to Chapter 51-53 WAC.

~~D~~ E. The International Fire Code, 2006 9 Edition, as published by the International Code Council, Inc., including ~~Chapter 46 and~~ Appendix Chapters B, C, F, I and J, as amended pursuant to Chapter 51-54 WAC;

~~E~~ F. The Uniform Plumbing Code, 2006 9 Edition, published by the International Association of Plumbing and Mechanical Officials, as amended pursuant to Chapter 51-56 and 51-57 WAC ~~and the Uniform Plumbing Code Standards (including Appendices A, B and I to the Uniform Plumbing Code) as amended pursuant to Chapter 51-57 WAC; including Appendix Chapters A, B, and I.~~

~~F~~ G. The International Existing Building Code, 2006 9 Edition, as published by the International Code Council, Inc. including Appendix Chapter A;

~~G~~ H. The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published by the International Conference of Building Officials;

~~H~~ I. The Washington State Energy Code as published by the Washington State Building Code Council, pursuant to Chapter 51-11 WAC;

~~I. The Washington State Ventilation and Indoor Air Quality Code as published by the Washington State Building Code Council, pursuant to Chapter 51-13 WAC; and~~

~~J. The Historic Building Code, as written by the Washington State Building Code Council, pursuant to Chapter 51-19 WAC.~~

Section 3. Chapter 15.08 of the Gig Harbor Municipal Code is amended to read as follows:

(A) Section 15.08.020 of the Gig Harbor Municipal Code is amended as follows:

15.08.020 Amendment to IBC Section 105

105.3.1 Action on application. The ~~building official~~ director shall review the application according to the procedures in GHMC 19.02.003, and shall issue the building permit within the deadline required by GHMC 19.05.009. If the application or the construction documents do not conform to the requirements of pertinent laws, the ~~building official~~ director shall deny such application in writing, stating the reasons therefor. If the ~~building official~~ director is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the ~~building official~~ director shall issue a permit therefor as soon as practicable.

105.3.2 Time limitation on application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or the permit has been issued; except that the director is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Any permit application that has been approved by the director but for whatever reason has not been issued within a period of 180 days after approval shall be deemed to have expired. If an update in code editions in accordance with Chapter 51-50 WAC occurs after expiration, application for a new permit must be submitted with new construction documents demonstrating compliance with the appropriate code provisions as enumerated in 51-50 WAC and GHMC Title 15.

105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work

is commenced. Before such work recommences, a new permit shall be first obtained and the fee, therefor, shall be one-half the amount required for a new permit for such work, provided no changes have been made in the original construction documents for such work and provided further that such suspension or abandonment has not exceeded one year.

The director is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing prior to the expiration of the permit and justifiable cause demonstrated.

(B) Section 15.08.021 of the Gig Harbor Municipal Code is amended as follows:

15.08.021 Amendment to IBC Section ~~406~~ 107.

Section ~~406~~ 107 of the IBC is amended as follows:

~~106.1 Submittal documents. Construction documents, statement of special inspections and other data shall be submitted in one or more sets with each application for a permit. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction where the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.~~

107.1 General. Submittal documents consisting of construction documents, statement of special inspections, geotechnical report, and other data shall be submitted in two or more sets with each permit application. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the director is authorized to require additional construction documents to be prepared by a registered design professional.

Exception: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

(C) Section 15.08.030 of the Gig Harbor Municipal Code is amended to read as follows:

15.08.030 Amendment to IBC Section ~~408~~ 109.

Section ~~408~~ 109 of the IBC is amended as follows:

~~408.1~~ 109.1 Payment of fees. A permit shall not be valid until the fees adopted by the City in a resolution for this purpose have been paid. Nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

~~408.2~~ 109.2 Schedule of permit fees. On buildings, structures, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required in accordance with the resolution adopted by the City for this purpose under Chapter 3.40 GHMC.

~~408.3~~ 109.3 Building permit valuations. The applicant for a permit shall provide an estimated permit value at the time of application. Permit valuations shall include the total value of work, including materials, labor, normal site preparation, architectural and design fees, overhead and profit, for which the permit is being issued, including such work as gas, mechanical, plumbing, equipment and permanent systems. If, in the opinion of the ~~building official/fire marshal~~ director of building and fire safety the valuation is underestimated on the application, the valuation shall be recalculated based on the valuation as determined using the square foot construction costs adopted by the City as Table 1-2 in the fee resolution, unless the applicant can show detailed estimates to meet the approval of the ~~building official~~ director. Final building permit valuation shall be set by the ~~building official/fire marshal~~ director.

~~408.4~~ 109.4 Work commencing before permit issuance. Any person who commences work on a building, structure, gas, mechanical, or plumbing system before obtaining the necessary permits shall be subject to an investigation fee established by City resolution that shall be in addition to the required permit fees.

~~408.5~~ 109.5 Related fees. The payment of a fee for the construction, alteration, removal or demolition of work done in connection to or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

~~408.6~~ 109.6 Refunds. The ~~building official/fire marshal~~ director may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The ~~building official/fire marshal~~ director may also authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The ~~building official/fire marshal~~ director may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done.

The ~~building official/fire marshal~~ director shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

109.7 Incident management and investigation fee. A fee as prescribed under the City's fee schedule shall be charged for management and investigation of emergency incidents involving structural damage, fires, or other public health and safety threats. The fee shall be payable by the property owner upon receipt of an invoice from the City for such services.

(D) Section 15.08.040 of the Gig Harbor Municipal Code is amended as follows:

15.08.040 Amendment to IBC Section ~~409~~ 110.

Section ~~409~~ 110 of the IBC is amended as follows:

~~409.7~~ 110.7 Reinspections. A reinspection fee may be assessed for each inspection or reinspection when the work for which the inspection is requested is not complete or when corrections noted on previous inspection are not made.

This section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with code requirements, but rather that fees are intended as a means of controlling the practice of calling for inspections before the job is ready for inspection or reinspection.

Reinspection fees may also be assessed when the inspection record card is not available on the work site, the approved plans are not readily available to the inspector, for failure to provide access for the inspection or for deviating from plans requiring the approval of the ~~building official/fire marshal~~ director.

(E) Section 15.08.041 of the Gig Harbor Municipal Code is amended as follows:

15.08.041 Amendment to IBC Section ~~409.3.8~~ 110.3.8.

Section ~~409.3.8~~ 110.3.8 of the IBC is amended as follows:

~~409.3.8~~ 110.3.8 Other inspections. In addition to the inspections specified above, the ~~building official/fire marshal~~ director is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the ~~department of building safety~~ building and fire safety department.

(F) Section 15.08.050 of the Gig Harbor Municipal Code is amended as follows:

15.08.050 Amendment to IBC Section ~~440~~ 111

Section ~~440~~ 111 of the IBC is amended as follows:

~~440.4~~ 111.1 Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the ~~building official~~ director has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation or the provisions of this code or of other ordinances of the jurisdiction.

Upon completion of the inspection required by EHB 1848 by a qualified inspector, the qualified inspector shall prepare and submit to the director a signed letter certifying that the building enclosure has been inspected during the course of construction or rehabilitative construction and that it has been constructed or reconstructed in substantial compliance with the building enclosure design documents, as updated pursuant to Section 3 of EHB 1848. The Building and Fire Safety Department shall not issue a final certificate of occupancy or other equivalent final acceptance until the letter required by this section has been submitted. The Building and Fire Safety Department and or director is not charged with and has no responsibility for determining whether the building enclosure inspection is adequate or appropriate to satisfy the requirements of EHB 1848.

Exception: Certificates of occupancy are not required for work exempt from permits under Section 105.2

~~440.2~~ 111.2 Certificate issued. After payment of the fee established in the City's fee resolution, and after the ~~building official~~ director inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the ~~division of fire and building safety~~ building and fire safety department the ~~building official~~ director shall issue a certificate of occupancy that contains the following:

1. The building permit number (if applicable)
2. The address of the structure.
3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the ~~building official~~ director.
7. The edition of the code under which the certificate was issued.
8. The use and occupancy in accordance with Chapter 3 ~~of the IBC~~.
9. The type of construction as defined in Chapter 6.
10. The design occupant load.
11. If an automatic sprinkler or fire alarm system is provided, whether the sprinkler or fire alarm system is required.
12. Any special stipulations and conditions of issuance of the certificate.

~~440.3~~ 111.3 Temporary occupancy. Upon payment of a fee as set forth in the City's fee resolution, the director is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The director shall set a time period during which the temporary certificate of occupancy is valid.

~~440.4~~ 111.4 Revocation. The ~~building official/fire marshal~~ director is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code whenever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

~~440.5~~ 111.5 Maintenance of certificate of occupancy. The certificate of occupancy issued under the provisions of this section shall be maintained on the premises at all times. The certificate shall be made available for inspection at the request of the ~~building official/fire marshal~~ director upon request.

(G) Section 15.08.060 of the Gig Harbor Municipal Code is amended as follows:

15.08.060 Amendment to IBC Section ~~442.4~~ 113.1

Section ~~442.4~~ 113.1 of the IBC is amended as follows:

~~442.4~~ 113.1 General. The Building Code Advisory Board shall hear and decide those appeals and interpretations described in Chapter 15.02 GHMC.

(H) Section 15.08.070 of the Gig Harbor Municipal Code is amended as follows:

15.08.070 Amendment to IBC Section ~~443~~ 114.

Section ~~443~~ 114 of the IBC is ~~repealed~~ deleted. A new section ~~443~~ 114 is hereby added to the IBC, which shall read as follows:

~~443~~ 114. Enforcement. Enforcement of violations of this code shall proceed as set forth in Chapter 15.24 GHMC.

(I) Section 15.08.080 of the Gig Harbor Municipal Code is amended as follows:

15.08.080 Amendment to IBC Section ~~444~~ 115.

Section ~~444~~ 115 of the IBC is deleted and a new section 115 is added to the IBC, which shall read:

115. Stop work orders. Enforcement of violations of this code, including the issuance of stop work orders, shall proceed as set forth in Chapter 15.24 GHMC.

(J) A new section 15.08.083 is added to the Gig Harbor Municipal Code to read as follows:

15.08.083 Amendment to IBC Section 901.1.

Section 901.1 of the IBC is amended to read as follows:

901.1 Scope. The provisions of this chapter shall specify where fire protection systems are required and shall apply to the design, installation and operation of fire protection systems. For the purposes of this chapter the term fire chief refers to the City of Gig Harbor director of building and fire safety.

(K) A new section 15.08.084 is added to the Gig Harbor Municipal Code to read as follows:

15.08.084 Amendment to IBC Section 907.2.

Section 907.2 of the IBC is amended as follows:

907.2 Where required – new buildings and structures. An approved fire alarm system installed in accordance with the provisions of this code and NFPA 72 shall be provided in new buildings and structures in accordance with Sections 907.2.1 through 907.2.23 and provide occupant notification in accordance with Section 907.6 unless other requirements are provided by another section of this code.

A minimum of one manual fire alarm box shall be provided in an approved location to initiate a fire alarm signal for fire alarm systems employing automatic fire detectors or waterflow detection devices. Where other sections of this code allow elimination of fire alarm boxes due to sprinklers a single alarm box shall be installed not more than 5 feet from the entrance to each required exit..

(L) A new section 15.08.085 is added to the Gig Harbor Municipal Code to read as follows:

15.08.085 Amendment to IBC Section 907.5.2.3.2

Section 907.5.2.3.2 of the IBC is amended as follows:

907.5.2.3.2 Employee work areas. Visible alarm notification appliances shall be provided in all employee work areas.

(M) A new section 15.08.086 is added to the Gig Harbor Municipal Code to read as follows:

15.08.086 Amendment to IBC Section 907.4

Section 907.4 of the IBC is amended as follows:

907.4 Initiating devices. Where manual or automatic alarm initiation is required as part of a fire alarm system, the initiating devices shall be addressable and shall be installed in accordance with Sections 907.4.1 through 907.4.3.

(N) A new section 15.08.087 is added to the Gig Harbor Municipal Code to read as follows:

15.08.087 Amendment to IBC Section 912.3.1

Section 912.3.1 of the IBC is amended as follows:

912.3.1 Locking fire department connection caps. Approved locking caps shall be provided on fire department connections for water-based fire protection systems.

(O) Section 15.08.090 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.08.090 Amendment to IBC Section 1011.1

Section 1011.1 of the IBC is amended as follows:

1011.1 Where required. Exit and exit access doors shall be marked by an approved exit sign readily visible from any direction of egress travel. The path of egress travel to exits and within exits shall be marked by readily visible exit signs to clearly indicate the direction of egress travel in cases where the exit or the path of egress travel is not immediately visible to the occupants. Intervening means of egress doors within exits shall be marked by exit signs. ~~Access to exits shall be marked by readily visible exit signs in cases where the exit or the path of egress travel is not immediately visible to the occupants.~~ Exit sign placement shall be such that no point in an exit access corridor or exit passageway is more than 100 feet (30480 mm) or the listed viewing distance for the sign, whichever is less, from the nearest visible exit sign.

Exceptions:

- ~~1. Exit signs are not required in rooms or areas that require only one exit or exit access.~~
- 2 1. Main exterior exit doors or gates that are obviously and clearly identifiable as exits need not have exit signs where approved by the building official.
- 3 2. Exit signs are not required in occupancies in Group U and individual sleeping units or dwelling units in Group R-1, R-2 and R-3.
- 4 3. Exit signs are not required in sleeping areas in occupancies in Group I-3.
- 5 4. In occupancies in Groups A-4 and A-5, exit signs are not required on the seating side of vomitories or openings into seating areas where exit signs are provided in the concourse that are readily apparent from the vomitories. Egress lighting is provided to identify each vomitory or opening within the seating area in an emergency.

(P) A new section 15.08.095 is added to the Gig Harbor Municipal Code to read as follows:

15.08.095 Amendment to IBC Section 1612.3

Section 1612.3 of the IBC is amended as follows:

1612.3 Establishment of flood hazard areas. To establish flood hazard areas, the City of Gig Harbor has adopted the Federal Emergency Management Agency Flood Insurance Study and Flood Insurance Rate Map under Title 18.10 of the Gig Harbor Municipal Code. The referenced study, map and supporting data are hereby adopted by reference and declared to be part of this section.

(Q) A new section 15.08.096 is added to the Gig Harbor Municipal Code to read as follows:

15.08.096 Amendment to IBC Section 3409.2, Exception 3

Section 3409.2, Exception 3 of the IBC is amended as follows:

3. Designated as historic under an approved state or local preservation program.

Section 4. Chapter 15.10 of the Gig Harbor Municipal Code is hereby amended as follows:

(A) The references in Gig Harbor Municipal Code Section 15.10.020 to IRC Section R105.2 are revised to read IRC Section R105.1.

(B) Section 15.10.020 is amended to correct the number sequencing in Section R105 and to amend Section R105 as follows:

R105.3.2 Time limitation on application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or the permit has been issued; except that the director is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Any permit application that has been approved by the director but for whatever reason has not been issued within a period of 180 days after approval shall be deemed to have expired. If an update in code editions in accordance with Chapter 51-51 WAC occurs after expiration, application for a new permit must be submitted with new construction documents

demonstrating compliance with the appropriate code provisions as enumerated in 51-51 WAC and GHMC Title 15.

R 105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Before such work recommences, a new permit shall be first obtained and the fee, therefor, shall be one-half the amount required for a new permit for such work, provided no changes have been made in the original construction documents for such work and provided further that such suspension or abandonment has not exceeded one year.

The building official director is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing prior to the expiration of the permit and justifiable cause demonstrated.

(C) Section 15.10.060 of the Gig Harbor Municipal Code is amended as follows:

1. The title of this section is amended by changing the reference to IRC Section ~~R112.4~~ R112.

2. Subsection R112.1.(2.3) is amended as follows:

R112.2.(2.3) Designated as historic under an approved state or local historic preservation program ~~that is approved by the Department of the Interior.~~

Section 5. Chapter 15.12 of the Gig Harbor Municipal Code is amended as follows:

(A) Section 15.12.020 of the Gig Harbor Municipal Code is hereby amended by correcting the reference to Section 105.2 to read 108.2.

(B) A new section 15.12.024 is added to the Gig Harbor Municipal Code to read:

15.12.024 Amendment to IMC Section 106.3.3

Section 106.3.3 is amended to read as follows:

Section 106.3.3 Time limitation on application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or the permit has been issued; except that the director is

authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Any permit application that has been approved by the director but for whatever reason has not been issued within a period of 180 days after approval shall be deemed to have expired. If an update in code editions in accordance with Chapter 51-52 WAC occurs after expiration, application for a new permit must be submitted with new construction documents demonstrating compliance with the appropriate code provisions as enumerated in 51-52 WAC and GHMC Title 15.

Any permit application that has been approved by the director but for whatever reason has not been issued prior to an update in code editions in accordance with Chapter 51-52 WAC shall expire upon the effective date of the code change. Application for a new permit must be submitted with new construction documents demonstrating compliance with the appropriate code provisions as enumerated in 51-52 WAC and GHMC Title 15.

read: (C) A new section 15.12.026 is added to the Gig Harbor Municipal Code to

15.12.026 Amendment to IMC Section 106.4.3

Section 106.4.3 is amended to read as follows:

106.4.3 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Before such work recommences, a new permit shall be first obtained and the fee, therefor, shall be one-half the amount required for a new permit for such work, provided no changes have been made in the original construction documents for such work and provided further that such suspension or abandonment has not exceeded one year.

The ~~building official~~ director is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing prior to the expiration of the permit and justifiable cause demonstrated.

read: (D) A new section 15.12.028 is added to the Gig Harbor Municipal Code to

15.12.028 Amendment to IMC Section 106.4.4

Section 106.4.4 is amended to delete the reference to a permit extension fee in the last paragraph of the section.

Section 6. Chapter 15.14 of the Gig Harbor Municipal Code is hereby amended as follows:

(A) Section 15.14.020 of the Gig Harbor Municipal Code is amended as follows:

15.14.020 Amendment to IFGC Section 406-5 106

106.3.2 Time limitation on application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or the permit has been issued; except that the director is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Any permit application that has been approved by the director but for whatever reason has not been issued within a period of 180 days after approval shall be deemed to have expired. If an update in code editions in accordance with Chapter 51-53 WAC occurs after expiration, application for a new permit must be submitted with new construction documents demonstrating compliance with the appropriate code provisions as enumerated in 51-53 WAC and GHMC Title 15.

106.5.3 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Before such work recommences, a new permit shall be first obtained and the fee, therefor, shall be one-half the amount required for a new permit for such work, provided no changes have been made in the original construction documents for such work and provided further that such suspension or abandonment has not exceeded one year.

The director is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing prior to the expiration of the permit and justifiable cause demonstrated.

Section 406-5 106.6 of the IFGC is amended as follows:

~~106.5~~ 106.6 Fees. A permit shall not be issued until the fees prescribed in Section ~~106.5~~ 6.2 have been paid, nor shall an amendment to a permit be released until the additional fee, if any, due to an increase of the installation has been paid.

~~106.5.1~~ 106.6.1 Work commencing before permit issuance. Any person who commences work on an installation before obtaining the necessary permit shall be subject to a fee as set forth in the City's fee resolution, in addition to the permit fees.

~~106.5.2~~ 106.6.2 Fee schedule. The fees for work shall be as indicated in the City's fee resolution.

~~106.5.3~~ 106.6.3 Fee Refunds. The ~~building official~~ director may authorize the refunding of fees as follows:

(B) Section 15.14.030 of the Gig Harbor Municipal Code is amended as follows:

15.14.030 Amendment to IFGC Section 107.2

~~107.2 Testing. Installations shall be tested as required in this code and in accordance with Sections and in accordance with Sections 107.2.1 through 107.2.3. Tests shall be made by the permit holder and observed by the code official.~~

107.2 Required inspections and testing. The code official is authorized to conduct such inspections as are deemed necessary to determine compliance with the provisions of this code. Construction or work for which a permit is required shall be subject to inspection by the director, and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid.

~~107.2.4~~ 107.2.6 Reinspection Fee. A reinspection fee may be assessed for each inspection or reinspection when the work for which the inspection is requested is not complete or when corrections noted on previous

inspections are not made.

Section 7. Chapter 15.16 of the Gig Harbor Municipal Code is hereby amended as follows:

(A) Section 15.16.010 of the Gig Harbor Municipal Code is amended as follows:

15.16.010 Amendment to IFC Section ~~402.5~~ 102.6

~~402.5~~ 102.6 of the IFC is amended as follows:

102.5 6 Historic Buildings. The construction, alteration, repair, enlargement, restoration, relocation or movement of buildings or structures that are designated as historic buildings when such buildings or structures do not constitute a distinct hazard to life or property shall be in accordance with the provisions of the International Existing Building Code adopted under Chapter 15.18 GHMC and the Washington State Historic Building Code adopted under GHMC 15.06.020.

(B) A new section 15.16.015 is added to the Gig Harbor Municipal Code to read as follows:

15.16.015 Amendment to IFC Section 104.10

Section 104.10 of the IFC is amended as follows:

104.10 Fire Incident Investigations. The fire code official, the fire department or other responsible authority shall have the authority to investigate the cause, origin, and circumstances of any fire, explosion or other hazardous condition. Information that could be related to trade secrets or processes shall not be made part of the public record except as directed by a court of law.

104.10.1 Assistance from other agencies. Police and other enforcement agencies shall have authority to render necessary assistance in the investigation of fires when requested to do so.

104.10.2 Incident investigation fees. A fee shall be collected for response to and investigation of fires, explosions, or other hazardous conditions resulting from emergency incidents. The fee shall be as stipulated in the City's fee resolution.

(C) Section 15.16.040 of the Gig Harbor Municipal Code is amended by changing the references to IFC Section 106.4 to read IFC Section 106.2.3.

(D) A new section 15.16.043 is added to the Gig Harbor Municipal Code to read as follows:

15.16.043 Amendment to IFC Section 105.2.3

Section 105.2.3 of the IFC is amended as follows:

105.2.3 Time limit on application. An application for a permit for any proposed work or operation shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that the fire code official is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Any permit application that has been approved by the director but for whatever reason has not been issued within a period of 180 days after approval shall be deemed to have expired. If an update in code editions in accordance with Chapter 51-54 WAC occurs after expiration, application for a new permit must be submitted with new construction documents demonstrating compliance with the appropriate code provisions as enumerated in 51-54 WAC and GHMC Title 15.

(E) A new section 15.16.045 is added to the Gig Harbor Municipal Code to read as follows:

15.16.045 Amendment to IFC Section 113.

Section 113 of the IFC is amended to read as follows:

113.2 Schedule of permit fees. A fee for each permit shall be paid as required in accordance with the schedule as established by ~~the applicable governing authority~~ the City's fee resolution.

113.3 Work commencing before permit issuance. Any person who commences any work, activity or operation regulated by this code before obtaining the necessary permits shall be subject to an additional fee established by ~~the applicable governing authority~~, City's fee resolution which shall be in addition to the required permit fee.

113.5 Refunds. The applicable governing authority is authorized to establish a refund policy. The director may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The director may also authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The director may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done.

The director shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

113.6 Incident management and investigation fee. A fee as prescribed under the City's fee schedule shall be charged for management and investigation of emergency incidents involving structural damage, fires, or other public health and safety threats. The fee shall be payable by the property owner upon receipt of an invoice from the City for such services.

(F) Section 15.16.090 of the Gig Harbor Municipal Code is amended as follows:

15.16.090 Amendment to IFC Section 503.2.3

Section 503.2.3 of the IFC is amended as follows:

503.2.3 Specifications. Fire apparatus access roads shall be installed and arranged in accordance with Sections 503.2.1 through 503.2.7 8. designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities.

Where storm vaults and other underground structures are located under fire apparatus access roads, the location of such structures shall be clearly marked on the roadway surface in an approved manner.

(G) Section 15.16.120 of the Gig Harbor Municipal Code is amended as follows:

15.16.120 Amendment to IFC Section ~~508.4~~ 507.1

Section ~~508.4~~ 507.1 of the IFC is amended as follows:

~~508.4~~ 507.1 Required water supply. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.

~~508.4.4~~ 507.1.1 Private property easements. When water is provided to private property from facilities located in the public right of way, but such water facilities must cross private property owned by third parties, the property owner shall obtain, at his/her own expense, easements(s) granting access to the City of Gig Harbor, allowing the city access for installation, repair and maintenance of the fire flow system. The form of the easement shall be approved by the City Attorney and recorded against the property at the property owner's expense.

~~Section 508.4.2~~ 507.1.2 Certificate of water availability. Prior to approval of plans for new developments, the applicant shall submit a certificate of water availability from the water purveyor, if other than the City of Gig Harbor, certifying the purveyors ability and intention to provide the required fire flow at the site.

~~Section 508.4.3~~ 507.1.3 Water system plan approval. Plans and specifications for new, revised or extended water systems providing fire protection water supply shall be approved in writing by the fire code official.

~~Section 508.4.4~~ 507.1.4 Prior to final approval of a development's water system, two copies of the "as-built" drawings shall be filed with the Gig Harbor ~~Community Development~~ Public Works Department.

(H) Section 15.16.130 of the Gig Harbor Municipal Code is amended as follows:

15.16.130 Amendment to IFC Section ~~508.5~~ 507.5

Section ~~508.5.~~ 507.5 of the IFC is amended as follows:

~~508.5~~ 507.5 Fire hydrant systems. Fire hydrant systems shall comply with Sections ~~508.5.4~~ 507.5.1 through ~~508.5.6~~ 507.5.6.

~~508.5.4~~ 507.5.1 Where required. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the building official/fire marshal. Fire hydrant locations shall be marked with a stake,

flagging or other approved means by a land surveyor registered by the State of Washington, and the locations approved prior to installation. Fire hydrant systems shall be installed, tested and approved prior to beginning combustible construction.

Exceptions:

1. For group R-3 and Group U occupancies, the distance requirement shall be 600 feet (183 m).
2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 the distance requirement shall be 600 feet.

~~508.5.2~~ 507.5.2 Inspection, testing and maintenance. Newly installed fire hydrants shall be flow tested by an approved testing agency in the presence of the building official/fire marshal or designee, to verify the systems ability to provide the required fire flow prior to final approval. Fire hydrant systems shall be subject to periodic tests as required by the building official/fire marshal. Fire hydrant systems shall be maintained in an operative condition at all times and shall be repaired where defective. Additions, repairs, alterations and servicing shall comply with approved standards.

~~508.5.7~~ 507.5.7 Type of hydrant. Standard hydrants shall have not less than five inch main valve openings with two, two and one-half inch outlets and one, four and one-half inch outlet. Hydrants shall comply with City of Gig Harbor public works standards. All four and one-half inch outlets shall be equipped with five inch Storz fittings.

~~508.5.8~~ 507.5.8 Fire hydrant system installations. Hydrant systems shall be installed in accordance with City of Gig Harbor Public Works Standards and NFPA 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances. Hydrants shall stand plumb and be set to finished grade. The bottom of the lowest outlet shall be no less than 18 inches above the finished grade and the bottom of the ground flange shall be no less than 1" above finished grade. The five inch Storz fitting shall face the roadway.

~~508.5.9~~ 507.5.9 Backflow prevention. When required by the fire ~~marshal/building official~~ water purveyor, private fire hydrant systems shall be separated from the public water system with an approved detector check valve installed in accordance with the manufacturer's installation instructions and ~~City of Gig Harbor Public Works Standards~~ purveyors standards.

(I) A new section 15.16.145 is added to the Gig Harbor Municipal Code to read as follows:

15.16.145 Amendment to IFC Section 510

Section 510 of the IFC is amended by the addition of new subsection 510.4 to read as follows:

510.4 Application to existing buildings. Emergency responder radio coverage shall be provided as prescribed in this code in all existing buildings by January 1, 2015. All buildings annexed into the City shall have emergency responder radio coverage within 5 years of the effective date of annexation.

(J) A new section 15.16.147 is added to the Gig Harbor Municipal Code to read as follows:

15.16.147 Amendment to IFC Section 901.1.

Section 901.1 of the IBC is amended as follows:

901.1 Scope. The provisions of this chapter shall specify where fire protection systems are required and shall apply to the design, installation and operation of fire protection systems. For the purposes of this chapter the term fire chief refers to the City of Gig Harbor director of building and fire safety.

(K) Section 15.16.150 of the Gig Harbor Municipal Code is amended as follows:

15.16.150 Amendment to IFC Section 902.1.

Section 902.1 of the IFC is amended as follows:

902.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein:

SUBSTANTIAL REMODEL/RENOVATION. A building or structure undergoes substantial remodel/renovation when the value of the construction exceeds ~~sixty~~ fifty percent of the building valuation determined by the most recent Pierce County Assessors Office assessment.

(L) Section 15.16.160 of the Gig Harbor Municipal Code is amended as follows:

15.16.160 Amendment to IFC Section 903.2.

Section ~~903.2.7~~ 903.2 of the IFC is amended as follows:

903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in this section.

~~903.2.7~~ 903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exception: Group R-3 occupancies are subject to the requirements of the International Residential Code.

~~903.2.7.8.1~~ 903.2.7.8.1 Application to existing structures. Automatic sprinklers shall be installed, tested and approved:

1. Whenever an existing building containing a Group R fire area is being substantially remodeled or renovated.
2. Whenever an existing building containing a Group R fire area incurs fire damage requiring repairs meeting the definition of substantial remodel/renovation.
3. In all existing hotels and motels annexed into the City of Gig Harbor within five years of the effective date of the annexation.

(M) Section 15.16.170 of the Gig Harbor Municipal Code is repealed and a new section 15.16.170 adopted to read as follows:

15.16.170 Amendment to IFC Section 907.2

IFC Section 907.2 is amended as follows:

907.2 Where required – new buildings and structures. An approved fire alarm system installed in accordance with the provisions of this code and NFPA 72 shall be provided in new buildings and structures in accordance with Sections 907.2.1 through 907.2.23 and provide occupant notification in accordance with Section 907.6 unless other requirements are provided by another section of this code.

A minimum of one manual fire alarm box shall be provided in an approved location to initiate a fire alarm signal for fire alarm systems employing automatic fire detectors or waterflow detection devices. Where other sections of this code allow elimination of fire alarm boxes due to sprinklers a single alarm box shall be installed not more than 5 feet from the entrance to each required exit..

(N) A new section 15.16.172 is added to the Gig Harbor Municipal Code to read as follows:

15.16.172 Amendment to IFC Section 907.6.2.3.2

Section 907.6.2.3.2 of the IBC is amended as follows:

907.6.2.3.2 Employee work areas. Visible alarm notification appliances shall be provided in all employee work areas.

(O) A new section 15.16.174 is added to the Gig Harbor Municipal Code to read as follows:

15.16.174 Amendment to IFC Section 907.5

Section 907.5 of the IFC is amended to read as follows:

907.5 Initiating devices. Where manual or automatic alarm initiation is required as part of a fire alarm system, the initiating devices shall be addressable and shall be installed in accordance with Sections 907.4.1 through 907.4.3.

(P) A new section 15.16.176 is added to the Gig Harbor Municipal Code to read as follows:

15.16.176 Amendment to IFC Section 912.3.1

Section 912.3.1 of the IFC is amended to read as follows:

912.3.1 Locking fire department connection caps. Approved locking caps shall be provided on fire department connections for water-based fire protection systems.

(Q) Section 15.16.180 of the Gig Harbor Municipal Code is amended as follows:

15.16.180 Amendment to IFC Section 1011.1

Section 1011.1 of the IFC is amended as follows:

1011.1 Where required. Exit and exit access doors shall be marked by an approved exit sign readily visible from any direction of egress travel. The path of egress travel to exits and within exits shall be marked by readily visible exit signs to clearly indicate the direction of egress travel in cases where the exit or the path of egress travel is not immediately visible to the occupants. Intervening means of egress doors within exits shall be marked by exit signs. ~~Access to exits shall be marked by readily visible exit signs in cases where the exit or the path of egress travel is not immediately visible to the occupants.~~ Exit sign placement shall be such that no point in an exit access corridor or exit passageway is more than 100 feet (30480 mm) or the listed viewing distance for the sign, whichever is less, from the nearest visible exit sign.

Exceptions:

~~1. Exit signs are not required in rooms or areas that require only one exit or exit access.~~

2 1. Main exterior exit doors or gates that are obviously and clearly identifiable as exits need not have exit signs where approved by the building official.

~~3~~ 2. Exit signs are not required in occupancies in Group U and individual sleeping units or dwelling units in Group R-1, R-2 and R-3.

4 3. Exit signs are not required in sleeping areas in occupancies in Group I-3.

~~5~~ 4. In occupancies in Groups A-4 and A-5, exit signs are not required on the seating side of vomitories or openings into seating areas where exit signs are provided in the concourse that are readily apparent from the vomitories. Egress lighting is provided to identify each vomitory or opening within the seating area in an emergency.

(R) Section 15.16.190 of the Gig Harbor Municipal Code is amended as follows:

15.16.190 Amendment to IFC Chapter 46 45.

IFC Chapter 46 45 is amended to read as follows:

Chapter 46 45

MARINAS

Section ~~4604~~ 4501

~~Section 4601.1~~ 4501.1 Scope. Marina facilities shall be in accordance with this chapter.

~~4601.1.1~~ 4501.1.1 Plans and approvals. Plans for marina fire-protection facilities shall be approved prior to installation. The work shall be subject to final inspection and approval after installation.

~~4601.1.2~~ 4501.1.2 Permits. Permits are required to use open flame devices for maintenance or repair on vessels, floats, piers or wharves.

Section ~~4602~~ 4502
Definitions

Section ~~4602.1~~ 4502.1 Definitions. The following words and terms shall, for the purpose of this chapter and as used elsewhere in this code, have the meanings shown herein.

COVERED BOAT MOORAGE is a pier or system of floating or fixed access ways to which vessels on water may be secured and any portion of which are covered by a roof.

DRAFT CURTAIN is a structure arranged to limit the spread of smoke and heat along the underside of the ceiling or roof.

FLOAT is a floating structure normally used as a point of transfer for passengers and goods, or both, for mooring purposes.

GRAVITY-OPERATED DROP OUT VENTS are automatic smoke and heat vents containing heat-sensitive glazing designed to shrink and drop out of the vent openings when exposed to fire.

MARINA is any portion of the ocean or inland water, either naturally or artificially protected, for the mooring, servicing or safety of vessels and shall include artificially protected works, the public or private lands ashore, and structures or facilities provided within the enclosed body of water and ashore for the mooring or servicing of vessels or the servicing of their crews or passengers.

PIER is a structure built over the water, supported by pillars or piles, and used as a landing place, pleasure pavilion or similar purpose.

VESSEL is watercraft of any type, other than seaplanes on the water, used or capable of being used as a means of transportation. Included in this definition are non-transportation vessels such as houseboats and boathouses.

WHARF is a structure or bulkhead constructed of wood, stone, concrete or similar material built at the shore of a harbor, lake or river for vessels to lie alongside of, and piers or floats to be anchored to.

Section ~~4603~~ 4503
General Precautions

~~4603.4~~ 4503.1 Combustible Debris. Combustible debris and rubbish shall not be deposited or accumulated on land beneath marina structures, piers or wharves.

~~4603.2~~ 4503.2 Sources of Ignition. The use of open flame devices for lighting or decoration on the exterior of a vessel, float, pier or wharf shall have the prior approval of the building official/fire marshal.

~~4603.3~~ 4503.3 Flammable or Combustible Liquid Spills. Spills of flammable or combustible liquids at or upon the water shall be reported immediately to the fire department or jurisdictional authorities.

~~4603.4~~ 4503.4 Rubbish Containers. Containers with tight-fitting or self-closing lids shall be provided for the temporary storage of combustible trash or rubbish.

~~4603.5~~ 4503.5 Electrical Equipment. Electrical equipment shall be installed and used in accordance with its listing and Section 605 of the IFC as required for wet, damp and hazardous locations.

~~4603.6~~ 4503.6 Slip Identification. Slips and mooring spaces shall be individually identified by an approved numeric or alphabetic designator. Space designators shall be posted at the space. Signs indicating the space designators located on finger piers and floats shall be posted at the base of all piers, finger piers, floats, and finger floats.

~~4603.6.1~~ 4503.6.1 Application to existing marinas. Slip identification designators shall be installed in all existing marinas within the City's jurisdiction on or before January 1, 2014. All marinas annexed into the City shall have slip identification designators installed within 5 years of the effective date of annexation.

Section ~~4604~~ 4504
FIRE-PROTECTION

~~4604.1~~ 4504.1 General. Marinas, piers, wharves, floats with facilities for mooring or servicing five or more vessels, and marine motor vehicle fuel-dispensing stations shall be equipped with fire-protection equipment in accordance with Section 4604.

~~4604.2~~ 4504.2 Standpipes. Marinas shall be equipped throughout with Class I manual, dry standpipe systems in accordance with NFPA 303. Systems shall be provided with outlets located such that no point on the marina pier or float system exceeds 150 feet from a standpipe outlet.

~~4604.2.1~~ 4504.2.1 Application to existing marinas. Class 1 manual, dry standpipes in accordance with this section shall be installed in all existing marinas within the City on or before January 1, 2014. All marinas

annexed into the City shall have class one manual, dry standpipes installed within 5 years of the effective date of annexation.

~~4604.2.1~~ 4504.2.2 Identification of standpipe outlets. Standpipe outlet locations shall be clearly identified by a flag or other approved means designed to be readily visible from the pier accessing the float system.

~~4604.3~~ 4504.3 Access and Water Supply. Piers and wharves shall be provided with fire apparatus access roads and water-supply systems with on-site fire hydrants when required by the fire code official. At least one fire hydrant capable of providing the required fire flow shall be provided within an approved distance of standpipe supply connections.

~~4604.4~~ 4504.4 Portable Fire Extinguishers. One 4A:40BC fire extinguisher shall be provided at each standpipe outlet. Additional fire extinguishers, suitable for the hazards involved, shall be provided and maintained in accordance with Section 906.

~~4604.5~~ 4504.5 Communications. A telephone not requiring a coin to operate or other approved, clearly identified means to notify the fire department shall be provided on the site in a location approved by the code official.

~~4604.6~~ 4504.6 Equipment staging areas. Space shall be provided on all float systems for the staging of emergency equipment. Staging areas shall provide a minimum of 4 feet wide by 10 feet long clear area exclusive of walkways and shall be located at each standpipe outlet. Staging areas shall be provided with barriers having a minimum height of 4 inches and a maximum space between the bottom barrier edge and surface of the staging area of 2 inches on the outboard sides to prevent loss of equipment overboard. A sign reading "Fire Equipment Staging Area- Keep Clear" shall be provided at each staging area to prevent obstruction.

~~4604.7~~ 4504.7 Smoke and heat vents. Approved automatic smoke and heat vents shall be provided in covered boat moorage areas exceeding 2,500 sq. ft. (232 m²) in area, excluding roof overhangs.

Exception: Smoke and heat vents are not required in areas protected by automatic sprinklers.

~~4604.7.1~~ 4504.7.1 Application to existing marinas. Smoke and heat vents in accordance with this section shall be installed in all existing marinas within the City on or before January 1, 2014. All marinas annexed into the City shall have smoke and heat vents installed within 5 years of the effective date of annexation.

~~4604.7.2~~ 4504.7.2 Design and installation. Where smoke and heat vents are required they shall be installed near the roof peak, evenly distributed and arranged so that at least one vent is over each covered berth. The effective vent area shall be calculated using a ratio of one square foot of

vent to every fifteen square feet of covered berth area (1:15). Each vent shall provide a minimum opening size of 4 ft. x 4 ft.

~~4604.7.2.4~~ 4504.7.2.1 Smoke and heat vents. Smoke and heat vents shall operate automatically by actuation of a heat-responsive device rated at ~~between~~ 100°F (56°C) above ambient.

Exception: Gravity-operated ~~drip~~ drop out vents.

~~4604.7.2.2~~ 4504.7.2.2 Gravity-operated drop out vents. Gravity-operated drop out vents shall fully open within 5 minutes after the vent cavity is exposed to a simulated fire represented by a time-temperature gradient that reaches an air temperature of 500°F (260°C) within 5 minutes.

~~4604.8~~ 4504.8 Draft curtains. Draft curtains shall be provided in covered boat moorage areas exceeding 2,500 sq. ft. (232 m²) in area excluding roof overhangs.

Exception: Draft curtains are not required in areas protected by automatic sprinklers.

~~4604.8.~~ 4504.8.1 Application to existing marinas. Draft curtains in accordance with this section shall be installed in all existing marinas within the City on or before January 1, 2014. All marinas annexed into the City shall have draft curtains installed within 5 years of the effective date of annexation.

~~4604.8.1~~ 4504.8.2 Draft curtain construction. Draft curtains shall be constructed of sheet metal, gypsum board or other approved materials that provide equivalent performance to resist the passage of smoke. Joints and connections shall be smoke tight.

~~4604.8.2~~ 4504.8.3 Draft curtain location and depth. The maximum area protected by draft curtains shall not exceed 2,000 square feet (186 m²) or two slips or berths, whichever is smaller. Draft curtains shall not extend past the piling line. Draft curtains shall have a minimum depth of 4 feet and shall not extend closer than 8 feet (2438 mm) to the walking surface of the pier

Section ~~4607~~ 4507
MARINE MOTOR VEHICLE FUEL-DISPENSING STATIONS

~~4607.4~~ 4507.1 Fuel-Dispensing. Marine motor vehicle fuel-dispensing stations shall be in accordance with IFC Chapter 22.

(S) A new section 15.16.200 is added to the Gig Harbor Municipal Code to read as follows:

15.16.200 Amendment to IFC Chapter 4603.6

Section 4603.6 of the IFC is amended as follows:

4603.6 Fire alarm systems. An approved fire alarm system shall be installed in existing buildings and structures in accordance with Sections 4603.6.1 through 4603.6.7 and provide occupant notification in accordance with Section 907.6 unless other requirements are provided by other sections of this code.

Occupancies subject to section 4603.6 and annexed into the City of Gig Harbor shall have smoke alarms installed in accordance with this section within five years of the date of annexation.

(T) A new section 15.16.210 is added to the Gig Harbor Municipal Code to read as follows:

15.16.210 Amendment to IFC Appendix Chapter C, Table C105.1

Appendix C, Table 105.1 is amended by the addition of a new footnote “f” to read:

f. When the fire flow determined under Appendix Ch. B falls between the fire flow requirements specified in the first column of Table C105.1 the flow shall be rounded up to the next closest prescribed flow.

Section 8. Chapter 15.18 of the Gig Harbor Municipal Code is hereby amended as follows:

(A) A new section 15.18.055 is added to the Gig Harbor Municipal Code to read as follows:

15.18.055 Amendment to IEBC 105.

Section 105 is amended as follows:

105.3.2 Time limit on application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the code official is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Any permit application that has been approved by the director but for whatever reason has not been issued within a period of 180 days after approval shall be deemed to have expired. If an update in code editions in accordance with Chapter 51-50 WAC occurs after expiration, application

for a new permit must be submitted with new construction documents demonstrating compliance with the appropriate code provisions as enumerated in 51-50 WAC and GHMC Title 15.

105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Before such work recommences, a new permit shall be first obtained and the fee, therefor, shall be one-half the amount required for a new permit for such work, provided no changes have been made in the original construction documents for such work and provided further that such suspension or abandonment has not exceeded one year.

The director is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing prior to the expiration of the permit and justifiable cause demonstrated.

(B) Section 15.18.060 of the Gig Harbor Municipal Code is amended as follows.

15.18.060 Amendment to IEBC Section 108.

Section 108 of the IEBC is amended as follows:

108.3 Building permit valuations. The applicant for a permit shall provide an estimated permit value at the time of application. Permit valuations shall include the total value of work, including materials, labor, normal site preparation, architectural and design fees, overhead and profit, for which the permit is being issued, such as gas, mechanical, plumbing equipment and permanent systems.

If in the opinion of the ~~building official~~ director, the valuation is underestimated on the application, the valuation shall be based on the valuation as determined using the most current Table 1-2, Square Foot Construction Costs contained in the ~~Building Valuation Data published by the International Code Council~~ City's fee resolution unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official.

(C) Section 15.18.062 of the Gig Harbor Municipal Code is amended as follows:

15.18.062 Amendment to IEBC Section 307.5.

Section 307.5 of the IEBC is amended as follows:

307.5 Energy. Buildings undergoing a change in occupancy that would result in an increase in demand for either fossil fuel or electrical energy shall comply with the *International Energy Conservation Code* Washington State Energy Code.

(D) Section 15.18.064 of the Gig Harbor Municipal Code is amended as follows.

15.18.064 Amendment to IEBC Section 308.2.

Section 308.2 of the IEBC is amended as follows:

Exception: Historic buildings that are:

1. Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places;
2. Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or
3. Designated as historic under a state or local historic preservation program ~~that is approved by the Department of Interior.~~

Section 9. Chapter 15.22 of the Gig Harbor Municipal Code is hereby amended as follows:

(A) A new section 15.22.045 is hereby added to the GHMC to read as follows

15.22.045 Amendment to UPC Section 103.

Section 103 of the UPC is amended as follows:

103.3.4 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work

is commenced. Before such work recommences, a new permit shall be first obtained and the fee, therefor, shall be one-half the amount required for a new permit for such work, provided no changes have been made in the original construction documents for such work and provided further that such suspension or abandonment has not exceeded one year.

The director is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing prior to the expiration of the permit and justifiable cause demonstrated.

103.4.3 Time limitation on application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or the permit has been issued; except that the director is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Any permit application that has been approved by the director but for whatever reason has not been issued within a period of 180 days after approval shall be deemed to have expired. If an update in code editions in accordance with Chapter 51-56 WAC occurs after expiration, application for a new permit must be submitted with new construction documents demonstrating compliance with the appropriate code provisions as enumerated in 51-56 WAC and GHMC Title 15.

(B) Section 15.22.070 of the Gig Harbor Municipal Code is amended by changing the definition of Authority Having Jurisdiction in Section 203.0 of the UPC to read:

Authority Having Jurisdiction – ~~The building official/fire marshal~~ building/fire safety director of the City of Gig Harbor shall be the Authority Having Jurisdiction for the purposes of this code. This definition shall include the Authority Having Jurisdiction's duly authorized representative.

Section 10. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 11. Copies of Codes Filed with City Clerk. Pursuant to RCW 35A.12.140, copies of all of the codes adopted by reference in this Ordinance

have been filed with the City Clerk for use and examination by the public prior to adoption.

Section 12. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ----th day of -----, 2010.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
ANGELA BELBECK

FILED WITH THE CITY CLERK: 04/23/08
PASSED BY THE CITY COUNCIL: 5/12/08
PUBLISHED: 5/21/08
EFFECTIVE DATE: 5/26/08
ORDINANCE NO: 1128