

Gig Harbor City Council Meeting

**October 22, 2012
5:30 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
Monday, October 22, 2012 – 5:30 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes Oct. 8, 2012.
2. Correspondence / Proclamations: a) Harbor Hope Network Proclamation.
3. Liquor License Action: a) Added Privilege – Premium Liquor and Wine; b) Application – Applebee’s Neighborhood Grill & Bar; c) Renewals: Maritime Mart; Marketplace Grille; Blue Cannon Pizza; Pioneer 76; Qdoba Mexican Grill; and The Wine Studio; d) Application – Sunset Grill.
4. Receive and File: a) Planning Commission Minutes June 21, July 5, August 16, and September 6, 2012; b) Intergovernmental Affairs Committee Minutes July 9, 2012; c) Gig Harbor Historical Waterfront Association Report; d) Third Quarter Financial Report.
5. Doxo Web-based Utility Bill Delivery and Payment Agreement.
6. Fire Alarm Inspection Services – Agreement Authorization.
7. City-wide Travel Demand Model Update, Annual Capacity Availability Report and On-Call Services for Concurrency Testing – Contract Amendment #3.
8. Approval of Payment of Bills Oct 22, 2012: Checks #70864 through #70958 in the amount of \$773,320.23.

PRESENTATIONS:

Harbor Hope Network Proclamation.

OLD BUSINESS:

1. Second Reading of Ordinance - Comcast Franchise Agreement.

NEW BUSINESS:

1. Public Hearing and First Reading of Ordinance – 2012 Comprehensive Plan Amendments.

STAFF REPORT:

PUBLIC COMMENT:

MAYOR’S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Downtown Planning & Vision Committee: Tue. Oct 23rd at 4:00 p.m.
2. Planning/Building Committee Special Meeting: Tue. Oct. 30th at 5:30 p.m.
3. Budget Worksessions: Mon. Nov. 5th and Tues. Nov. 6th at 5:30 p.m.
4. Civic Center closed for Veterans Day – Mon. Nov. 12th.
5. City Council Meeting on Tuesday, Nov. 13th at 5:30 p.m. due to Veteran’s Day.

ADJOURN to Workstudy Session: Shoreline Master Program

MINUTES OF GIG HARBOR CITY COUNCIL MEETING – October 8, 2012

PRESENT: Councilmembers Ekberg, Young, Guernsey, Perrow, Malich, Payne, Kadzik and Mayor Hunter.

CALL TO ORDER: 5:35 p.m.

CONSENT AGENDA:

1. Approval of City Council Minutes Sep. 24, 2012.
2. Receive and File: a) Operations Minutes – March 19, 2012; b) Parks Commission Minutes August 1, 2012; c) Pierce Conservation District Assessment Proposal.
3. Correspondence / Proclamations: a) National Community Planning Month.
4. MRSC Rosters - Small Works & Consultant Roster Annual Contract Renewal.
5. WSDOT Reimbursable Agreement for State Materials Lab Engineering and/or Testing Services.
6. Approval of Payment of Bills Sep 24, 2012: Checks #70727 through #70863 in the amount of \$1,079,210.74.
7. Approval of Payroll for the month of September: Checks # 6757 through #6767 and direct deposits in the amount of \$323,086.92.

MOTION: Move to adopt the Consent Agenda as presented.
Ekberg / Malich – six voted yes. Councilmember Guernsey abstained due to Item 2c.

PRESENTATIONS:

1. Pierce Transit Proposition No. 1 Impacts – Justin Leighton, Government Relations Officer. Mr. Leighton utilized a PowerPoint presentation to update Council on the proposition to fund Pierce Transit services in the future. He then addressed Council's questions.

2. National Community Planning Month – Tom Dolan / Jim Pasin. Mayor Hunter presented Jim Pasin, Planning Commissioner, and Planning Director Tom Dolan with the signed proclamation.

Mr. Pasin said he was pleased to accept the proclamation on behalf of the other members of the Planning Commission: Rick Gagliano, Harris Atkins, Craig Baldwin, Bill Coughlin, Reid Ekberg, and Michael Fisher. He explained that the group has a good balance of different viewpoints but has the ability to come to consensus in a peaceful manner. He mentioned how blessed the city is to have long-term volunteers such as Kae Paterson, Dick Allen, Teresa Malich, Jill Guernsey and Paul Kadzik, and the helpful support of city staff Tom Dolan and Jennifer Kester. He closed by praising the important part played the City Attorney Angela Belbeck, who answers their questions, but leaves it up to the Commissioners to make the decisions.

Planning Director Tom Dolan thanked Senior Planner Jennifer Kester and the members of the Planning Commission for all their hard work. He mentioned the multiple meetings required by the Shoreline Management Program updates. He said that he has been blessed with a planning staff that is committed to doing their best, and thanked the City Council for their commitment and dedication.

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. Proposed Amendment to the Development Agreement with Harbor Hill LLC.
Senior Planner Jennifer Kester presented the background information for this proposed amendment to add a retirement community to the Harbor Hill Development Agreement. She explained that the first step is for the City Council to agree to initiate the process that will begin the process, and that several steps are required before the final agreement comes before Council for final adoption. She addressed Council questions.

MOTION: Move to initiate further processing of the proposed amendment to the Development Agreement with Harbor Hill LLC.
Ekberg / Perrow – six voted in favor. Councilmember Malich voted no.

STAFF REPORT: None.

PUBLIC COMMENT: None.

MAYOR'S REPORT / COUNCIL COMMENTS:

Mayor Presents the 2013 Draft Budget to Council. The draft 2013 Budget was distributed to Councilmembers and the City Clerk.

Councilmember Payne reported on the recent Pierce County Flood Control Zone District Advisory Committee meeting in which they discussed recommendations for the Flood Control Zone Board's 2013 Budget. He explained that he also represents the city on the Water Resource Inventory Area No. 15 during these meetings. He said that they will be providing policy advice to the board on how much the Flood Control Zone District funding should go towards maintenance and operations of flooding events, and capital projects. He said that a majority of the members are recommending an assessment of \$.10 per \$1,000 assessed property value. The committee meets again on the 26th and he will report back.

Councilmember Kadzik said that at the last council meeting he suggested an ad hoc Committee for the recently purchased Ancich Netshed property. He said he would like Council approval to move forward to explore opportunities for this site.

Councilmember Malich asked if it is a foregone conclusion that the netshed will be used for the kayak club, and that the bulkhead is slated for removal. Mayor Hunter and City

Administrator Denny Richards assured him that no decisions have been made for the property other than to get rid of the knotweed.

Councilmember Payne said that the sooner we can get the Ad Hoc Committee moving the better in order to take advantage of the 2013 Legislative Agenda.

Councilmember Young voiced concern that we are seeking appropriations and capital funding so quickly when he thought the intent of purchasing the property was to bank it for some time in the future.

Councilmember Perrow agreed, and then said that a plan needs to be in place in order to take advantage of opportunities that may come up.

Councilmember Guernsey requested to be included in the ad hoc committee, also agreeing that development of a plan is necessary. She then announced the Maritime Support Committee is meeting on Wednesday, October 16th. She said that the HarborMaster from Poulsbo is coming to speak, as well as talk about what it takes to get a grocery store. She invited the other Councilmembers to attend.

Mayor Hunter said he has spoken with Mr. Milgard, who shared that he has done everything that he can to get a grocery to come, but it doesn't pencil out.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Operations Committee: Thu. Oct. 18th at 3:00 p.m.
2. Downtown Vision Town Hall Meeting 2.0: Thu. Oct. 18th at 4:30 p.m.
3. Wilkinson Greenhouse Ribbon Cutting Ceremony: Fri. Oct. 19th at 3:00 p.m.
4. Council Worksession on the Shoreline Master Program – Mon. Oct. 22nd at 6:00 p.m.

ADJOURN:

MOTION: Move to adjourn at 6:31 p.m.
Malich / Kadzik – unanimously approved.

CD recorder utilized: Tracks 1002 – 1017

Charles L. Hunter, Mayor

Molly Towslee, City Clerk

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

Whereas, Gig Harbor's youth are its most valuable resource; and

Whereas, Harbor Hope Network is a community based coalition of organizations focused on meeting the physical, spiritual and emotional needs of teens and their families; and

Whereas, Harbor Hope Network is a diverse group of community leaders from various organizations throughout the harbor, including our community centers, mental health providers, local churches, female health and pregnancy center, and other various non-profit organizations; and

Whereas, Harbor Hope Network will organize resources and identify the needs that teens and their families have in our community; and

Whereas, Harbor Hope Network provides and connects our teens & families to existing community services, both in Crisis and Prevention; and

Whereas, Harbor Hope Network provides large and small group events for teens and families as an opportunity to empower, create a felt sense of community, and to educate our community regarding "real issues" in the lives of teens and their families.

NOW, THEREFORE, I, Charles Hunter, Mayor of the City of Gig Harbor, do proclaim

Harbor Hope Network

to be a vital community resource to Gig Harbor and invite our citizens to support their efforts. In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 22nd day of October.

Mayor, City of Gig Harbor

Date

NOTICE OF LIQUOR LICENSE APPLICATION



MVC

RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 10/04/12

TO: MOLLY TOWSLEE, CITY CLERK

RE: APPLICATION FOR ADDED PRIVILEGE

UBI: 603-202-125-001-0003
License: 409664 - 1U County: 27
Tradenname: PREMIUM LIQUOR & WINE
Loc Addr: 4814 PT FOSDICK DR NW
GIG HARBOR WA 98335-1711
Mail Addr: PO BOX 918
MUKILTEO WA 98275-0918
Phone No.: 425-353-1400

APPLICANTS:
PREMIUM RETAIL GROUP, LLC

- Privileges Upon Approval:
DIRECT SHIPMENT RECEIVER-IN/OUT WA
BEER/WINE SPECIALTY SHOP
SLS SPIRITS RETAILER
KEG SALES
BEER/WINE SPECIALTY SHOP GROWLERS

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

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

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



NOTICE OF LIQUOR LICENSE APPLICATION

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

TO: MOLLY TOWSLEE, CITY CLERK
RE: NEW APPLICATION

DATE: 10/10/12

UBI: 602-329-766-001-0036

License: 410253 - 1U County: 27
Tradename: APPLEBEES NEIGHBORHOOD GRILL & BAR
Address: 4827 POINT FOSDICK DR NW
GIG HARBOR WA 98335-1710

APPLICANTS:
(See Back of Letter)

Phone No.: 216-525-2775 MELISSA FREDEEN

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

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

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2. Do you approve of location ?
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DATE SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE

ADDITIONAL NEW APPLICATION INFORMATION

Applicants:

	APPLE WASHINGTON LLC	
	FLYNN, GREGORY GRANT	1964-02-24
(Spouse)	FLYNN, JULIE A	1966-08-21
	PETTINGER, DAVID BRADLEY	1959-05-30
(Spouse)	PETTINGER, HOPE LOUISE	1959-07-01
	KREBSBACH, DANIEL VICTOR	1959-10-21
	CORTINA, LORIN MIGUEL	1966-05-06
(Spouse)	SUNG, HYEN-AE JANE	1965-10-22
	IGARASHI, RONALD SHIGERU	1961-08-31
(Spouse)	IGARASHI, DAWN M	1961-09-19

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 10/06/2012

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20130131

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1. KAE & SOOK CORPORATION	MARITIME MART 7102 STINSON GIG HARBOR WA 98325 0000	078669	GROCERY STORE - BEER/WINE
2. LAI FOOK, RICHARD ANTHONY LAI FOOK, TERRY-ANN CARLENE	MARKETPLACE GRILLE 8825 N HARBORVIEW DR STE C & D GIG HARBOR WA 98332 2149	084215	BEER/WINE REST - BEER/WINE
3. EMPIRE RESTAURANTS INC.	BLUE CANNON PIZZA COMPANY 4726 BORGES BLVD STE B GIG HARBOR WA 98332 6832	405752	BEER/WINE REST - BEER/WINE BEER/WINE REST - BEER/WINE
4. GRANITE SERVICE, INC.	PIONEER 76 7101 PIONEER WAY GIG HARBOR WA 98335 0000	365485	GROCERY STORE - BEER/WINE
5. ZRC OPERATIONS COMPANY, INC.	QDOBA MEXICAN GRILL 4726 BORGES BLVD STE A GIG HARBOR WA 98335 0000	403619	BEER/WINE REST - BEER/WINE
6. THE WINE STUDIO OF GIG HARBOR,	THE WINE STUDIO OF GIG HARBOR 3123 56TH ST NW STE 5 GIG HARBOR WA 98335 1302	080669	TAVERN - BEER/WINE OFF PREMISES



NOTICE OF LIQUOR LICENSE APPLICATION

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

TO: MOLLY TOWSLEE, CITY CLERK
RE: NEW APPLICATION

DATE: 10/12/12

CORRECTED

UBI: 603-222-759-001-0001

License: 072299 - 1U County: 27
Tradename: SUNSET GRILL
Address: 4926 POINT FOSDICK DR NW
GIG HARBOR WA 98335-1713

APPLICANTS:

MORERUSS, LLC
PETERSON, CHARLENE HENRIETTA
1967-03-24
PETERSON, ERIK RAVNAA
(Spouse) 1968-12-18
REMICK, ELIZABETH N
1959-11-19

Phone No.: 253-851-8282 CHARLENE PETERSON

Privileges Applied For:
DIRECT SHIPMENT RECEIVER-IN WA ONLY
SPIRITS/BR/WN REST LOUNGE +
CATERING

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

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

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE

**City of Gig Harbor Planning Commission
Work Study Session
Planning and Building Conference Room
June 21, 2012
5:00 pm**

PRESENT: Harris Atkins, Craig Baldwin, Jim Pasin, and Bill Coughlin. Rick Gagliano, Reid Ekberg and Michael Fisher were absent.

STAFF PRESENT: Staff: Tom Dolan, Jennifer Kester and Lita Dawn Stanton

CALL TO ORDER: at 5:00 p.m.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes from June 7, 2012 as written.
Pasin/Baldwin – Motion carried

WORK STUDY SESSION:

1. Downtown Zoning Code Amendments – Review of sample buildings

Ms. Kester went over where they had left off at the last meeting and explained that they had wanted to go over some sample buildings and compare what the current zoning allows and what could be allowed with the amendments. Mr. Pasin asked about how many building owners have actually approached the city about upgrading their buildings and Ms. Kester went over all the buildings in the downtown that had done renovations in the last few years and explained what some of the obstacles had been. Mr. Coughlin asked about the fees and Ms. Kester stated that she hadn't had a chance to gather that information but would have it for their next meeting. Discussion followed on different options for incentives. Ms. Stanton spoke briefly about how historic properties are listed for their interior uses and exterior qualities.

Height restrictions were discussed and examples were given on the heights of some existing buildings and what could be built. Ms. Kester stated that it had been discussed that perhaps one of the common sense amendments should be to just allow two stories if you go to the Design Review Board.

Some of the more contentious projects were discussed next and the reasons for their issues and whether there would be as many issues today. Options were brought up for how to word possible alternatives to existing code.

It was noted that perhaps Neptunes Court should be added as a case study for the open house along with The Harbor Landing Mall.

Ms. Kester went over the recent parking changes and how it may affect future code changes. Further discussion was held on parking in the downtown.

There is a break in the minutes due to a malfunction in the recorder.

ADJOURNMENT

MOTION: Move to adjourn at 6:40 p.m. Coughlin/Pasin – Motion carried.

City of Gig Harbor Planning Commission
Work Study Session
Planning and Building Conference Room
July 5, 2012
5:00 pm

PRESENT: Harris Atkins, Reid Ekberg, Rick Gagliano, Jim Pasin, Bill Coughlin and Craig Baldwin. Michael Fisher were absent.

STAFF PRESENT: Staff: Jennifer Kester

CALL TO ORDER: at 5:00 p.m.

WORK STUDY SESSION:

1. Downtown Zoning Code Amendments –

Ms. Kester stated that at the last meeting there had been three areas that they had wanted to spend more time looking at and those were gross floor area, building height and the nonconforming thresholds for remodeling. She also stated that staff had compiled a little bit of information from the open house last week and will be continuing to compile it in the coming weeks.

Ms. Kester passed out a chart showing what areas people thought of as the downtown. Mr. Pasin asked since they were given a task of looking at the downtown do they take the area that most people defined as the downtown and ignore the other areas. Mr. Gagliano said that he thought that this chart just showed how many differing opinions there are. He also noted how few people thought that the downtown was not the entire view basin.

Mr. Atkins noted that Mr. Pasin had a good idea that we need to approach the property owners with what may or may not help them redevelop their property. The various comments received at the public hearing were discussed.

Mr. Gagliano asked if there were instances where uses don't match up with zoning. Ms. Kester answered that there were only a couple tiny areas.

Mr. Pasin reiterated that the 5 items suggested as quick fixes should be brought to property owners to see if they felt they would be beneficial. Mr. Gagliano also noted that there is an issue of how long it will take to see the results of these changes and if it's too long then why do it.

Ms. Kester suggested that allowing increased floor area to the interior of the building is probably one of the easiest to change. Then if you want to stay within the historic district design requirements you could allow a greater level of remodeling threshold (75% versus the 50% nonconforming threshold). Mr. Coughlin noted that without the

vision statement we still don't know what we want. Do we want to go back to some earlier time or are we trying to create something new. Mr. Gagliano expressed that you want to save good buildings for good buildings sake not just for history sake. Mr. Pasin reminded everyone that the success of the business within the building is also important. Everyone agreed it has to be successful on all levels.

Mr. Pasin wondered about the Gig Harbor Historic Waterfront Association and why weren't they taking a more active role in this. Ms. Kester noted that one of their goals this year was to do a market analysis of what is needed downtown.

Ms. Kester went on to say that none of the code changes are going to make people redevelop or improve their properties but she thought it could definitely help if the time is right for property owners to make that decision. Discussion followed on the benefits of allowing more square footage. Ms. Kester went over the proposal for the boat barn and what could happen there if it were allowed more gross floor area.

Ms. Kester stated that some cities have developed guidance for infill development. She asked if the commission was interested in looking at some of what other cities have adopted for an infill process. Mr. Coughlin asked about what the definition of infill was and Ms. Kester explained the difference between infill and adaptive reuse. Mr. Gagliano pointed out that there are some buildings in town that are just not appropriate for adaptive reuse. He also suggested that perhaps more residential units should be allowed downtown.

Ms. Kester suggested that increasing the 50% threshold for remodeling a nonconforming building would really make a difference in allowing people to make improvements. Discussion followed on how the code reads now and what the pros and cons were of changing the threshold. Mr. Gagliano cautioned that they need to assure that people are not just adding more poor construction to an already poorly constructed building. Ms. Kester used an example of Neptune's Court and calculated what their threshold would be for remodeling and it was noted that the way the code dictates how that is calculated could be changed. She then explained the design review process and how it could help to assure that what is built meets everyone's expectation.

Discussion was held on various uses and the required square footage for those uses. Mr. Baldwin asked about the hazards of increasing the threshold for remodeling a nonconforming structure. Ms. Kester explained that nonconformities are intended to go away, so if you are just allowing everything should you be changing the code. Mr. Atkins suggested that it could be a requirement to go to the Design Review Board if you want to do more than the 50%. Mr. Pasin cautioned that these additional steps also cost money and staff time.

Mr. Gagliano suggested that they hold a meeting downtown and walk around. Ms. Kester said that she can advertise the meeting as a walking tour for the 19th. Mr. Atkins noted that he wouldn't be in attendance at that meeting as he would be out of town. Mr. Baldwin said he liked the idea of asking the business owners if these changes are really

gaining anything. Everyone agreed that they should schedule a meeting with the business owners. Mr. Gagliano said he will be gone for approximately 3 weeks. It was decided to pick up this issue and do the walking tour later in August when everyone can attend. The next meeting will be about the upcoming Comprehensive Plan amendments. They tentatively scheduled a public hearing on the Comp Plan on August 2nd and the walking tour on the 16th of August.

ADJOURNMENT

MOTION: Move to adjourn Gagliano/Pasin – Motion carried.

City of Gig Harbor Planning Commission
Work Study Session
Downtown Walking Tour
August 16, 2012
5:00 pm

PRESENT: Harris Atkins, Reid Ekberg, Rick Gagliano, Jim Pasin, Craig Baldwin and Bill Coughlin. Michael Fisher was absent.

STAFF PRESENT: Staff: Jennifer Kester

CALL TO ORDER: at 5:08 p.m.

WORK STUDY SESSION:

1. Downtown Zoning Code Amendments –

The Planning Commission conducted a walking tour of buildings in the downtown as part of the commission's review of downtown development regulations. The meeting began in the pavilion at Skansie Brothers Park, 3207 Harborview Drive. Chair Harris Atkins opened the meeting. Senior Planner, Jennifer Kester handed out a sheet which included the six amendments the commission had been considering:

1. Grandfather existing building sizes (sq footage) in the DB Zone. Allow existing non-historic buildings to be torn down and re-built within the existing building envelope. (DRB approval required.)
2. Allow increased floor area within an existing building's envelope (mezzanines, etc).
3. Provide building size allowances to eligible or listed historic buildings in the View Basin if the front façade is preserved.
4. Consider height increase allowances for buildings in the View Basin (up to 2 stories).
5. Consider incentives for first floor retail/restaurant.
6. Consider increasing the cost of remodel threshold for nonconforming buildings (currently 50% of replacement value).

The commission then walked along Harborview Drive and reviewed the following buildings in the order shown below:

- El Pueblito buildings
- Salon Paris building
- Harborview House (The former Rose B&B)
- Harbor Inn
- Neptune's Court
- Peninsula Hotel (Spiro's building)
- Willis Marketing Building
- Boat Barn (Egg Co-op)

ADJOURNMENT: at 6:50 p.m.

MOTION: Move to adjourn Gagliano/Ekberg – Motion carried.

City of Gig Harbor Planning Commission
Work Study Session
Planning and Building Conference Room
September 6, 2012
5:00 pm

PRESENT: Harris Atkins, Reid Ekberg, Craig Baldwin, Jim Pasin, and Bill Coughlin. Rick Gagliano and Michael Fisher were absent.

STAFF PRESENT: Staff: Tom Dolan and Jennifer Kester

CALL TO ORDER: at 5:00 p.m.

APPROVAL OF MINUTES:

Move to approve the minutes of June 21, 2012 as written. Pasin/Baldwin – Motion carried

Mr. Baldwin noted that on the minutes of July 5, 2012 he was listed as absent when he was present. Move to approve the minutes of July 5, 2012 as corrected. Pasin/Coughlin – Motion carried.

Ms. Kester noted that the minutes of August 16, 2012 had just been distributed tonight. Mr. Coughlin noted that Mr. Gagliano had intended to add some thoughts from the walking tour of August 16th. Ms. Kester agreed but said that she hadn't received those yet. It was decided that they would wait until the next meeting to adopt the minutes of August 16th and it would be noted at the bottom of the minutes the portions that were observations of a Planning Commission member.

WORK STUDY SESSION:

2012 Annual Comprehensive Plan Amendments

PL-COMP-12-0002: Transportation Element. A city sponsored Comprehensive Plan text amendment to update the Transportation Element to include additional policies that encourage and enhance pedestrian and vehicular connections in the downtown area.

Ms. Kester noted that these policies begin to implement some of the business strategies that were part of the Rod Stevens report. She noted that there needed to be supporting policies along capital projects on the books in order to partner with private developers to complete these projects.

Mr. Pasin asked why do the policies need to be so specific as to the streets. Ms. Kester stated that in sub-policies it does get a little more specific in order to identify the area. Mr. Pasin asked what a "shared vehicular pedestrian alley" meant. Ms. Kester said that it could mean many different things; it could have different materials to differentiate between the vehicular and pedestrian areas, but that the idea was to make sure that it

was an alley that could accommodate both. Discussion followed on what was meant by encourage. Ms. Kester went over the public and private streets in the area.

Senior Engineer Emily Appleton joined the meeting and gave a brief explanation of what the Engineering Department had intended in regard to the alleys vs. public roads in the area. She then discussed what shared vehicular and pedestrian areas meant. Mr. Dolan suggested more general language, stating something like “provide for a pedestrian connection between Harborview Dr and Judson St., due to the narrow existing rights of way for shared pedestrian/vehicular rights of way” so that it states that we want some kind of connection but it’s exact type and location can be figured as needed. Ms. Appleton stated that would be fine and meet the intent.

Mr. Atkins asked if this would be an appropriate time to add some policies regarding public parking. Mr. Dolan stated that he felt that there were already policies in the comprehensive plan that would allow the Planning Commission to explore those options.

Discussion followed on the importance of these policies in order to receive grants, update the public works standards and to accomplish capital projects.

Mr. Dolan stated that staff would rework the language and bring that back for the Public Hearing. Ms. Kester noted that the meeting would be held in the Community Rooms rather than the Council Chambers on September 20th at 5:00 for a work-study session and 6:00 for the public hearing. She asked if they wanted her to draft some initial findings or wait for the October meeting. The commission requested draft findings be developed for the September meeting.

OTHER BUSINESS

Appointment of an alternate DRB member

Mr. Dolan explained that currently Mr. Gagliano and Mr. Fisher are members of the DRB and recently we have had an issue when we didn’t have a quorum. He further explained that while Mr. Fisher is recuperating we should have an alternate and they could either attend all the meetings or only attend when necessary. Mr. Coughlin asked if this was temporary and Mr. Atkins explained that it would be a position that would always be filled. Mr. Atkins emphasized that if an alternate had attended a meeting on a certain project they should follow that project through. Mr. Pasin noted that it is a good learning experience to serve on the Design Review Board. Ms. Kester went over the makeup of the Design Review Board. It was decided to defer this issue until the next meeting so that everyone could check his or her schedules.

Work Study Session:

Downtown Zoning Code Amendments – Planning Commission review and identification of codes that inhibit the preservation of character-defining historic buildings

in the downtown. Follow-up discussion on downtown walking tour. Discussion of potential amendments and review schedule.

Ms. Kester stated that at the end of their walking tour she had suggested that the next step would be to take the previous discussion and select the items that warrant the development of code amendments. She went over the timeframes required for code amendment adoption. She added that their October 18th meeting has already been slated for an open house for the draft visioning statement. Mr. Dolan noted that staff can advise the City Council if more time is needed. Mr. Pasin felt that items 2, 4 and 6 could be worked on now (see below of list of items being referred to). Mr. Atkins wondered why #1 had been left out. It was decided to conduct a poll. Mr. Coughlin said 1 was a no brainer and that 6 was very critical. He agreed with Mr. Pasin that 2, 4 and 6 would make a big difference for the downtown. Mr. Baldwin said he liked 1, 2, 4 and 6. Mr. Atkins said he agreed with what had been said, start with 1, and then go to 6 then 2 and 4. Mr. Ekberg stated that he thought 1 and 2 were the easiest, he liked 4 and he liked 6 but didn't see how we would get there. Ms. Kester talked about what would be required to bring the proposals forward from here. Discussion followed on different ways to approach each of the proposals and different scenarios if the proposals were adopted. It was decided that 2 and 6 would be phase 1 and then they would think about 1 and 4 next. Ms. Kester said she would bring back language for 2 and 6 at the next meeting.

1. *Grandfather existing building sizes (sq footage) in the DB Zone. Allow existing non-historic buildings to be torn down and re-built within the existing building envelope. (DRB approval required.)*
2. *Allow increased floor area within an existing building's envelope (mezzanines, etc).*
3. *Provide building size allowances to eligible or listed historic buildings in the View Basin if the front façade is preserved.*
4. *Consider height increase allowances for buildings in the View Basin (up to 2 stories).*
5. *Consider incentives for first floor retail/restaurant.*
6. *Consider increasing the cost of remodel threshold for nonconforming buildings (currently 50% of replacement value).*

Mr. Atkins noted that he will not be at the first meeting in October. Mr. Ekberg said he won't be at the next meeting.

Ms. Kester noted that the city website now has the Town Hall meeting data posted. Discussion followed on some of the data gathered. Ms. Kester talked about what will happen at the open house on October 18th and how things will go forward after that for the visioning process.

ADJOURNMENT

MOTION: Move to adjourn at 6:41p.m. Baldwin/Coughlin – Motion carried.



Meeting Minutes
Intergovernmental Affairs Committee
July 09, 2012

In attendance:

Councilmember Malich
Councilmember Payne
Councilmember Perrow
City Administrator Richards
Briahna Taylor, GTH-GA
Dale Learn, GTH-GA, via teleconference
Travis Lumpkin, GTH-GA, via teleconference

The meeting convened at 4:35 p.m.

Federal Update

Travis Lumpkin began the federal update by introducing himself and highlighting his experience with Senator Murray's office prior to joining GTH-GA in May. He worked on many transportation, housing, and community development issues, and in this capacity became familiar with several projects in our jurisdiction.

The current activity in Washington that may have the greatest impact on the City is the recently-passed Transportation Reauthorization Bill. While there are a number of changes in this bill that changes the federal landscape relative to transportation, very little change was made in funding levels to states. Program consolidations will limit the number of potential targets at the federal level; however, both PSRC and WSDOT will receive more federal money than in the past. The Surface Transportation Program will be reduced approximately 20%; cutting some programs used for transportation enhancements (recreational trails). Changes were made on the transit side that will effect the way funds are flowing to Pierce Transit, and some of those changes will impact our constituents.

The bill does maintain an important program for projects of maximum regional significance; essentially will be the authorization for future TIGER & TIGER-like programs. Staff will work with city to identify where there might be opportunities to

Intergovernmental Affairs Committee
July 9, 2012
Page 2 of 4

apply for projects like the Harbor Hill Road when it is ready for construction, or other projects in the area for which the City may want to pursue federal funding. The bill contains many other aspects in addition to transportation and after a thorough reading, staff will provide more detail on specific programs and how to work together to determine which to pursue. When Mr. Lumpkin and Mr. Learn were in town in June, they were made aware of downtown revitalization plans. More discussion is needed to identify downtown business development, investments, and etc.

Mr. Learn noted that unlike previous federal Surface Transportation bills, this bill is for two fiscal years instead of the previous five - six years. The President signed the bill just a few days ago so staff has not had a chance to delve into details; targeted documents will be provided.

As indicated by the changes related to PSRC and WSDOT, staff has seen the authorization bills strengthen local power over time when it comes to federal funds.

Ms. Taylor noted that she follows many PSRC activities but has not focused on City's interests. Councilmember Payne advised that Councilmember Young is actively engaged on our behalf, although often overridden by larger jurisdictions. Councilmember Payne inquired if these additional monies to PSRC would have any provisions that might afford opportunities for smaller communities as opposed to those that are somewhat centered around Seattle. Mr. Learn noted that some programs have had set asides in the past and programs specific for smaller communities. More information will be available after a thorough reading of the bill.

It will be important for Councilmember Young to provide comment on PSRC's fund implementation to GTH-GA staff for feedback to their contemporaries.

At the state level, legislators are often able to weigh in on PSRC-type decisions in an informal manner than can be helpful. Ms Taylor will be alert to City's interests.

Council was reminded that a regulatory phase is attached to this legislation. As an authorization bill these are not requirements for things to be done, nor are they requirements for these things to be funded.

Mr. Learn clarified that the project acceleration mentioned previously refers to streamlining of the environmental permitting (NEPA) process. Minor projects that receive less than \$5 million in federal funds could obtain a categorical exclusion. Staff will investigate the regulatory process and possibility of retroactivity.

Mr. Learn summarized the TIGER (Transportation Investment Generating Economic Intergovernmental Affairs Committee

July 9, 2012

Page 3 of 4

Recovery) grant program as a program created during the American Recovery and Reinvestment Act of 2009. This was an \$8 billion stimulus bill to fund larger projects, specifically surface transportation infrastructure projects.

A white paper related to the Sand Spit transfer of ownership from the US Coast Guard to the City has been presented to the offices of Dicks, Cantwell, and Murray; all are supportive. The preferred method of transfer is through a Coast Guard Reauthorization and staff remains in contact with the Coast Guard as well as pursuing meetings with subcommittee staff. There is not a known timeline for completion of this transaction.

Mr. Lumpkin and Mr. Learn will return to Gig Harbor in August to view projects first-hand and become familiar with the financing behind them. Understanding where there might be flexibility for the city to supplant some existing funds with federal funds will allow for creativity in creating a strategy to secure funding to help complete Donkey Creek and other projects. Council is reminded that jobs bills are consuming much of the congressional energy at this time and there is question that any key legislation will be out this fall ahead of the election.

It was determined that a groundbreaking for the Donkey Creek Restoration Project would be an appropriate occasion to recognize Congressman Dicks' and celebrate his service to the community. A formal meeting request should be sent to Clark Mather, District Director, for a date mid to late September. Mr. Richards agreed to draft the invitation and review with Mr. Learn and Mr. Lumpkin.

State Update

Although quiet in Olympia, Ms. Taylor keeps very busy generating political capital through campaign involvement.

The state is implementing its rulemaking process in three different areas; Ms. Taylor will investigate any issue in which the City has further interest.

1. Changes to State Environmental Policy Act (SEPA). Last legislative session GTH-GA worked on and supported, together with the City, legislation that changes categorical exemptions and raises thresholds. Those changes written in the Bill were temporary and will be replaced in 2013 with the outcome of this rulemaking process and whatever new thresholds are determined. AWC has three representatives on the committee of twenty-one. There is also staff from Department of Ecology, county representatives, business and environmental community representatives, and a

number of other stake holders. The committee will meet July
Intergovernmental Affairs Committee
July 9, 2012
Page 4 of 4

through October with rulemaking to be complete by January 1, 2013.

2. Emergency Management Funding. Federal dollars are disbursed to the state level and the Washington Military Department distributes via an established formula; City works with Pierce County for its allocation. Argument is being made that geographical changes are inequitable and that funds should be distributed according to where the largest risk exists.

3. Changing Fish Consumption rate. If fish consumption increases then water quality and soil sediment standards need to be tightened. If accomplished there will be future changes to the WAC.

AWC is participating in all three discussions. Committee members expressed interest in any changes with SEPA as well as what impact the Fish Consumption Rate may have on sediment rules and water quality rules. Ms. Taylor will research more specific details and keep City apprised.

The recognition/thank you event for the State Delegation should be held prior to the November election; preferably sometime in September. Plans will move forward for a mid afternoon event associated with a ribbon cutting for the Maritime Pier followed by light refreshments. Ms. Taylor to confirm availability of Threshold Group's outside terrace as well as legislator's calendar.

New Business:

Mr. Richards and Mayor Hunter recently toured The Boys & Girls Club and returned very impressed by the programs provided to needy children. There is a need for general operation funding and Mr. Richards is interested in what grant funds might be available for this purpose. In deference to time this discussion will continue at a future meeting.

The meeting adjourned at 5:30 p.m.

Next meeting: TBD

**Gig Harbor Historic Waterfront Association
Implementing the Main Street™ Approach
in the Gig Harbor Historic Waterfront District**

Progress Report

October 1, 2012

COMMITTEE UPDATES

Economic Development Committee

Status of Current Projects:

Available Properties

The committee has discussed the need to use the available property information to help attract new business. The information should be shared with the Chamber, The Economic Development Board, Real Estate Brokers, and others. Consideration is being given to developing packets for prospective tenants, which would include brochures on the community and on available properties, pictures and other information to help in attracting tenants.

Cushman Connection Trail

GHHWA has identified a volunteer (Mr. Chuck Meacham) to oversee the Cushman Connection Trail project, along with Gary Glein, GHHWA President. Discussions regarding easements are ongoing.

Cash Mobs

Together with the Promotions Committee, the Economic Development Committee has now held two "Cash Mobs." The first, held at Wild Birds Unlimited, had 80 people visit the store during the cash mob hours and sales were in the four figures. The second, held at Animal Crackers, was a great success. According to the owner, Eric Minor, "It was our best Thursday ever and was more than double our usual Thursday." A third Cash Mob will be held on October 27, location to be determined. More cash mobs will occur after the first of the year.

Zip Code Survey

GHHWA has been conducting a zip code survey with the help of some waterfront businesses, a restaurant and the Harbor History Museum. This effort will help us clearly identify our market area. Please see the attached map that we will use as a tool to help better define our market area, and to better determine which type of businesses make sense for the GHHWA District.

Community Branding Process

This process will involve all the GHHWA committees, volunteers, other community organizations, the City of Gig Harbor, property owners and more. For the GHHWA, it will help define the personality of our organization, our name, logo, theme, typeface, and colors. For the community, it will identify potential ways to promote all of Gig Harbor utilizing the same

message. A meeting on September 4 with Muldrow and Associates drew many community leaders and has created much excitement for the process.

Business Assistance Packet

The Economic Development Committee is working on the creation of a better way of assisting and welcoming new businesses to the Gig Harbor Waterfront District. Many excellent suggestions were offered and noted at the recent Roundtable Meeting. The Economic Development committee and the Organization committee will be working on different aspects of welcoming new businesses.

Design Committee

Flower Basket Program

80 flower baskets were maintained along the waterfront throughout the summer. Nearly 40 volunteers contributed 181.75 hours of volunteer time in July, 168.50 in August, and 32/25 in September. We could not run this program without the partnership with the City of Gig Harbor and the use of their truck, (including gas and maintenance), and water, not to mention the work of the Public Works Department in hanging and removing the baskets.

Connie Schick Clock Project

The GHHWA Design Committee is currently addressing the need for a new location for the placement of Connie's Clock. An on-site visit to the Finholm district identified potential locations for the clock. When completed this project will be the result of a partnership among GHHWA, the City of Gig Harbor, and Rotary.

Map Reprint

Efforts are underway to update the GHHWA Waterfront map.

Promotions Committee

Paddler's Cup & Expo: GHHWA is again supporting the efforts of the Paddler's Cup to be held April 20-21, 2013.

Cash Mob

The second Cash Mob was held Thursday, September 27 from 4-6pm at Animal Crackers and the Tides Tavern. One more cash mob is being planned for October (see review in Economic Development section).

Trick or Treat in the Harbor

The promotion committee has opted to simplify the event this year by not holding the pumpkin decorating contest. Harbor Wild Watch will have their "spooky" touch tanks in Skansie Park and the Rotary Club of Gig Harbor North will provide photo opportunities in the park. Per discussions with Officer Michael Allen, a road closure will be in effect to offer safety to the thousands of people who attend. Medic One & Fire Dept will be there as well.

Girls Night Out

The third annual "Girls Night Out" will be held on Thursday, November 15 and offers an opportunity to "shop and dine from noon to 9:00." GHHWA volunteers are now visiting businesses to answer questions and highlight important details. Registration forms from participating merchants are due at the GHHWA office no later than Oct. 15. We have two sponsors for the event this year: Java & Clay Café and Devoted Kiss Café.

Hark the Harbor

This community caroling event will take place on December 6, when the Argosy Cruise Ship arrives at 8:30pm with the Federal Way Harmony Kings Choir. We will be caroling in the park with Sharon Stearnes again and hope to continue to grow the community crowd. Last year well over 100 attended. Girl Scouts troops and others have asked to join in the festivities this year, and Santa will be on hand to sing and talk with the kids.

Candlelight Christmas in the Harbor

December 7 -9. Plans include bringing back the Holiday Hayrides with Santa on Friday and Saturday, musicians in the stores on Saturday & Sunday, and having the window/storefront decorating contest again, re-naming it Deck the Harbor. The committee is working on additional features to build this event and generate more holiday shopping on the waterfront.

Organization Committee

Communications

GHHWA monthly newsletter is distributed monthly via Constant Contact.

Email Blasts are sent as needed to inform the readership of upcoming district activities.

GHHWA distributes the monthly Art Walk newsletter, promoting the Gig Harbor Gallery Association events (First Saturday Art Walk).

Facebook and Twitter updates are posted on a regular basis.

B&O Tax Credit

This program is an excellent tax credit opportunity for business owners who have a B&O tax liability every year. The state has a pool of money available through Main Street for tax credits on their B&O tax. Committee chair, Chris Phillips, recommends businesses find out how much B&O they owe through their accountants if they don't know already. A business will receive a credit of 75% on their B&O tax liability the following year.

This program is a great way to donate to the GHHWA. Of the \$1.3 million the state has available, \$133,333 is available as the GHHWA's share. Last year, the total donation to the GHHWA was \$105,000, one of the few Main Streets to exceed the \$100,000 level.

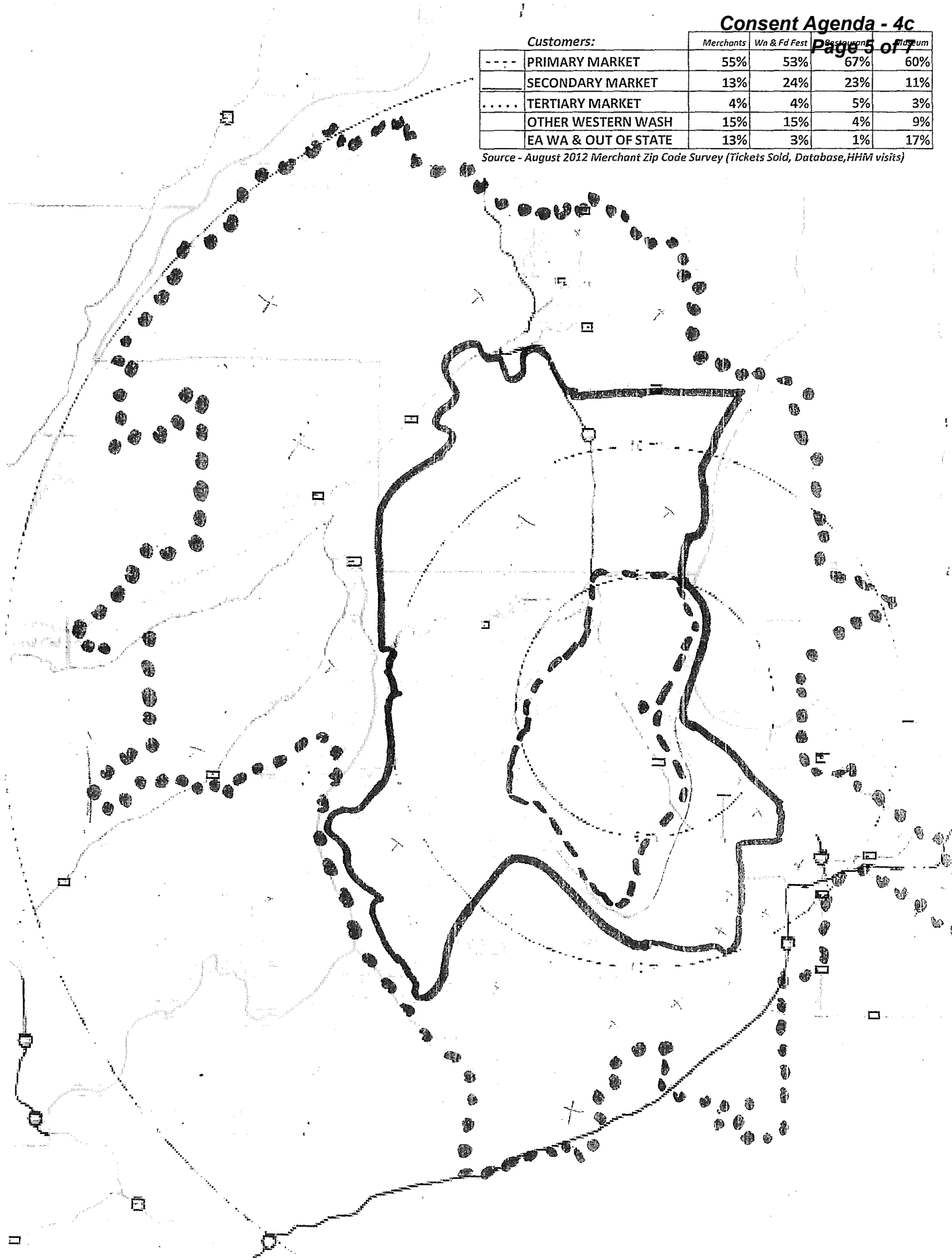
Finances

A Profit & Loss Statement and Balance Sheet for 07/01/2012 through 09/30/2012 are included in this report.

Customers:

	Merchants	Wn & Fd Fest	Restaurants	Museum
--- PRIMARY MARKET	55%	53%	67%	60%
SECONDRY MARKET	13%	24%	23%	11%
..... TERTIARY MARKET	4%	4%	5%	3%
OTHER WESTERN WASH	15%	15%	4%	9%
EA WA & OUT OF STATE	13%	3%	1%	17%

Source - August 2012 Merchant Zip Code Survey (Tickets Sold, Database, HHM visits)



**Gig Harbor Historic Waterfront
Balance Sheet
As of September 30, 2012**

	<u>Sep 30, 12</u>
ASSETS	
Current Assets	
Checking/Savings	
10550 · Columbia Bank	30,586.22
10600 · Petty Cash	<u>250.00</u>
Total Checking/Savings	<u>30,836.22</u>
Total Current Assets	<u>30,836.22</u>
TOTAL ASSETS	<u>30,836.22</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
20000 · Accounts Payable	<u>-25.03</u>
Total Accounts Payable	<u>-25.03</u>
Other Current Liabilities	
24000 · Payroll Liabilities	<u>1,187.11</u>
Total Other Current Liabilities	<u>1,187.11</u>
Total Current Liabilities	<u>1,162.08</u>
Total Liabilities	1,162.08
Equity	
32000 · Unrestricted Net Assets	82,766.79
Net Income	<u>-53,092.65</u>
Total Equity	<u>29,674.14</u>
TOTAL LIABILITIES & EQUITY	<u>30,836.22</u>

**Gig Harbor Historic Waterfront
Profit & Loss
July through September 2012**

	<u>Jul - Sep 12</u>
Ordinary Income/Expense	
Income	
44500 · Government Grants	8,750.00
47200 · Membership	485.00
49000 · Special Events Income	45,015.28
Total Income	<u>54,250.28</u>
Cost of Goods Sold	
51000 · Event Expenses	149.18
Total COGS	<u>149.18</u>
Gross Profit	54,101.10
Expense	
62100 · Accounting & Legal Expenses	3,918.45
62800 · Facilities and Equipment	2,284.29
63000 · Education	89.85
64000 · Event Costs	44,050.32
65000 · Operations	2,181.20
65900 · Insurance, Tax & Memberships	1,049.11
66000 · Payroll Expenses	14,151.68
68300 · Travel and Meetings	103.25
Total Expense	<u>67,828.15</u>
Net Ordinary Income	<u>-13,727.05</u>
Net Income	<u><u>-13,727.05</u></u>



To: Mayor Hunter and City Council
From: David Rodenbach, Finance Director
Date: October 22, 2012
Subject: Third Quarter Financial Report

The quarterly financial reports for the third quarter of 2012 are attached.

Total resources, including all revenues and beginning cash balances, are 78 percent of the annual budget. Total revenues, excluding beginning cash balances, are 66 percent of the annual budget while total expenditures are at 56 percent. For the same period in 2011 we were at 80 and 69 percent for revenues and expenditures respectively.

General Fund revenues are 72 percent of budget. Third quarter 2011 general fund revenues were at 73 percent of budget and ended the three percent over budget. Taxes are projecting to come in about seven percent (\$650,000) under the 2012 budget. This is mostly explained by a \$330,000 plus refund in sales taxes and a \$200,000 plus refund in property taxes. Permit revenues are \$857,000 as compared with \$519,000 in the same period last year. The budget for permit revenues in 2012 is \$571,000.

General fund expenditures are 73 percent of budget. A year ago expenditures were 70 percent of budget after the third quarter. At this time it appears that all general fund departments are tracking within their 2012 budgets.

Due to the property purchase in August, we will need to process a budget amendment for the Park Development fund prior to year-end.

Water, Sewer and Storm Sewer revenues are 77, 73 and 72 percent of budget; while expenditures for these three funds are at 49, 69 and 68 percent of budget. 2011 amounts for the same period were 83, 73 and 78 percent for revenues and 59, 70 and 53 percent for expenditures.

Cash balances are adequate in all funds.

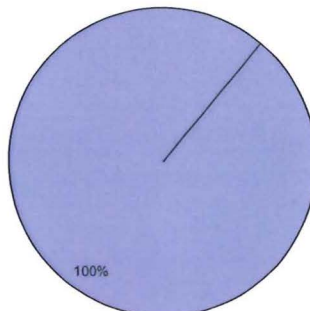
**CITY OF GIG HARBOR
CASH AND INVESTMENTS
YEAR TO DATE ACTIVITY
AS OF SEPTEMBER 30, 2012**

FUND NO.	DESCRIPTION	BEGINNING BALANCE	REVENUES	EXPENDITURES	OTHER CHANGES	ENDING BALANCE
001	GENERAL GOVERNMENT	\$ 2,101,173	\$ 7,443,583	\$ 8,340,623	\$ (134,888)	\$ 1,069,245
101	STREET FUND	94,268	2,562,460	2,438,507	(20,968)	197,252
102	STREET CAPITAL FUND	232,111	1,579,790	1,572,720	332,171	571,351
105	DRUG INVESTIGATION FUND	8,468	1,212	479	-	9,202
106	DRUG INVESTIGATION FUND	32,369	34	4,208	-	28,195
107	HOTEL-MOTEL FUND	152,829	150,668	178,568	(4,580)	120,349
108	PUBLIC ART CAPITAL PROJECTS	91,930	101	-	-	92,032
109	PARK DEVELOPMENT FUND	286,766	2,425,208	2,576,632	(65,889)	69,453
110	CIVIC CENTER DEBT RESERVE	3,620,697	9,149	1,819,988	-	1,809,858
111	STRATEGIC RESERVE FUND	280,439	80,397	-	-	360,836
112	EQUIPMENT RESERVE FUND	50,078	50,110	-	-	100,189
113	CONTRIBUTIONS/DONATIONS	-	-	-	-	-
208	LTGO BOND REDEMPTION	51,158	750,033	792,033	-	9,157
209	2000 NOTE REDEMPTION	39,285	574	-	-	39,859
210	LID NO. 99-1 GUARANTY	95,386	105	-	-	95,491
211	UTGO BOND REDEMPTION	247,679	233,225	51,013	-	429,891
301	PROPERTY ACQUISITION FUND	157,581	139,119	-	-	296,700
305	GENERAL GOVT CAPITAL IMPR	125,556	123,003	-	-	248,559
309	IMPACT FEE TRUST	938,126	880,552	-	2,780	1,821,458
310	HOSPITAL BENEFIT ZONE	1,128,704	1,768,903	1,210,662	-	1,686,945
401	WATER OPERATING	65,476	1,153,115	816,378	(105,580)	296,632
402	SEWER OPERATING	445,907	2,657,375	2,453,450	(56,153)	593,679
403	SHORECREST RESERVE FUND	-	54,830	1,347	(231)	53,253
407	UTILITY RESERVE	1,348,987	10,454	248	(22)	1,359,171
408	UTILITY BOND REDEMPTION	236,725	1,392,138	1,593,586	-	35,277
410	SEWER CAPITAL CONSTRUCTION	4,431,871	853,816	478,838	(76,265)	4,730,583
411	STORM SEWER OPERATING FUND	57,937	546,993	516,134	57,490	146,287
412	STORM SEWER CAPITAL	726,592	338,773	487,270	(196,965)	381,130
420	WATER CAPITAL ASSETS	1,323,639	753,847	467,940	(85,013)	1,524,534
605	LIGHTHOUSE MAINTENANCE TRUST	2,111	2	-	-	2,113
631	MUNICIPAL COURT	-	92,098	92,098	-	-
		\$ 18,373,847	\$ 26,051,669	\$ 25,892,722	\$ (354,113)	\$ 18,178,680

**COMPOSITION OF CASH AND INVESTMENTS
AS OF September 30, 2012**

	MATURITY	RATE	BALANCE
CASH ON HAND			300
CASH IN BANK			892,423
Adjustment for Unclaimed Property			(1,201)
ESCROW COLUMBIA BANK - 56ht/Pt Fosdick			400,220
INVESTMENTS/CD COLUMBIA BANK	May 2013	0.5000%	1,000,000
INVESTMENTS/US BANK	July 2017	0.1250%	998,412
LOCAL GOVERNMENT INVESTMENT POOL		0.1807%	14,888,527
			\$ 18,178,680

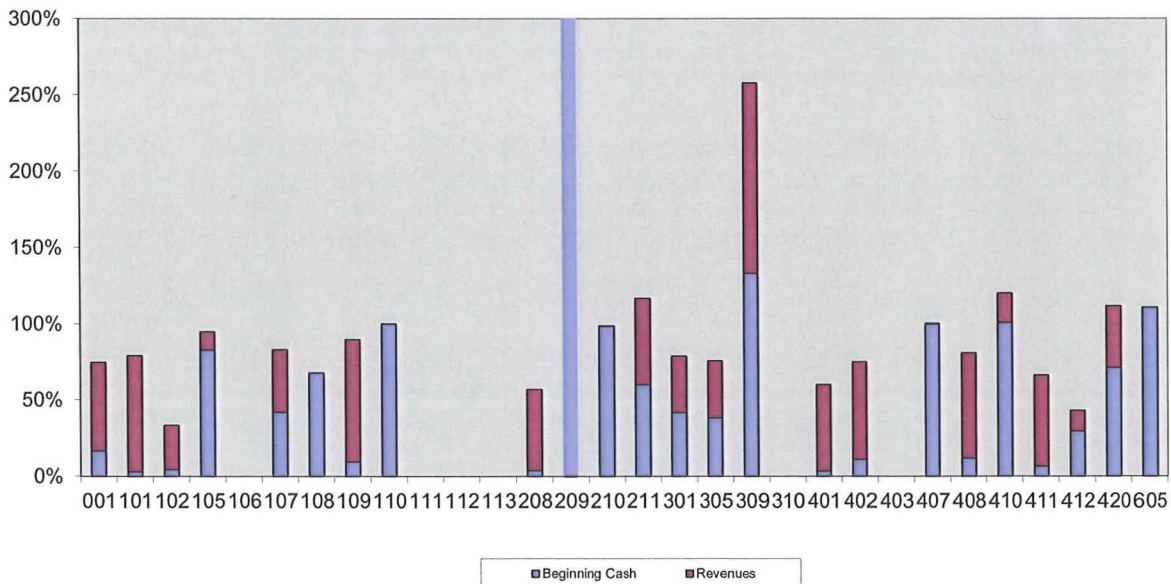
Ending Cash Balances by Fund



CITY OF GIG HARBOR
YEAR-TO-DATE RESOURCE SUMMARY
AND COMPARISON TO BUDGET
AS OF SEPTEMBER 30, 2012

FUND NO.	DESCRIPTION	ESTIMATED RESOURCES	ACTUAL Y-T-D RESOURCES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT	\$ 12,813,229	\$ 9,544,756	\$ 3,268,473	74%
101	STREET FUND	3,368,923	2,656,728	712,195	79%
102	STREET CAPITAL FUND	5,464,803	1,811,900	3,652,903	33%
105	DRUG INVESTIGATION FUND	10,245	9,680	564	94%
106	DRUG INVESTIGATION FUND	32,430	32,403	27	100%
107	HOTEL-MOTEL FUND	366,205	303,496	62,709	83%
108	PUBLIC ART CAPITAL PROJECTS	136,192	92,032	44,160	68%
109	PARK DEVELOPMENT FUND	3,037,881	2,711,974	325,907	89%
110	CIVIC CENTER DEBT RESERVE	3,633,634	3,629,846	3,788	100%
111	STRATEGIC RESERVE FUND	1,008,504	360,682	647,822	36%
112	EQUIPMENT RESERVE FUND	100,190	100,146	44	100%
113	DONATIONS/CONTRIBUTIONS	-	-	-	
208	LTGO BOND REDEMPTION	1,414,641	801,190	613,451	57%
209	2000 NOTE REDEMPTION	542	39,859	(39,317)	7353%
210	LID NO. 99-1 GUARANTY	97,204	95,491	1,713	98%
211	UTGO BOND REDEMPTION	413,522	480,904	(67,382)	116%
301	PROPERTY ACQUISITION FUND	378,564	296,700	81,864	78%
305	GENERAL GOVT CAPITAL IMPR	330,078	248,559	81,519	75%
309	IMPACT FEE TRUST	706,116	1,818,678	(1,112,562)	258%
310	HOSPITAL BENEFIT ZONE	3,000,570	2,001,540	999,030	67%
401	WATER OPERATING	2,040,765	1,218,590	822,174	60%
402	SEWER OPERATING	4,161,349	3,103,282	1,058,067	75%
403	SHORECREST RESERVE FUND	-	54,830	(54,830)	
407	UTILITY RESERVE	1,358,052	1,359,441	(1,389)	100%
408	UTILITY BOND REDEMPTION	2,022,800	1,628,863	393,937	81%
410	SEWER CAPITAL CONSTRUCTION	4,416,561	5,285,686	(869,126)	120%
411	STORM SEWER OPERATING FUND	917,386	604,930	312,455	66%
412	STORM SEWER CAPITAL	2,493,157	1,065,366	1,427,791	43%
420	WATER CAPITAL ASSETS	1,865,364	2,077,486	(212,122)	111%
605	LIGHTHOUSE MAINTENANCE TRUST	1,914	2,113	(199)	110%
631	MUNICIPAL COURT	-	92,098	(92,098)	
		\$ 55,590,821	\$ 43,529,252	\$ 12,061,568	78%

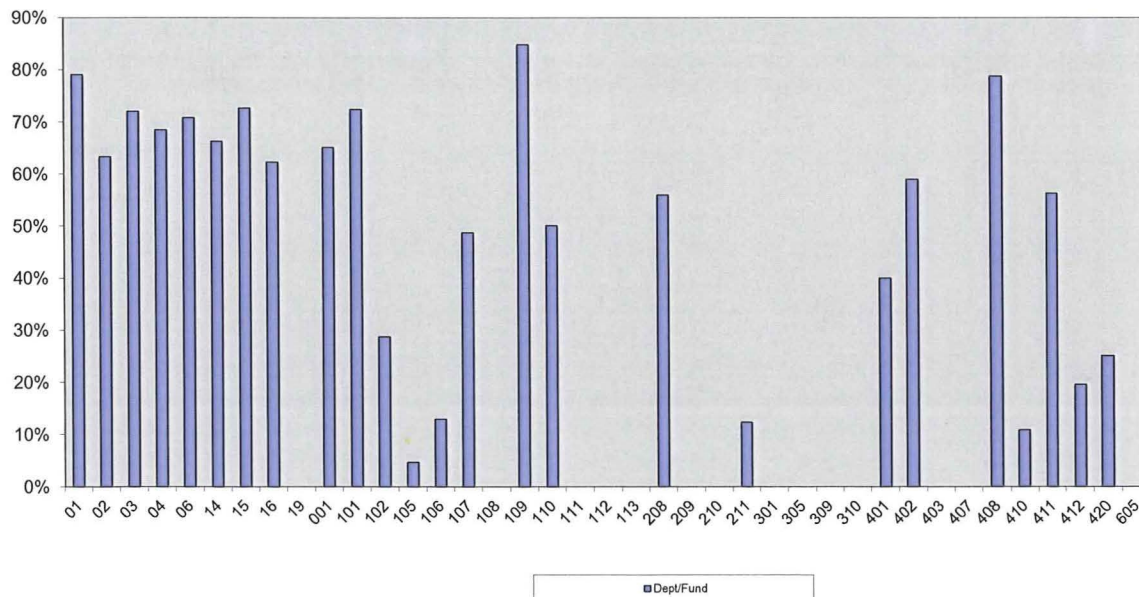
Resources as a Percentage of Annual Budget



CITY OF GIG HARBOR
YEAR-TO-DATE EXPENDITURE SUMMARY
AND COMPARISON TO BUDGET
FOR PERIOD ENDING SEPTEMBER 30, 2012

FUND NO.	DESCRIPTION	ESTIMATED EXPENDITURES	ACTUAL Y-T-D EXPENDITURES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT				
01	NON-DEPARTMENTAL	\$ 4,375,955	\$ 3,460,894	\$ 915,061	79%
02	LEGISLATIVE	29,950	18,958	10,992	63%
03	MUNICIPAL COURT	352,900	254,247	98,653	72%
04	ADMINISTRATIVE/FINANCIAL	1,459,150	999,304	459,846	68%
06	POLICE	2,863,560	2,026,892	836,669	71%
14	COMMUNITY DEVELOPMENT	1,322,160	875,914	446,246	66%
15	PARKS AND RECREATION	749,460	544,358	205,102	73%
16	BUILDING	257,100	160,057	97,043	62%
19	ENDING FUND BALANCE	1,402,994	-	1,402,994	
001	TOTAL GENERAL FUND	12,813,229	8,340,623	4,472,606	65%
101	STREET FUND	3,368,923	2,438,507	930,416	72%
102	STREET CAPITAL FUND	5,464,803	1,572,720	3,892,084	29%
105	DRUG INVESTIGATION FUND	10,245	479	9,766	5%
106	DRUG INVESTIGATION FUND	32,430	4,208	28,222	13%
107	HOTEL-MOTEL FUND	366,205	178,568	187,637	49%
108	PUBLIC ART CAPITAL PROJECTS	136,192	-	136,192	
109	PARK DEVELOPMENT FUND	3,037,881	2,576,632	461,249	85%
110	CIVIC CENTER DEBT RESERVE	3,633,634	1,819,988	1,813,645	50%
111	STRATEGIC RESERVE FUND	1,008,504	-	1,008,504	
112	EQUIPMENT RESERVE FUND	100,190	-	100,190	
113	DONATIONS/CONTRIBUTIONS	-	-	-	
208	LTGO BOND REDEMPTION	1,414,641	792,033	622,608	56%
209	2000 NOTE REDEMPTION	39,270	-	39,270	
210	LID NO. 99-1 GUARANTY	97,204	-	97,204	
211	UTGO BOND REDEMPTION	413,522	51,013	362,509	12%
301	PROPERTY ACQUISITION FUND	378,564	-	378,564	
305	GENERAL GOVT CAPITAL IMPR	330,078	-	330,078	
309	IMPACT FEE TRUST	706,116	-	706,116	
310	HOSPITAL BENEFIT ZONE	3,000,570	1,210,662	-	
401	WATER OPERATING	2,040,763	816,378	1,224,385	40%
402	SEWER OPERATING	4,161,349	2,453,450	1,707,900	59%
403	SHORECREST RESERVE FUND	-	1,347	(1,347)	
407	UTILITY RESERVE	1,358,052	248	1,357,804	
408	UTILITY BOND REDEMPTION	2,022,800	1,593,586	429,214	79%
410	SEWER CAPITAL CONSTRUCTION	4,416,561	478,838	3,937,723	11%
411	STORM SEWER OPERATING FUND	917,386	516,134	401,253	56%
412	STORM SEWER CAPITAL	2,493,157	487,270	2,005,887	20%
420	WATER CAPITAL ASSETS	1,865,364	467,940	1,397,424	25%
605	LIGHTHOUSE MAINTENANCE TRUST	1,914	-	1,914	
631	MUNICIPAL COURT	-	92,098	(92,098)	
		\$ 55,629,547	\$ 25,892,722	\$ 27,946,918	47%

Expenditures as a Percentage of Annual Budget



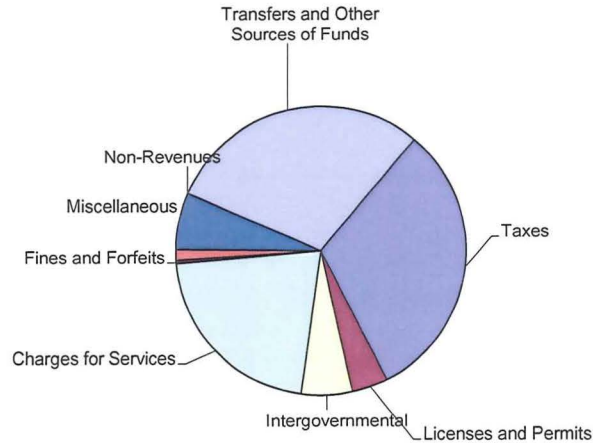
**CITY OF GIG HARBOR
YEAR-TO-DATE REVENUE SUMMARY
BY TYPE
FOR PERIOD ENDING SEPTEMBER, 2012**

<u>TYPE OF REVENUE</u>	<u>AMOUNT</u>
Taxes	\$ 8,137,416
Licenses and Permits	1,037,600
Intergovernmental	1,487,712
Charges for Services	5,561,306
Fines and Forfeits	95,791
Miscellaneous	314,532
Non-Revenues	1,638,557
Transfers and Other Sources of Funds	7,686,656
Total Revenues (excludes Court Pass Thru)	<u>25,959,570</u>
Beginning Cash Balance	18,373,847
Total Resources	<u>\$ 44,333,418</u>

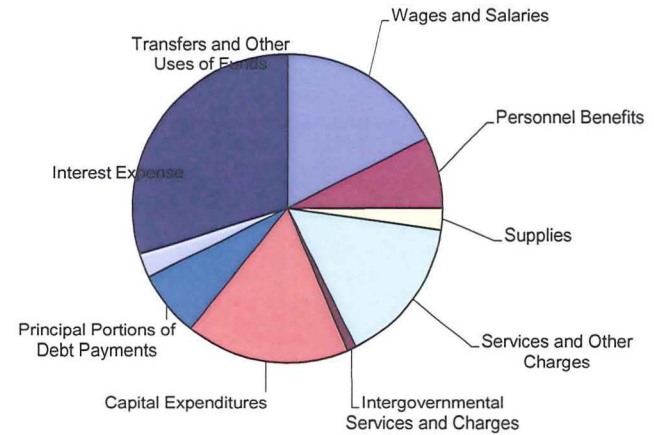
**CITY OF GIG HARBOR
YEAR-TO-DATE EXPENDITURE SUMMARY
BY TYPE
FOR PERIOD ENDING SEPTEMBER, 2012**

<u>TYPE OF EXPENDITURE</u>	<u>AMOUNT</u>
Wages and Salaries	\$ 4,530,310
Personnel Benefits	1,915,111
Supplies	592,548
Services and Other Charges	3,982,300
Intergovernmental Services and Charges	246,996
Capital Expenditures	4,411,912
Principal Portions of Debt Payments	1,776,818
Interest Expense	659,814
Transfers and Other Uses of Funds	7,684,814
Total Expenditures (excludes Court Pass Thru)	<u>25,800,623</u>
Ending Cash Balance	18,178,680
Total Uses	<u>\$ 43,979,303</u>

Revenues by Type - All Funds



Expenditures by Type - All Funds



**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2012**

	SPECIAL REVENUE FUNDS										
	001	101	102	105	106	107	108	109	110	111	112
	GENERAL GOVERNMENT	STREET	ST CAP	DRUG INVESTIGTN	DRUG INVESTIGTN	HOTEL - MOTEL	PUBLIC ART PROJECTS	PARK DVLP FUND	CIVIC CTR DEBT RSRV	STRATEGIC RESERVE	EQUIPMENT RESERVE
ASSETS											
CASH	\$ 60,484	\$ 11,141	\$ 409,885	\$ 520	1,592	\$ 6,797	\$ 5,198	\$ 3,923	\$ 45,740	\$ 20,380	\$ 5,659
INVESTMENTS	1,008,761	186,112	161,466	8,682	26,603	113,552	86,834	65,530	1,764,118	340,456	\$ 94,530
RECEIVABLES	1,249,468	3,729	55,690	-	-	26,536	-	-	4,404	-	-
FIXED ASSETS	-	-	-	-	-	-	-	-	-	-	-
OTHER	-	-	-	-	-	-	-	-	-	-	-
TOTAL ASSETS	2,318,713	200,981	627,041	9,202	28,195	146,885	92,032	69,453	1,814,262	360,836	100,189
LIABILITIES											
CURRENT	42,934	3,750	6,868	-	-	-	-	11,081	-	-	-
LONG TERM	49,364	-	-	-	-	-	-	-	-	-	-
TOTAL LIABILITIES	92,298	3,750	6,868	-	-	-	-	11,081	-	-	-
FUND BALANCE:											
BEGINNING OF YEAR	3,123,455	73,279	613,103	8,468	32,369	174,785	91,930	209,796	3,625,101	280,439	50,078
Y-T-D REVENUES	7,443,583	2,562,460	1,579,790	1,212	34	150,668	101	2,425,208	9,149	80,397	50,110
Y-T-D EXPENDITURES	(8,340,623)	(2,438,507)	(1,572,720)	(479)	(4,208)	(178,568)	-	(2,576,632)	(1,819,988)	-	-
ENDING FUND BALANCE	2,226,415	197,231	620,172	9,202	28,195	146,885	92,032	58,372	1,814,262	360,836	100,189
TOTAL LIAB. & FUND BAL.	2,318,713	200,981	\$ 627,041	\$ 9,202	28,195	\$ 146,885	\$ 92,032	\$ 69,453	\$ 1,814,262	\$ 360,836	\$ 100,189

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2012**

	SPECIAL REVENUE FUNDS						TOTAL SPECIAL REVENUE
	301 PROPERTY ACQUISITION	305 GEN GOVT CAPITAL IMP	309 IMPACT FEE TRUST FUND	310 HOSPITAL BENEFIT	605 LIGHTHOUSE MAINT	631 MUNICIPAL COURT	
ASSETS							
CASH	\$ 16,757	\$ 14,038	\$ 102,874	\$ 95,277	\$ 119		\$ 739,899
INVESTMENTS	279,943	234,521	1,718,584	1,591,668	1,994		6,674,592
RECEIVABLES	-	-	-	-	-	-	90,359
FIXED ASSETS	-	-	-	-	-	-	-
OTHER	-	-	-	-	-	-	-
TOTAL ASSETS	296,700	248,559	1,821,458	1,686,945	2,113	-	7,504,850
LIABILITIES							
CURRENT	-	1,633	36,140	-	-	-	59,473
LONG TERM	-	-	-	-	-	-	-
TOTAL LIABILITIES	-	1,633	36,140	-	-	-	59,473
FUND BALANCE:							
BEGINNING OF YEAR	157,581	123,922	904,766	1,128,704	2,111	-	7,476,432
Y-T-D REVENUES	139,119	123,003	880,552	1,768,903	2	92,098	9,862,807
Y-T-D EXPENDITURES	-	-	-	(1,210,662)	-	(92,098)	(9,893,862)
ENDING FUND BALANCE	296,700	246,926	1,785,318	1,686,945	2,113	-	7,445,377
TOTAL LIAB. & FUND BAL.	\$ 296,700	\$ 248,559	\$ 1,821,458	\$ 1,686,945	\$ 2,113	\$ -	\$ 7,504,850

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2011**

	208 LTGO BOND REDEMPTION	209 2000 NOTE REDEMPTION	210 LID 99-1 GUARANTY	211 UTGO BOND REDEMPTION	TOTAL DEBT SERVICE
ASSETS					
CASH	\$ 517	\$ 2,251	\$ 5,393	\$ 24,280	\$ 32,441
INVESTMENTS	8,640	37,608	90,098	405,611	541,957
RECEIVABLES	-	-	-	14,366	14,366
FIXED ASSETS	-	-	-	-	-
OTHER	-	-	-	-	-
TOTAL ASSETS	9,157	39,859	95,491	444,257	588,764
LIABILITIES					
CURRENT	-	-	-	-	-
LONG TERM	-	-	-	9,985	9,985
TOTAL LIABILITIES	-	-	-	9,985	9,985
FUND BALANCE:					
BEGINNING OF YEAR	51,158	39,285	95,386	252,060	437,888
Y-T-D REVENUES	750,033	574	105	233,225	983,937
Y-T-D EXPENDITURES	(792,033)	-	-	(51,013)	(843,046)
ENDING FUND BALANCE	9,157	39,859	95,491	434,272	578,780
TOTAL LIAB. & FUND BAL.	\$ 9,157	\$ 39,859	\$ 95,491	\$ 444,257	\$ 588,764

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2012**

	PROPRIETARY									TOTAL PROPRIETARY	TOTAL
	401 WATER OPERATING	402 SEWER OPERATING	403 SHORECREST RESERVE	407 UTILITY RESERVE	408 UTILITY BOND REDEMPTION	410 SEWER CAP. CONST.	411 STORM SEWEF OPERATING	412 STORM SEWER CAPITAL	420 WATER CAP. ASSETS		
ASSETS											
CASH	\$ 16,848	\$ 33,625	\$ 3,008	\$ 20,375	\$ 1,992	\$ 267,178	\$ 8,262	\$ 21,526	\$ 86,104	\$ 458,917	\$ 1,291,741
INVESTMENTS	279,784	560,054	50,245	1,338,796	33,285	4,463,405	138,025	359,604	1,438,430	8,661,629	16,886,939
RECEIVABLES	401,750	389,767	231	-	54,682	5,490	125,802	-	-	977,721	2,331,915
FIXED ASSETS	6,367,578	34,738,824	-	-	-	336,148	338,578	666,127	775,769	43,223,024	43,223,024
OTHER	-	-	-	-	160,222	-	-	-	-	160,222	160,222
TOTAL ASSETS	7,065,960	35,722,270	53,484	1,359,171	250,181	5,072,221	610,666	1,047,258	2,300,302	53,481,513	63,893,841
LIABILITIES											
CURRENT	127,804	25	-	-	1,385,314	4,000	29	-	9	1,517,181	1,619,588
LONG TERM	46,861	71,262	-	-	22,679,082	-	42,086	-	-	22,839,291	22,898,641
TOTAL LIABILITIES	174,665	71,287	-	-	24,064,397	4,000	42,115	-	9	24,356,473	24,518,228
FUND BALANCE:											
BEGINNING OF YEAR	6,554,558	35,447,058	-	1,348,965	(23,612,767)	4,693,243	537,692	1,195,755	2,014,385	28,178,889	39,216,665
Y-T-D REVENUES	1,153,115	2,657,375	54,830	10,454	1,392,138	853,816	546,993	338,773	753,847	7,761,342	26,051,669
Y-T-D EXPENDITURES	(816,378)	(2,453,450)	(1,347)	(248)	(1,593,586)	(478,838)	(516,134)	(487,270)	(467,940)	(6,815,190)	(25,892,722)
ENDING FUND BALANCE	6,891,295	35,650,983	53,484	1,359,171	(23,814,216)	5,068,221	568,552	1,047,258	2,300,293	29,125,041	39,375,612
TOTAL LIAB. & FUND BAL.	\$ 7,065,960	\$ 35,722,270	\$ 53,484	\$ 1,359,171	\$ 250,181	\$ 5,072,221	\$ 610,666	\$ 1,047,258	\$ 2,300,302	\$ 53,481,514	63,893,842



Business of the City Council
City of Gig Harbor, WA

Subject: Doxo Web-based Utility Bill Delivery and Payment Agreement

Proposed Council Action: Approve and Authorize the Mayor to execute the contract with Doxo

Dept. Origin: Finance
Prepared by: David Rodenbach, Finance Director
For Agenda of: October 22, 2012
Exhibits: Doxo Order Form/Agreement

Concurred by Mayor: Initial & Date
GLH 10/17/12
Approved by City Administrator: R 10/17/12
Approved as to form by City Atty: PER E-MAIL
Approved by Finance Director: JF 10/10/2012

Expenditure Required	\$1,480	Amount Budgeted	\$2,000	Appropriation Required	0
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INFORMATION / BACKGROUND

Doxo is a web based application that connects businesses to customers by delivering documents (statements, bills and other correspondence) directly to the customer's consolidated, secure online digital mailbox. Consumers can view, pay and store all their bills and other documents from all of their providers they do business with in one place. There are no processing fees (for the city and customer) to accept payment via the doxo network and the service includes a mobile app that will allow consumers to see and pay their bills on their mobile devices (iPhone, Android) at no charge to the city.

Payments made through the Doxo network are processed directly to the city's bank account. Any fees related to payments are paid by Doxo.

Doxo has many municipal users, including the state of Washington, Tacoma Public Utilities, and at least 12 counties.

Currently, the city has at least 25 customers who have expressed an interest in using Doxo to process utility payments.

FISCAL CONSIDERATION

This service is free to the city's customers. The cost to the city is \$100 per month plus \$40 per month for each block of 100 users/customers who connect to the system. Doxo is responsible for banking fees associated with payments received through the Doxo network.

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to execute the attached Doxo order form.

Doxo, Inc.
Order Form

This is an agreement between Doxo, Inc., a Delaware corporation ("Doxo", "we" or "us") and the business or organization identified below ("Provider" or "you"). The signature of a party's authorized representative below indicates acceptance of this Order Form and incorporates the Provider Terms of Service, currently located at www.doxoconnect.com (the Order Form and the Provider Terms of Service are, collectively, the "Agreement"). This Agreement contains the terms and conditions governing your access to and use of the Doxo Provider Service. Capitalized terms used but not defined in this Order Form will have the meaning set forth in the Provider Terms of Service.

"Effective Date"	
Initial Term	36 months
Billing Period	Annual

Provider Information	
Company/Org Name	City of Gig Harbor
Address	3510 Grandview Street Gig Harbor, WA 98335
Phone	253-853-7610

Connect Plan	
Plan Selected(X)	STARTER
	PLUS
	BUSINESS
Initial Connect Blocks	1

Provider Designated Contact	
Name	David Rodenbach
Position Title	Finance Director
Phone	253-853-7610
Email	rodenbachd@cityofgigharbor.net

Special Incentives
<p><i>Notwithstanding the pricing set forth in this Order Form, if the Initial Term of this Agreement is at least 36 months, the standard annual billing period is selected, and you:</i></p> <p>a) <i>Sign this Agreement no later than October 31, 2012;</i></p> <p>b) <i>Launch the Doxo Provider Service for your customers no later than November 30, 2012;</i></p> <p>c) <i>Promote the Doxo Provider Service to your customers in all of the following ways:</i></p> <ul style="list-style-type: none"> • <i>Include on your home web page the "doxo Connect" login icon link provided by us;</i> • <i>Identify Doxo as a paperless billing option and an e-payment option wherever paperless billing and payment options are mentioned on your statements and website;</i> • <i>Include in customer mailings, for every customer mailing during at least the first year of this Agreement, an insert promoting the ability to "Connect and Go Paperfree on doxo" to all of your customers;</i> • <i>Issues a joint press release to be mutually agreed by the parties, no later than one month following your launch of the Doxo Provider Service;</i> <p><i>Then:</i></p> <ul style="list-style-type: none"> • <i>Doxo will waive the platform fee for the first month of the service</i> • <i>Doxo shall provide one FREE Monthly Connect Block from the Connect Plan initially selected by Provider for the Term of the Agreement.</i> • <i>Provider may terminate the Agreement at anytime during the first 30 days of the Initial Term for any or no reason.</i>

In witness whereof, the parties have entered into this Agreement as of the Effective Date set forth above.

Provider	City of Gig Harbor
Signature	
Name	
Title	

	Doxo Inc.
Signature	
Name	
Title	

Connect Plan Fees

Fees are calculated and due from you according to the Connect Plan you select on the first page. All Connect Plans require the purchase of a minimum of one Monthly Connect Block.

CONNECT PLANS			
<i>Fees shown below are for annual billing, which provides a 20% discount over monthly billing. For monthly billing, add 20% to fees shown.</i>			
	STARTER	PLUS	BUSINESS
Platform Service Fee	\$100/month	\$150/month	\$450/month
Fee per Monthly Connect Block	\$40/month per 100 Connects	\$100/month per 300 Connects	\$240/month per 1,000 Connects
Documents delivered per Connect	Unlimited	Unlimited	Unlimited
doxoPAY payments per Connect	Unlimited	Unlimited	Unlimited
Support	Online Only	Online Only	Online & Phone*

* Up to three hours of phone support per month is included.

Fees are quoted and payable in United States dollars. Prices are valid for the Term. Platform Service Fees and Monthly Connect Block fees commence on the Billing Effective Date and are charged and billed in advance for the Billing Period. If the Billing Effective Date is not on the first day of a calendar month, the first invoice will include the prorated fees for that first month as well as the fees due for the next complete Billing Period.

If no Connect Plan is specified on the first page of this Order Form, the smallest Connect Plan is automatically selected. You may upgrade your Connect Plan at any time by providing five business days written notice to us, and that upgrade will become effective as of the first day of the next calendar month, and the associated fees are billed for the remainder of the Billing Period on the first day of the next calendar month.

At any time, if your total Connects exceed the number of Monthly Connect Blocks already allocated to you, then the necessary additional Monthly Connect Block(s), are automatically allocated from your Connect Plan, and the associated additional fees will be billed for the remainder of the Billing Period on the first day of the next calendar month. For example, if you selected the Plus Connect Plan and have previously been allocated 10 Monthly Connect Blocks, for a total Connect capacity of 3,000 per month, a new Connect Block is automatically added when your total Connects in a month reach 3,001, and you will be billed for 11 Monthly Connect Blocks for the remainder of the Billing Period or until additional Monthly Connect Blocks become necessary.

You may reduce the number of Monthly Connect Blocks by providing written notice to us and the reduced Monthly Connect Block fees will be effective as of the first day of the next Billing Period. However, in no event may you reduce the number of Monthly Connect Blocks below the minimum needed for the total Connects you have at that time.

The "Term" of the Agreement starts on the Effective Date, continues for the Initial Term, and will automatically renew for additional Billing Periods unless either party gives the other notice of its desire not to renew at least 30 days before the end of the then current term. During the Term, you agree to be available as a Provider on the Doxo network and pay all fees specified in this Order Form. Notwithstanding anything to the contrary in the Provider Terms of Service you may not terminate the Term except in the case of a material breach by us which breach remains uncured 30 days after you provide notice of that breach to us. Other than if you terminate for cause, there are no refunds or credits for partial Billing Periods, Connect Plan downgrades, unused Monthly Connect Block capacity, or unused time. Section 5 of the Provider Terms of Service is hereby amended by adding the following to the end of the last sentence of that section: ", unless required under the Public Records Act (ch. 42.56 RCW) or court order. Prior to any such disclosure, you will endeavor to provide 10 business days notice to us to allow us an opportunity to bring a legal action to prevent disclosure." Notwithstanding anything to the contrary in Section 12 of the Provider Terms of Service, you may terminate the Agreement immediately upon written notice to us but only within 30 days of the last day of the calendar month in which we make a change to the terms and conditions contained in the Agreement which change materially and detrimentally affects your use of the Doxo Provider Service.



PROVIDER SIGN IN

- Buzz
- Contact Us

- why doxo
- what you get
- start now

Terms of service

doxo Provider Terms of Service

Version 2 July 16, 2012

These Provider Terms of Service ("Agreement") are between Doxo, Inc., a Delaware corporation ("Doxo", "we" or "us") and the business or organization agreeing to these terms and conditions in order to use the Doxo Provider Service ("Provider" or "you") and contains the terms and conditions governing your access to and use of the Doxo Provider Service.

By accepting this Agreement, either by clicking a box indicating your acceptance or by executing an Order Form that references this Agreement you agree to the terms of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind that company or legal entity and its Affiliates to this Agreement, in which case the terms "you" and "your" will refer to that company or legal entity and its Affiliates. If you do not have that authority, or if you do not agree to the terms and conditions of this Agreement, you must not accept this Agreement and you may not use the Doxo Provider Service.

1. Doxo Provider Service

1.1 License, Proper Uses, Affiliates

We grant to you a limited, non-exclusive right during the Term to access and use the Doxo Provider Service only in the manner permitted by this Agreement. We grant you no rights other than those expressly set forth in this Agreement. We may request, and if we do, you will provide, information to us to allow us to verify your identity. Once we have verified you, which will be in our sole discretion, you may use the Doxo Provider Service to manage and maintain the information and elements of your profile in the Doxo Provider Service. You may also use the Doxo Provider Service to send Your Data only to, and communicate only with, Doxo Users that establish a Connect with you and are your existing customers. At all times you must comply with the terms of this Agreement. You may allow one or more of your Affiliates to access and use the Doxo Provider Service in compliance with the terms of this Agreement, as long as they utilize the same Doxo identification, profile and identity in the Doxo Provider Service directory as you. You are fully responsible for the acts and omissions of any of your Affiliates.

1.2 Authorized Persons, Account Security

You may register an Authorized Person to administer your use of the Doxo Provider Service and we will provide the Authorized Person with a unique username and password. You may replace an individual Authorized Person with another Authorized Person at any time in accordance with the terms of this Agreement. You will provide accurate and complete information about you and your Authorized Persons in the account management page of the Doxo Provider Service, and in any registration, forms, or other communication you provide to us, and will keep that information current at all times. You will maintain the security of your usernames, passwords, and other similar information. You will promptly notify us if you discover or otherwise suspect any security breaches relating to your Authorized Person, including any unauthorized use or disclosure of a username or password. You understand that any person with your or your Authorized Person's usernames, passwords, or similar information may be able to access the Doxo Provider Service, including Your Data and other confidential information.

2 Use of the Doxo Provider Service

2.1 Our Responsibilities

We agree that we are solely responsible for: (a) providing the Doxo Provider Service in accordance with the terms of this Agreement; (b) using commercially reasonable efforts to prevent unauthorized access to or use of the Doxo Provider Service; and (c) complying with applicable laws and regulations when providing the Doxo Provider Service to you. For the avoidance of doubt, and notwithstanding anything in this Agreement to the contrary, this Agreement is not binding on us until we verify you and deliver Doxo Provider Service credentials to you.

2.2 Your Responsibilities

You agree that you are solely responsible for: (a) preserving your corporate status as validly domiciled, organized, and in good standing under the laws of the United States, and providing to us evidence of this on request; (b) your Authorized Persons' and Affiliates' compliance with the terms of this Agreement and all actions and omissions of your Authorized Persons and Affiliates under this Agreement; (c) the accuracy, quality, integrity, and legality of Your Data; (d) preventing unauthorized use of your credentials, usernames, and passwords; (e) using the Doxo Provider Service in accordance with the terms of this Agreement; (f) complying with all applicable laws and regulations with respect to your use of the Doxo Provider Service; and (g) keeping your profile (including company information, name, and logo) and other information you provide to us complete, accurate, and current. You agree that your compliance with applicable laws and regulations means, without limitation, that you, and not we, are responsible for verifying and complying with all requirements applicable to electronic delivery of Your Data to your customers. This Agreement includes and incorporates by reference the AUP and the doxoPAY Guide and you are responsible for complying with them. Capitalized terms used but not defined in this Agreement will have the meanings defined in the AUP or the doxoPAY Guide. To send pay Documents you must activate doxoPay in the Doxo Provider Service. By activating doxoPAY, you agree to comply with the doxoPAY Guide.

3 Free Trial, Order Forms, Fees, and Taxes

3.1 Free Trial

If you register on our website and are approved by us for a free trial, we will make the Doxo Provider Service available to you on a trial basis free of charge until the earlier of: (a) the end of the free trial period for which you registered to use the Doxo Provider Service; or (b) the start date of any Order Form you and we have executed. Additional trial terms and conditions may appear on the trial registration web page. Any additional terms and conditions to which you agree are incorporated into this agreement by reference.

Any data you enter into the Doxo Provider Service, and any configurations made to the Doxo Provider Service by or for you during the free trial will be permanently lost unless you and we execute an Order Form prior to the end of the free trial and we make the Doxo Provider Service available.

3.2 Order Forms

If you and we have mutually agreed and executed an Order Form, then, subject to the terms of this Agreement we will make the Doxo Provider Service available to you as specified in this Agreement and the relevant Order Form during the term specified in the Order Form.

3.3 Fees

You agree to pay fees in accordance with this Agreement and any applicable Order Form. Amounts payable to us under this Agreement are due 30 days after invoicing, unless you and we otherwise agree in an Order Form. Terms or conditions accompanying any purchase orders will have no effect and will not be binding on us unless separately agreed to by us in writing. If you do not pay fees owed to us by the due date, then at our discretion: (a) those fees may accrue late interest at the rate of 1.0% of the outstanding balance per month or the maximum rate permitted by law, whichever is lower, from the date the payment was due until the day you pay it; or (b) we may terminate or otherwise suspend your access to and use of the Doxo Provider Service until your fees are paid in full.

3.4 Taxes

Our fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including but not limited to value-added, sales, use, or withholding taxes, assessable by any local, state, or federal jurisdiction (but, excluding taxes based on our income, property, or employees) (collectively, "Taxes"). You are responsible for paying Taxes except those assessable against Doxo based on its income. We will invoice you for such Taxes if we believe we have a legal obligation to do so.

4 Intellectual Property, Proprietary Rights, Marks, Suggestions

We or our suppliers own the Doxo Provider Service, and, subject to the limited rights granted in this Agreement, reserve all right, title, and interest in and to the Doxo Provider Service (including, without limitation, all trade secrets, patents, trademarks, copyrights, and other intellectual property rights). Subject to the terms of this Agreement and for the purposes of telling customers that you are a Provider available to Connect on the Doxo Provider Service, or directing them to our website, each party grants to the other party a limited, revocable, non-transferable, non-sublicensable, non-exclusive, royalty-free license to use those of its Marks that party makes available to the other party, and in accordance with the guidelines and specifications provided to the other party. You and we acknowledge that nothing contained in this Agreement will give the other party any interest in the other party's Marks. Neither party will take any action inconsistent with the other party's ownership of its Marks and any benefits

accruing from use of a party's Marks will automatically vest in that party. You grant to us a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Doxo Provider Service and otherwise fully exploit any suggestions, enhancement requests, recommendations, or other feedback you or your Authorized Persons provide to us.

5 Confidentiality, Privacy

During the course of your use of the Doxo Provider Service, you may receive information relating to us or to the Doxo Provider Service that is not known to the general public ("Confidential Information"). You agree that: (a) all Confidential Information will remain our exclusive property; (b) you will use Confidential Information only as is reasonably necessary for your use of the Doxo Provider Service; and (c) you will not disclose Confidential Information to any individual, company, or other third party.

6 Rights in Doxo Data, Your Data, and Doxo User Information

As between the parties, you own all Your Data and we own all Doxo Data. Each party may use or disclose the other party's data only as explicitly stated by this Agreement. You understand that Your Data that you deliver through the Doxo Provider Service to a Doxo User is maintained by that Doxo User in that Doxo User's account and may not be modified or deleted by you during or after the Term of this Agreement. A Doxo User may share Doxo User Information with you or us. Each party's use and disclosure of Doxo User Information is governed by our Privacy Policy. Either party may use aggregate information that does not identify or allow identification of a user or the other party that it obtains in connection with the Doxo Provider Service to improve its or others use of the Doxo Provider Service.

7 Restrictions

Notwithstanding anything in this Agreement to the contrary, when using the Doxo Provider Service you may not: (a) allow access or use by anyone other than your Authorized Person; (b) send information on behalf of a third party; (c) store or transmit material that is infringing, libelous, otherwise unlawful or tortious, or that violates third party privacy rights; (d) provide identification, password, or other information of you or your Authorized Person to any service that, as determined by us in our sole discretion, scrapes, crawls, data-mines, or otherwise uses such information; (e) interfere with or disrupt the integrity or performance of the Doxo Provider Service or any third party data it contains; (f) attempt to gain unauthorized access; (g) store or transmit any malicious code (e.g. time bomb, automatic shut-down, virus, software lock, drop dead device, malicious logic, worm, Trojan horse, or trap or back door); (h) post or distribute any updates, advertisements, or other information, or send any information through the Doxo Provider Service, that denigrates, or discourages use of the Doxo Provider Service, or promotes or solicits the use of services that are an alternative to or compete with the Doxo Provider Service (whether yours or a third party's); (i) reproduce, reverse engineer, distribute, publish, transmit, modify, adapt, translate, sell, resell, rent, lease, license, or otherwise commercially exploit the Doxo Provider Service or any part thereof; (j) copy, frame, or mirror any part or content of the Doxo Provider Service (other than as expressly allowed by Doxo); or (k) access it in order to build a competitive product or service or copy any features, functions, or graphics of the Doxo Provider Service.

8 Warranties and Disclaimer

You represent and warrant that: (a) you have the legal power to enter into this Agreement and to perform your obligations in this Agreement; (b) you are a business duly organized, validly existing, and in good standing under the laws of the United States; (c) you and all of your subcontractors, agents, and suppliers will comply with all applicable laws in your performance of your obligations and exercise of your rights under this Agreement; and (d) you will post a privacy policy with which you must comply and which must comply with applicable law. WE PROVIDE THE DOXO PROVIDER SERVICE, INCLUDING ALL SOFTWARE, FUNCTIONS, MATERIALS, AND INFORMATION MADE AVAILABLE ON OR PROVIDED IN CONNECTION WITH THE DOXO PROVIDER SERVICE, "AS-IS." EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9 Indemnification You will indemnify and hold harmless us, our officers, directors, employees, agents, and representatives (each, an "Indemnified Party") from and against any and all third party damages, costs, judgments, penalties, and expenses of any kind (including reasonable legal fees and disbursements) brought against an Indemnified Party as a result of: (a) your use of the Doxo Provider Service; (b) you or your Affiliates breach of any of your representations, warranties, covenants, or obligations set forth in this Agreement.

10 Limitation of Liability

IN NO EVENT WILL: (A) EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF: (I) THE AMOUNT PAID OR PAYABLE BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT GIVING RISE TO SUCH LIABILITY; (II) OR ACTUAL DAMAGES INCURRED; OR (B)

EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11 Term

11.1 Term, Termination

The term of this Agreement starts on your acceptance of this Agreement and ends upon termination of this Agreement or at the conclusion of the term specified in an applicable Order Form, whichever is later ("Term"). Unless otherwise specified in an Order Form, either party may terminate this Agreement at any time, with or without cause, by providing notice to other party as set forth in this Agreement.

11.2 Effects of Termination

You must stop using the Doxo Provider Service upon the effective date of termination. Following termination or expiration of this Agreement, we will have no obligation to maintain or provide any of Your Data and may delete all of Your Data in our systems or otherwise in our possession or under our control. All provisions which are intended to survive termination or expiration of this Agreement will survive, including Sections 1.3, 2, 3 and 5-13.

11.3 Suspension of Your Account

We may, with or without prior notice to you, immediately suspend your access to and use of the Doxo Provider Service if and when: (a) you breach this Agreement; (b) you use or attempt to use the Doxo Provider Service in any manner that does not comply with this Agreement; or (c) we believe suspicious activity, by you or a third party, has occurred in connection with your account, in which case we will use commercially reasonable efforts to investigate the cause of the suspicious activity, resolve it and, in our discretion, restore your account. We will notify you of that suspension via the email address in your account settings. We may provide you with an opportunity to cure the issue that resulted in suspension and reinstate your access to the Doxo Provider Service. If we determine that you have not logged into your account for more than ninety days we may terminate or suspend your access to and use of the Doxo Provider Service upon thirty days' prior notice to you. Our suspension of your account does not limit our right to terminate this Agreement pursuant to its terms.

12 General Provisions

This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter except as agreed and executed by the parties in an Order Form, or in written agreements expressly accepted and executed by both parties. This Agreement will be governed by the laws of the state of Washington, without regard to its conflict of law principles to the contrary. You agree that you may only file any action at law or in equity arising out of or relating to this Agreement only in the state or federal courts located in Seattle, Washington, and you hereby irrevocably and unconditionally consent and submit to the exclusive jurisdiction of those courts over any suit, action, or proceeding arising out of this Agreement. If any provision of this Agreement is held to be unlawful, void, or for any reason unenforceable, that provision will be deemed severable and will not affect the validity and enforceability of the remaining provisions. No failure or delay by a party in exercising any right, power, or privilege under this Agreement will operate as a waiver thereof. Any waiver must be set forth in a signed writing. You agree that, except as otherwise provided under this Agreement, all notices and other communications may be sent to you by e-mail to the email address for your Authorized Person in your account settings or by delivering Documents to you via the Doxo Provider Service. You must send us all notices and other communication relating to us, the Doxo Provider Service, or this Agreement by using the Contact link found on the bottom of our website. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third party beneficiaries to this Agreement. Either party may assign or transfer this Agreement, in whole or in part, without restriction, provided the assignee agrees to be fully bound by this Agreement.

We may modify any of the terms and conditions contained in this Agreement (including the AUP or doxoPAY Guide) at any time and in our discretion by posting a change notice or a new agreement on our website. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED PARTICIPATION IN THE DOXO PROVIDER SERVICE FOLLOWING OUR POSTING OF A CHANGE NOTICE OR NEW AGREEMENT ON OUR WEBSITE WILL CONSTITUTE BINDING ACCEPTANCE OF THE CHANGE. We reserve the right to modify or discontinue offering all or any part of the Doxo Provider Service at any time without notice. Either party may use subcontractors to perform its obligations under this Agreement provided that each party remains responsible for that use of subcontractors.

13 Definitions

In addition to capitalized terms defined elsewhere in this Agreement, capitalized terms used in this Agreement will have the following meanings:

“Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with you.

“Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“AUP” means the Doxo Acceptable Use Policy as made available within the Doxo Provider Service.

“Authorized Person” is an individual who has been authorized by you to access and use the Doxo Provider Service on your behalf in accordance with the terms of this Agreement.

“Connect(s)” is the functionality that, with the approval of both a specific Doxo User and you, allows you to communicate and share Your Data with the Doxo User using the Doxo Provider Service. This functionality will cease to be available in the event that the Connect is terminated.

“Document” is an electronic document and/or other information which may be sent by you to a Doxo User via the Doxo Provider Service in accordance with the terms of this Agreement.

“Doxo Data” means all electronic data or information provided by us via the Doxo Provider Service.

“Doxo User” is our customer who has created an account on the network.

“Doxo User Information” means information, including personally identifiable information, that a Doxo User may share with you or us.

“Doxo Provider Service” means the website, computer networks, servers, APIs, and other data and information we provide or make available to enable you to establish Connects with Doxo Users.

“Marks” means the trademarks, service marks, logos, or similar items provided by one party to the other party for use pursuant to this Agreement.

“Order Form” means the documents or online forms used for placing orders, that are entered into between you and us. By entering into an Order Form, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party to this Agreement. Order Forms are incorporated into this Agreement by reference and any conflict between these Provider Terms of Service and an Order Form will be resolved in favor of the Order Form.

“Your Data” means all electronic data or information (including without limitation, Documents) provided by you to Doxo Users via the Doxo Provider Service.

- Call us today
(888) 944-3696
- Start your free trial
- Sign Up Now
- Company
- About doxo
- Contact Us
- Buzz
- Blog
- Careers
- Follow Us
- Facebook
- Twitter
- LinkedIn
- RSS Feed
- Google+
- Resources
- doxo Mobile
- Bank-Grade Security
- Paperless WhitePaper
- Privacy Policy
- Sites
- doxo.com
- connect.doxo.com



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

Subject: Fire Alarm Inspection Services – Agreement Authorization

Dept. Origin: Public Works/Operations

Proposed Council Action:

Award and authorize the Mayor to execute a Fire Alarm Inspection Services Agreement with Sound Electronics, Inc. in the amount of \$987.35 for Annual Fire Alarm Inspection Services at the Civic Center Building.

Prepared by: Marco Malich *by Jenni Reed*
Public Works Superintendent

For Agenda of: October 22, 2012

Exhibits: Agreement

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

Initial &
Date

CLH 10/15/12
R 10/11/12
email 10/11/12
Q 10/11/12

Expenditure Required	\$987.35	Amount Budgeted	\$3,000	Appropriation Required	\$0
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INFORMATION/BACKGROUND

Testing of fire system devices in City buildings is required annually. This contract provides the testing of all devices in the Gig Harbor Civic Center. This includes all smoke detectors (141), heat detectors (5), beam detectors (6), horns (44), strobes (56), batteries, panels and other related items.

The City will be using the state contract for all other 2012 fire service testing-related items.

FISCAL CONSIDERATION

The 2012 City Buildings budget, Objective #3 provides \$3,000 for mandatory annual testing on fire systems.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Award and authorize the Mayor to execute a Fire Alarm Inspection Services Agreement with Sound Electronics, Inc. in the amount of \$987.35 for Annual Fire Alarm Inspection Services at the Civic Center Building.

CITY OF GIG HARBOR
FIRE ALARM INSPECTION SERVICES AGREEMENT

THIS CONTRACT is made and entered into this _____ day of _____, 20____, by and between the City of Gig Harbor, Washington (the "City"), and Sound Electronics, Inc., a Corporation (the "Contractor").

FOR AND IN CONSIDERATION of the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

1. Scope of Work. The Contractor agrees to furnish all material, labor, tools, equipment, apparatus, etc. necessary to perform and complete in a workmanlike manner the work set forth in the Scope of Work attached hereto as Exhibit A and incorporated herein by reference.

2. Time of Performance and Completion. The work to be performed under this Contract shall commence as soon as the Contractor has received a notice to proceed from the City and in accordance with the schedule set forth in the Scope of Work. All work to be performed under this Contract shall be completed no later than 45 days from the date of Notice to Proceed.

3. Payments. The Contractor agrees to perform all work called for at the rate of Nine Hundred and Ten Dollars and Zero Cents (\$910.00), plus applicable Washington State Sales Tax. Said sum shall constitute full compensation for all labor, materials, tools, appliances, etc. required to perform the required services. Total compensation shall not exceed Nine Hundred and Eighty-Seven Dollars and Thirty-Five Cents (\$987.35).

4. Standard of Care and Supervision.

A. The Contractor represents that Contractor has the necessary knowledge, skill and experience to perform services required by this Contract. The Contractor and any persons employed by the Contractor 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 the Scope of Work.

B. The Contractor is responsible for the direct supervision of its employees, and a supervisor shall be available at all reasonable times to confer with the City in regards to services. The Contractor commits that its services will be performed by careful and efficient employees trained in the best practice and highest standards imposed by the Contractor. The Contractor agrees to remove any of its employees who in the reasonable opinion of the City are conducting themselves improperly or incapable of performing the work assigned to them.

5. (Intentionally deleted.)

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6. (Intentionally deleted.)

7. Indemnity.

A. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney's fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

B. Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees or volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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

8. Insurance.

A. The Contractor shall secure and maintain in force throughout the duration of this Contract, business auto coverage for any auto no less than a \$1,000,000 each accident limit.

B. The Contractor shall secure and maintain in force throughout the duration of this Contract, comprehensive general liability insurance with a minimum coverage of not less than a limit of \$1,000,000 per occurrence, \$2,000,000 annual aggregate for bodily injury, including death, and property damage. The insurance will be written on an occurrence basis, by an 'A' rated company licensed to conduct business in the State of Washington. The general liability policy shall name the City as an additional insured and shall include a provision prohibiting cancellation, changes and reductions of coverage under said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this Section shall be delivered to the City with the signed Contract. Under this Agreement, the Contractor'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 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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C. The Contractor shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30 days in advance of any cancellation, suspension or material change in the Contractor's coverage.

D. In addition, the Contractor shall secure and maintain workers' compensation insurance pursuant to the laws of the State of Washington.

9. (Intentionally deleted.)

10. Termination. This Contract may be terminated with or without cause by the City at any time upon reasonable written notice from the City to the Contractor. If the City so terminates this Contract, the Contractor shall immediately stop and cause to be stopped all work herein. Unless the termination is for cause, the City shall determine and pay to the Contractor the percentage of the Contract price equal to the percentage of conforming services performed prior to the delivery of City's termination notice.

11. Compliance with Laws. The Contractor shall at all times comply with all applicable state and local laws, rules, ordinances and regulations.

12. Nondiscrimination. Except to the extent permitted by a bona fide occupational qualification, the Contractor agrees that the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

13. Independent Contractor. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and subcontractors during the performance of this contract.

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

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agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Contractor performs

15. Legal Action. In the event that either party shall bring suit to enforce any provision of this Contract or to seek redress for any breach, the prevailing party in such suit shall be entitled to recover its costs, including reasonable attorneys' fees.

16. Entire Agreement. This Contract, together with all attachments, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations and agreements, whether written or oral. This Contract may be amended only by written change order, properly signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first written above.

CITY OF GIG HARBOR

CONTRACTOR

MAYOR CHARLES L. HUNTER
Date: _____

By: _____
Title: _____
Date: _____

ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:
Office of the City Attorney



SOUND ELECTRONICS

3409 South 37th Street
Tacoma, WA 98409
Tacoma: 253-472-2955
Facsimilie: 253-472-2974

PROJECT QUOTATION

PROJECT: Gig Harbor Civic Center
Fire Alarm Inspection

DATE: 10-1-12

1. Test all devices in the Gig Harbor Civic Center.
2. This includes all smoke detectors, heat detectors, horns, strobes, batteries, panels, and other related items
3. Complete inspection forms as required and file with appropriate authorities.
4. Quote does not include repairs of any deficiencies found during inspections. All deficiencies will be noted on inspection reports.

TOTAL: \$910 plus tax

CONDITIONS OF QUOTATION

1. Quotation INCLUDES checkout and testing by two Technicians.
2. Quotation DOES NOT INCLUDE repair or testing of the sprinkler systems.
3. Quotation is based on receipt of a signed purchase order or on receipt of a signed standard subcontract form AIA; ASC; ASA; AGC of Washington (1991 edition) or AGC/ASA/ASC Standard Construction Subcontract (AGC Document No. 640 1994 edition) with retainage to be on same bases as prime with interest accruing to Sound Electronics as our proportionate share represents. Sound Electronics will protect its lien rights on all work.
4. Quotation DOES NOT INCLUDE payment / performance bond (add 2.25% if required), WSST, or material use tax and excludes any general conditions (i.e. toilets, refuge, cleanup, telephone.
5. Quotation is firm for thirty (30) days.
6. Our insurance premium is based upon standard conditions of the specifications and does not include PRIMARY INSURED endorsements.

Accepted by: _____ Date: _____ PO Reference: _____

Proposed by: Andy Freudenstein Date: 10/1/12
Andy Freudenstein - Service Manager - Sound Electronics



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Business of the City Council
City of Gig Harbor, WA

Subject: City-Wide Travel Demand Model Update, Annual Capacity Availability Report and On-Call Services for Concurrency Testing Amendment No. 3 to Consultant Services Contract

Proposed Council Action: Approve and authorize the Mayor to execute an Amendment No. 3 to the Consultant Services Contract with David Evans and Associates, Inc. for a not-to-exceed amount of \$15,110.00.

Dept. Origin: Public Works/Engineering

Prepared by: Stephen Misiurak, PE
City Engineer

For Agenda of: October 22, 2012

Exhibits: Consultant Services Contract Amendment No. 3

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

CUH 10/18/12
R- 10/17/12
approv via email 10/17/12
JP 10/17/12
10/16/12

Expenditure Required	\$15,110.00	Amount Budgeted	\$10,000	Appropriation Required	\$0
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INFORMATION / BACKGROUND

The City is required to maintain and annually update its traffic demand model. On June 13, 2011, the City Council approved the Consultant Services Contract with David Evans and Associates (DEA), Inc. for the City-Wide travel demand model update and on-call services for transportation concurrency modeling. Contract Amendment No. 2 provided for additional updates necessary to keep the model current and accurate. It also extended the contract through December 31, 2013, to allow DEA to continue to perform transportation concurrency evaluation and documentation, an on-call task that is reimbursed by fees from private development as a pass-through cost.

The original Consultant Services Contract was approved by Council on June 13, 2011 in the amount of \$49,900.00. Contract Amendment No. 1 was approved by Council on July 11, 2011 for no change in the dollar amount. Contract Amendment No. 2 was approved by Council on May 14, 2012 for the amount of \$23,208.00 bringing the total contract amount to \$73,108.00.

This contract amendment in the amount of \$15,110 will build a city wide operational analysis model using the SYNCHRO program. SYNCHRO is a traffic operational program that models traffic signal timing along with the turning movements and is necessary for optimizing traffic signal timing and performing traffic capacity analysis.

FISCAL CONSIDERATION

The ending fund construction costs associated with the 2012 Pavement Maintenance projects came in approximately \$350,000.under the allocated budget. Therefore sufficient funds exist in the 2012 Street Operating Budget to fund this Contract Amendment.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Approve and authorize the Mayor to execute Amendment No. 3 to the Consultant Services Contract with David Evans and Associates for a not-to-exceed amount of \$15,110.00. The total amended contract amount for all the Contract Amendments will be \$88,218.00.

**THIRD AMENDMENT
TO
CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
DAVID EVANS AND ASSOCIATES, INC.**

THIS THIRD AMENDMENT is made to that certain Consultant Services Contract dated June 13, 2011 (the "Agreement"), as amended by that certain First Amendment dated July 11, 2011, as amended by that certain Second Amendment dated May 14, 2012 by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and David Evans and Associates, Inc., a corporation organized under the laws of the State of Washington (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in completing City-Wide Travel Demand Model, Capacity Availability Report, On-Call Services for Concurrency and desires to extend consultation services in connection with the project; and

WHEREAS, section 18 of the 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 and to amend 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. Scope of Work. Section 1 of the Agreement is amended to add the work as shown in **Exhibit A – Scope of Work**, attached to this Amendment and incorporated herein.

Section 2. Compensation. Section 2(A) of the Agreement is amended to increase compensation to the Consultant for the work to be performed as described in **Exhibit A** in an amount not to exceed Fifteen Thousand One Hundred Ten Dollars (\$15,110.00), as shown in **Exhibit A**, attached to this Amendment and incorporated herein.

Section 3. Duration of Work. Section 4 of the Agreement is amended to extend the duration of this Agreement to December 31, 2013.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

EXCEPT AS EXPRESSLY MODIFIED BY THIS AMENDMENT, ALL TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties have executed this Amendment on this _____ day of _____, 20__.

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its Principal

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF GIG HARBOR

**AMENDMENT 3
CITYWIDE SYNCHRO OPERATIONAL MODEL -
ADDITIONAL WORK OF SCOPE OF SERVICES
FOR CITYWIDE TRAVEL DEMAND MODEL UPDATE**

The City of Gig Harbor (City) desires to contract David Evans and Associates, Inc. (DEA) to build a citywide operational analysis model using the SYNCHRO program, which incorporates the Highway Capacity Manual (HCM 2000 and 2010) methodology. The citywide SYNCHRO model will include all signalized and sign controlled intersections that are on the concurrency test list.

The Amendment describes the additional work and costs that are outside of the original scope and services. The additional work includes the following tasks:

Task 1. Project Management

This task provides for management and coordination activities that are necessary to complete the work program. The activities shall include project administration, preparation of monthly invoices and progress reports, city-consultant coordination and meetings, and quality control and quality assurance.

Task 2. Build an Existing Citywide SYNCHRO Model

Use the SYNCHRO program to build a citywide operational analysis model. The analysis period will focus on the PM peak hour only. All the signalized and sign controlled intersections on the concurrency test list will be included. The signal timing/phasing in the existing condition for the signalized intersections will be obtained from the City. Existing geometry including turning lane pockets for all intersections will be coded in the model.

Task 3. Build a Macro Program Linking VISUM and SYNCHRO Model

Build a systematic macro program linking the travel demand VISUM model and the operational analysis SYNCHRO model. With the macro, traffic volumes from the travel demand model can be imported into the SYNCHRO model instantly, and SYNCHRO intersection level of service (LOS), delay, and volume to capacity ratio (V/C) can be exported from SYNCHRO model instantly back to the excel workbook, which greatly improves efficiency.

Task 4. Build a Pipeline Citywide SYNCHRO Model

Update the existing SYNCHRO model with pipeline projects and with any control type changes in the pipeline condition. Optimize intersection signal timing/phasing for new intersections in the pipeline condition if necessary.

Task 5. Evaluate Intersection LOS for Existing and Pipeline Conditions

Evaluate intersection LOS using the SYNCHRO program for the existing condition and pipeline condition. Compare the SYNCHRO LOS with the TRAFFIX LOS and identify intersections with major differences in LOS and delay.

Task 6. Assist the City to Revise Municipal Codes

Provide assistance to City's Municipal Code revisions to Impact Fee Credit Codes and help address intersection LOS failure strategies. Attend City Council meetings upon request.

Task 7. City Staff Training

Provide training for city staff to learn SYNCHRO program and macro system linking VISUM and SYNCHRO. The training includes, but not limited to, coding intersection geometry/configuration, control type for un-signalized and signalized intersections; coding timing/phasing for signalized intersections, conducting corridor coordination and signal timing optimization; performing actuated-isolated or fixed time operations for signalized intersections; conducting intersection/corridor/arterial LOS analysis and reporting; utilizing macro system importing and exporting between VISUM and SYNCHRO models etc.

Deliverables:

- Existing and pipeline SYNCHRO model and macro program ready for next concurrency test.
- SYNCHRO intersection LOS tables and graphic displays for both the existing and pipeline conditions.

Fee Basis

The budget to complete Tasks 1-7 related to this amendment is not to exceed \$15,110. Detail hours and budget estimate is shown in **Table 1**.

Table 1. Schedule of Rates and Estimated Hours/Budget

Task		Hours			Total	Budget
		Project Manager	Engineer/Modeler	Admin		
		vls	mxlu/aow	mjre/vle/jxt/pat		
Task 1. Project Management		4		3	7	\$1,178
1.1	Project Coordination	3				
1.2	Monthly Invoices and Progress Reports	1		3		
Task 2. Build an Existing Citywide SYNCHRO Model			20		20	\$2,700
2.1	Obtain geometry and signal timing/phasing data		3			
2.2	Build citywide SYNCHRO model for all concurrency intersections		17			
Task 3. Build a Macro Program Linking VISUM and SYNCHRO Model			9		9	\$1,215
3.1	Make intersection node number compatible between VISUM and SYNCHRO models		3			
3.2	Build a systematic Macro program linking VISUM and SYNCHRO models		4			
3.3	Macro program testing		2			
Task 4. Build a Pipeline Citywide SYNCHRO Model			8		8	\$1,080
4.1	Add pipeline projects to the existing SYNCHRO model		3			
4.2	Update intersection control types in pipeline condition		3			
4.3	Optimize signal timing/phasing for new intersections		2			
Task 5. Evaluate Intersection LOS for Existing and Pipeline Conditions		2	6		8	\$1,252
5.1	Evaluate existing condition intersection LOS	1	3			
5.2	Evaluate pipeline condition intersection LOS	1	3			
Task 6. Assist the City to Revise Municipal Codes		25			25	\$5,525
6.1	Provide assistance to Municipal Code revision and attend City Council meetings	25				
Task 7. City Staff Training			16		16	\$2,160
7.1	Provide training to city staff to learn macro system and SYNCHRO program for LOS analysis		16			
Totals by Position for Tasks 1-7		31	59	3	93	\$15,110
Approximate Hourly Billing Rate by Position		\$221	\$135	\$98		
Total Cost		\$6,851	\$7,965	\$294		\$15,110

MXLU:

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Business of the City Council
City of Gig Harbor, WA

Subject: Comcast Franchise Renewal Ordinance – Second Reading

Proposed Council Action: Consider Ordinance Renewing Comcast Franchise for Cable Television Services in the City at First Reading

Dept. Origin: Finance
Prepared by: D. Rodenbach/E. Zana
For Agenda of: October 22, 2012
Exhibits: Draft ordinance

Initial & Date

Concurred by Mayor: CLH 10/18/12
Approved by City Administrator: R- 10/18/12
Approved as to form by City Atty: PER F.M.H.K.
Approved by Finance Director: [Signature] 10/18
Approved by Department Head: _____

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

INFORMATION / BACKGROUND

Ordinance No. 1054 granted a five year franchise to Comcast of Puget Sound Inc., effective July 31, 2006. Comcast has continued to provide cable television services to the residents of the City of Gig Harbor following the expiration of the franchise in accordance with the franchise provisions. Comcast and the City have negotiated a renewal franchise for Comcast to continue to provide cable television services to the residents of the City.

The following is a list of the substantial changes in the renewal franchise as compared to the franchise approved by the City Council in July 2006:

- Expanded definition of Gross Revenues (to be consistent with other Washington franchises)
- Competitive Equity language required by Comcast in all of its newly renewed franchises
- Extended term of 7 years
- Additional public works provisions regarding general construction and maintenance requirements
- Enhanced indemnification provisions for the City
- Increased insurance limits
- Reduction in performance bond because Comcast does not plan on a significant build-out during the term of this franchise
- Deletion of I-Net provisions
- Addition of a commitment by Comcast to offer a discount to low income residents

- Revised provision regarding release of information pursuant to a public records request
- Updated provisions related to a change in control or transfer of the franchise from Comcast to another provider
- Provision of Performance Reports (upon request)

This list is a non-exclusive list of the changes. A complete detail of all of the modifications can be provided upon request.

As part of the renewal process the City discovered an underpayment in Franchise Fees which has since been corrected by Comcast (and the City has received a check from Comcast for those fees in the amount of \$105,868.86).

During the September 24th council meeting, Councilmember Perrow requested further information on customer service reports and the ability of Comcast subscribers to return Comcast equipment at a Gig Harbor location, rather than traveling to Tacoma.

The following sections of the franchise discuss the availability of customer service related reports:

Section 18.06 requires Comcast to provide reports upon the City's request (but no more than once per year) which includes:

- A. Records of all written complaints received by Grantee for the previous year. The term "complaint" as used herein refers to escalated concerns about any aspect of the Cable System or Grantee's cable operations.
- B. Records of outages for the previous year, indicating date, duration, area, and the number of Subscribers affected, type of outage and cause.
- C. Records of service calls for repair and maintenance for the previous year, indicating the date and time service was required, the date of acknowledgment, the date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved.
- D. Records of installation/reconnection and requests for service extension for the previous year, indicating the date of request, date of acknowledgment, and the date and time service was extended.

In addition, upon renewal in 7 years, there is a performance evaluation pursuant to Section 5 and the City is entitled to adopt Customer Service standards beyond the FCC Standards pursuant to Section 12.04.

With regard to Comcast equipment returns, Comcast provides the following options:

- A. Subscribers can return equipment at the Comcast Cable Store in Tacoma.
- B. Subscribers can return equipment at the Comcast Cable Store in Bremerton.
- C. Subscribers may mail in their equipment and forego visiting a cable store altogether. For \$15 Comcast will mail them all the packaging material they need to return their

equipment and cover the postage. Whether a customer has one or multiple pieces of equipment, the cost is the same.

Following the council meeting, Comcast was asked by Councilmember Perrow to provide additional information regarding free drops and service to the City as well as the number of Gig Harbor residents that receive a low income discount. Comcast responded that there are currently 7 facilities (5 schools, 1 fire department and 1 government building) receiving a free drop and service from Comcast. There are also 8 Gig Harbor residents receiving the low income discount. This 30% discount is available to Gig Harbor residents who are low income and are aged 65 years or older or disabled and applies only to the Basic Cable Service.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

None

RECOMMENDATION / MOTION

Move to: Adopt Ordinance at Second Reading.

RECITALS

SECTION 1 ENACTMENT

- §1.01 Recitals
- §1.02 Short Title

SECTION 2 DEFINITIONS

- §2.01 Terms

SECTION 3 GRANT OF AUTHORITY

- §3.01 Use of Public Rights-of-Way
- §3.02 Additional Services/Compensation
- §3.03 Responsibility for Costs
- §3.04 Publication Costs
- §3.05 Franchise Non-Exclusive
- §3.06 Grant of Other Franchises; Competitive Equity

SECTION 4 SERVICE AVAILABILITY

- §4.01 Service Availability
- §4.02 Annexations
- §4.03 Installation and Extension Policy

SECTION 5 TERM, EVALUATION AND RENEWAL

- §5.01 Term of Franchise
- §5.02 Performance Evaluations
- §5.03 Renewal

SECTION 6 COMPLIANCE WITH CITY, STATE, AND FEDERAL LAWS

- §6.01 Compliance with Applicable Laws
- §6.02 Subject to Police Power of the City
- §6.03 Notification in the Event of Preemptive Law

SECTION 7 CONDITIONS OF PUBLIC RIGHTS-OF-WAY OCCUPANCY

- §7.01 Use
- §7.02 Excavation
- §7.03 Restoration
- §7.04 Relocation
- §7.05 Temporary Removal of Wire for Building Moving
- §7.06 Tree Trimming
- §7.07 Approval of Plans and Specifications
- §7.08 Underground Installation
- §7.09 Facilities Location
- §7.10 Work of Contractors and Subcontractors
- §7.11 Standards
- §7.12 Emergency Relocation

SECTION 8 INDEMNIFICATION AND LIABILITY

- §8.01 Indemnification
- §8.02 Damages and Penalties
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SECTION 9 INSURANCE REQUIREMENTS

- §9.01 Minimum Coverage
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- §9.04 Workers' Compensation
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- §10.01 Amount
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SECTION 11 CABLE SYSTEM CHARACTERISTICS

- §11.01 Channel Capacity
- §11.02 New Construction
- §11.03 Cable System Capabilities
- §11.04 Equal and Uniform Service

SECTION 12 OPERATIONAL STANDARDS

- §12.01 Compliance with Applicable FCC Rules
- §12.02 Technical Performance
- §12.03 Parental Guidance Control
- §12.04 Customer Service

SECTION 13 SIGNALS TO BE CARRIED

- §13.01 Required Programming Categories
- §13.02 Service for the Hearing Impaired

SECTION 14 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

- §14.01 Initial Channels
- §14.02 Additional Channels
- §14.03 Delivery of PEG Programming
- §14.04 Management and Control of PEG Channels
- §14.05 Relocation of Access Channels
- §14.06 PEG Capital Support
- §14.07 Technical Assistance

SECTION 15 EMERGENCY USE OF THE CABLE SYSTEM

- §15.01 Emergency Alert Capability

SECTION 16 FREE DROPS AND SERVICE

- §16.01 Free Drops and Service
- §16.02 Low Income Discount

SECTION 17 PAYMENT TO CITY

- §17.01 Amount and Time
- §17.02 Annual Financial Report
- §17.03 Right of Inspection of Records
- §17.04 Late Payment Interest Charge

- §17.05 Acceptance
- §17.06 Acts of Non-Collection
- §17.07 Additional Commitments Not Franchise Fees

SECTION 18 RECORDS AND REPORTS

- §18.01 Notice
- §18.02 Books of Account
- §18.03 Confidentiality
- §18.04 Quarterly Reports
- §18.05 Annual Report
- §18.06 Performance Reports

SECTION 19 REGULATION OF RATES

- §19.01 City Regulation of Grantee's Rates
- §19.02 Notice of Rates
- §19.03 Customer Billing

SECTION 20 EMPLOYMENT REQUIREMENTS

- §20.01 Equal Opportunity in Employment

SECTION 21 PROHIBITION OF DISCRIMINATORY OR PREFERENTIAL PRACTICES

- §21.01 No Rate Discrimination

SECTION 22 ASSIGNMENT OF FRANCHISE

- §22.01 City Approval of Assignment Required
- §22.02 City Approval of Change of Control Required
- §22.03 Change in Control Terms
- §22.04 No Waiver

SECTION 23 FRANCHISE VIOLATIONS, NOTICE AND LIQUIDATED DAMAGES

- §23.01 Notice of Default; Opportunity to Cure; Public Hearing
- §23.02 City Action in Event of Violation
- §23.03 Liquidated Damages
- §23.04 Arbitration
- §23.05 Force Majeure
- §23.06 Reservation of Rights
- §23.07 Venue and Jurisdiction
- §23.08 No Third-Party Beneficiaries
- §23.09 Captions

SECTION 24 REVOCATION OF FRANCHISE

- §24.01 General
- §24.02 Method of Revocation
- §24.03 Grantee May Appeal City's Decision

SECTION 25 VALUATION

- §25.01 Purchase Price of Cable System

SECTION 26 FAILURE OF CITY TO ENFORCE FRANCHISE

- §26.01 No Waiver of Terms

SECTION 27 RECOURSE, UNDERSTANDING, CONSTRUCTION, AND SEVERABILITY

§27.01 Requirements and Enforcement

§27.02 Grantee's Understanding

§27.03 Construction of Franchise

§27.04 Provisions Severable

SECTION 28 ACCEPTANCE OF FRANCHISE

§28.01 Method of Acceptance

§28.02 Acceptance of Franchise Not a Waiver

§28.03 Effective Date

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO COMCAST OF PUGET SOUND, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AND FRANCHISE FOR THE TERM OF SEVEN YEARS, TO ERECT, MAINTAIN, AND OPERATE A CABLE SYSTEM IN THE CITY OF GIG HARBOR, WASHINGTON; TO ERECT, MAINTAIN, AND OPERATE ITS POLES, TOWERS, ANCHORS, WIRES, CABLES, ELECTRONIC CONDUCTORS, CONDUITS, MANHOLES, AND OTHER STRUCTURES AND APPURTENANCES IN, OVER, UNDER, ALONG, AND ACROSS THE PRESENT AND FUTURE PUBLIC RIGHTS-OF-WAY IN THE CITY; PRESCRIBING COMPENSATION FOR THE RIGHTS, PRIVILEGES, AND FRANCHISE CONFERRED HEREUNDER; PRESCRIBING THE CONDITIONS GOVERNING THE OPERATION OF THE BUSINESS INsofar AS IT AFFECTS THE USE OF PUBLIC PROPERTY FOR THE PURPOSE OF SUCH BUSINESS; INSTALLATION, UPGRADE, MAINTENANCE, AND OPERATION OF SAID CABLE SYSTEM AND BUSINESS; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, by Ordinance No. 1054, the City of Gig Harbor granted a five year franchise to Comcast of Puget Sound Inc., effective July 31, 2006; and

WHEREAS, Grantee has provided cable services within the City under such franchise; and

WHEREAS, Grantee has requested renewal of its franchise in accordance with Section 626 of the Cable Act to allow continued operation of its cable system in the City; and

WHEREAS, the City Council finds from all the evidence that Grantee meets the legal, financial, and technical qualifications, as well as other qualifications, necessary to assure that the residents of the City of Gig Harbor will receive the best available cable service provided in accordance with this franchise; and

WHEREAS, following proper notice, the City Council of the City of Gig Harbor held a public hearing on Grantee's request for renewal, at which time representatives of Grantee and interested citizens were heard in a full public proceeding affording opportunity for comment by any and all persons desiring to be heard; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the

City Council now deems it appropriate and in the best interest of the City and its inhabitants that the franchise be renewed with Grantee; now, therefore

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

SECTION 1 ENACTMENT

§1.01. Recitals. The facts and recitations set forth in the preamble of this Ordinance are hereby adopted, ratified, and confirmed.

§1.02. Short Title. This Ordinance shall be known and may be cited as "The City of Gig Harbor Cable Service Franchise Ordinance." Within this document, it shall be referred to as the "Franchise."

SECTION 2 DEFINITIONS

§2.01. Terms. Terms, phrases, words, and abbreviations not defined herein shall be construed in accordance with the Cable Act, and if not therein defined, then in accordance with the ordinances of the City or their customary usage and meaning. When not inconsistent with the context, words used in the singular shall include the plural, words in the plural shall include the singular, and words used or defined in one tense or form shall include other tenses or derivative forms. The headings contained in this Franchise are to facilitate reference only, do not form a part of this Franchise, and shall not in any way affect the construction or interpretation hereof. The words "shall," "will," and "must" are mandatory, and the word "may" is permissive or directory.

- A. Affiliate. When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- B. Basic Cable Service. The Cable Service tier, which includes the retransmission of local television broadcast signals, as well as the PEG Channels required by this Franchise.
- C. Cable Act. The Cable Communications Policy Act of 1984 as amended and as may be amended from time to time during the term of this Franchise (47 U.S.C. § 521 et seq., as amended).
- D. Cable Operator. Any Person or group of Persons (i) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in the Cable System, or (ii) who otherwise Controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

- E. Cable Service. The transmission to Subscribers of Video Programming, or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.
- F. Cable System. A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes, but is not limited to, Video Programming and which is provided to multiple Subscribers within a community, but such term does not include facilities that qualify under the exceptions put forth in 47 U.S.C. §522(7). Unless otherwise specified, "Cable System" is used in this Franchise to refer to the particular cable system authorized under the Franchise and operated by the Grantee or any Affiliate who is a Cable Operator within the Franchise Area.
- G. Channels. A portion of the frequency band capable of carrying a video programming service or a combination of video programming services, whether by analog or digital signal.
- H. City Engineer. The Gig Harbor City Engineer or his/her designee.
- I. Control. The actual working control of Grantee in whatever manner exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in Control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Grantee; or (ii) an agreement of the holders of voting stock or rights of the Grantee which effectively vests or assigns policy decision-making in any Person other than the Grantee.
- J. Days. Calendar days unless otherwise specified.
- K. Drop. An aerial or underground portion of the Cable System which extends from the tap to the ground block of the Subscriber's residence or business.
- L. Educational Access Channel. The non-commercial Channel(s) on the Cable System which are reserved for educational users and used in accordance with the rules and procedures established by the City or its designee.
- M. Expanded Basic Cable Service. The tier of cable programming services which is offered for an additional monthly charge over and above the charge for Basic Cable Service.
- N. Federal Communications Commission or FCC. The agency as presently constituted by the United States Congress or any successor agency with jurisdiction over Cable Service matters.

- O. Franchise Area. The incorporated area of the City and such additional areas as may be included in the corporate limits of the City during the term of this Franchise.
- P. Government Access Channel. The non-commercial Channel(s) on the Cable System which are reserved for government users and used in accordance with the rules and procedures established by the City or its designee.
- Q. Grantee. Comcast of Puget Sound, Inc., also known as Comcast, or its lawful successor.
- R. Gross Revenue. Any and all revenue as determined in accordance with generally accepted accounting principles (GAAP) derived by the Grantee or any Cable Operators of the Cable System, including an Affiliate of Grantee, from the operation of the Cable System to provide Cable Services within the Franchise Area.

By way of illustration and not limitation, Gross Revenue includes all fees charged Subscribers for any and all Cable Services provided by Grantee over the Cable System such as Basic Cable Service revenues, Expanded Basic Cable Service revenues, Premium Cable Service revenues, revenues derived from any other Cable Service tier, revenues resulting from fees charged to Subscribers for any optional, per-Channel, or per-program services, revenues from leased Access Channels, revenues received from any music services that are deemed to be a Cable Service over the Cable System, revenues from the sale of program guides; revenues resulting from connection, modification or reconnection to the Cable System in order to receive Cable Services, revenues from service calls, revenues resulting from the lease, rental, or use of Cable System equipment used to provide Cable Service, revenues from late, delinquent, or other administrative fees applied to Cable Services, and Franchise fees assessed on Cable Services which are collected from Subscribers.

Gross Revenues shall also include advertising sales, minus commissions due to advertising agencies that arrange for the advertising buy as calculated under GAAP and home shopping revenues to the extent consistent with GAAP.

Gross Revenues shall not include (i) any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency; (ii) unrecovered bad debt, and (iii) those payments described in subsection 14.06 of this Franchise.

- S. Other Programming Service. Information that a Cable Operator makes available to all Subscribers generally.
- T. Master Use Permit Ordinance. Chapter 12.18 of the Gig Harbor Municipal Code.
- U. Normal Operating Conditions. Those service conditions that are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, labor strikes or slowdowns, civil disturbances, telephone network outages which are not caused by Grantee or its Affiliate, commercial power outages, and severe or unusual weather conditions. Those conditions which are within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, changes in rates, regular or seasonal demand periods, changes in the billing cycles, changes in channel lineups that are within the Grantee's control, backup power during power outages, and maintenance or upgrade of the Cable System.
- V. Premium Cable Services. The delivery over the Cable System of programming to Subscribers for a fee or charge over and above the charge for Basic Cable Service or Expanded Basic Cable Programming Service on a per program, per Channel, per connection or per time period of connection basis.
- W. PEG Channels. All Public Access Channels, Educational Access Channels and Government Access Channels, collectively.
- X. PEG Programming. Non-commercial programming produced for cable casting over the PEG Channels.
- Y. Person. Any natural person, firm, partnership, association, corporation, company, joint stock company, trust corporation, governmental entity, or organization of any kind.
- Z. Public Access Channel. The non-commercial Channel(s) on the Cable System which are reserved for public users and used in accordance with the rules and procedures established by the City, or its designee.
- AA. Public Rights-of-Way. The surface, the air space above the surface, and the area below the surface of any public street, highway, freeway, land path, parkway, circle, lane, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation, repair, and maintenance of a Cable System. No reference in this Franchise to a Public Right-of-Way shall be deemed to be a representation or

guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation, repair, and maintenance of a Cable System, and the Grantee shall be deemed to gain only those rights which the City has the undisputed right and power to give.

- AB. Subscriber. Any Person lawfully receiving Cable Service delivered by means of the Grantee's Cable System.
- A.C. Video Programming. Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 3

GRANT OF AUTHORITY

- §3.01. Use of Public Rights-of-Way. There is hereby granted to Grantee the right, privilege, and Franchise to have, acquire, construct, reconstruct, upgrade, repair, maintain, use, and operate in the City a Cable System, and to have, acquire, construct, reconstruct, repair, maintain, use, and operate in, over, under, and along the present and future Public Rights-of-Way of the City all necessary or desirable poles, towers, anchors, wires, cables, electronic conductors, underground conduits, manholes, and other structures and appurtenances necessary for the construction, maintenance, and operation of a Cable System in the Franchise Area. Grantee or Affiliates shall not install or construct facilities within the City's Public Rights-of-Way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.
- §3.02. Additional Services/Compensation. By granting this Franchise, the City does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered over the Cable System which are not Cable Services. Upon request, Grantee shall inform City of any non-Cable and/or Cable Services offered over the Cable System of which Grantee or its Affiliates are aware. By accepting this Franchise, Grantee does not waive any right it has under law to challenge the City's requirement for authorization to provide non-Cable Services.
- §3.03. Responsibility for Costs. Except as expressly provided otherwise, any act that Grantee is required to perform under this Franchise shall be performed at its cost. If Grantee fails to perform work that it is required to perform within the time provided for performance or a cure period, the City may perform the work and bill the Grantee for documented costs. The Grantee shall pay the amounts billed within forty-five (45) days. The parties agree that any amounts paid pursuant to this Section are not Franchise fees and fall within one or more of the exceptions to the definition of Franchise fee under federal law. Nothing in this section is intended to affect in any way (by expansion or contraction) Grantee's rights under applicable law governing rates.

§3.04. Publication Costs. Any and all costs of publication related to this Franchise which may be required by law or action of City Council shall be borne by Grantee, subject to the five percent (5%) limit established by Section 622 of the Cable Act. Any payments made by the City under this provision are to be reimbursed to the City within thirty (30) days of Grantee's receipt of the invoice.

§3.05. Franchise Non-Exclusive. The rights, privileges, and Franchise granted hereby are not exclusive. This Franchise shall not be construed as any limitation upon the right of the City, through its proper officers, to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways by Franchise, permit or otherwise. The City shall not authorize or permit any Person providing Video Programming and/or Cable Services to enter into the Public Rights-of-Way in any part of the City on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

§3.06. Grant of Other Franchises; Competitive Equity.

A. Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises subsequent to this Franchise to provide Cable Service within the Franchise Area; provided, the City agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise fees; insurance; System build-out requirements; security instruments; Access Channel and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word identical franchise or authorization so long as the regulatory and financial burdens on each entity are materially equivalent. If any subsequent franchise is granted by the City or by transfer, extension, or renewal which, in the reasonable opinion of Grantee, contains materially more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include more materially favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee.

B. In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon Grantee by registered or certified mail or via nationally recognized overnight courier service.

C. In the event that a wireline multichannel video programming distributor provides video service to the residents of the City under the authority granted by federal, State legislation, or other regulatory entity, Grantee shall have a right to request Franchise amendments that relieve Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The City shall not unreasonably withhold consent to Grantee's petition.

SECTION 4 SERVICE AVAILABILITY

§4.01. Service Availability. The Grantee shall provide Cable Service throughout the entire Franchise Area, subject to the provision below.

§4.02. Annexations. If the City annexes any contiguous area which is being provided Cable Service by the Grantee or its Affiliates, the annexed area will be subject to the provisions of this Franchise upon the effective date of the annexation; provided, however, that Grantee shall be allowed a reasonable time under the circumstances to make any required modifications to the Cable System, Cable Services, billing system, etc., as may be required to accommodate such change, and provided that if the area is serviced by an Affiliate, a transfer of ownership of the Cable System in that area to the Grantee shall not be required by the City. If the annexed area is being provided Cable Service by another provider, Grantee shall have the right, but not the requirement, to extend its Cable System to the annexed area. If the annexed area is not being provided Cable Services, the Grantee shall be required to provide service within one (1) year of the annexation.

§4.03. Installation and Extension Policy

A. In general, except as otherwise provided herein, Grantee shall provide a standard installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area. For purposes of this Section a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:

- (1) With no line extension charge except as specifically authorized elsewhere in this Franchise.
- (2) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot aerial or sixty (60)

foot Underground drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to subsection B below.

- B. No Customer shall be refused service arbitrarily. However, for unusual circumstances, such as the existence of more than one hundred twenty-five (125) aerial feet or sixty (60) underground feet of distance from distribution cable to connection of service to Customers, or a density of less than twenty-five (25) residences per cable-bearing mile of aerial trunk or distribution cable or sixty (60) residences per cable-bearing mile of underground trunk or distribution cable, service shall be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Customers in the area in which service shall be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per cable-bearing mile of its trunk or distribution cable and whose denominator equals twenty-five (25) for an aerial extension or sixty (60) for an underground extension. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

SECTION 5 TERM, EVALUATION, AND RENEWAL

- §5.01. Term of Franchise. This Franchise shall be in full force and effect for a term of seven (7) years commencing on the effective date of Ordinance No. ____.
- §5.02. Performance Evaluations. In order to assure that the Grantee is complying with the terms of this Franchise and with the character, quality, and efficiency of service to be rendered, given, performed, and furnished under this Franchise, and in order to promote a sharing of information between the City Council and the Grantee, the City may schedule a performance evaluation once during any seven (7) year term of the Franchise, subject to §5.03 below, in accordance with the following process:
- A. At least one hundred twenty (120) days prior to each performance evaluation, the City shall notify the Grantee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Grantee pursuant to paragraph B below. Unless specifically waived by the City Council, attendance of Grantee's duly authorized representative at these meetings shall be mandatory.

- B. Within sixty (60) days from receipt of such notification, the Grantee shall file a report with the City that is certified by a representative of the Grantee knowledgeable of the operations of Grantee within the City, in reasonable detail, specifically addressing, at a minimum, the following areas:
- (1) compliance with the requirements regarding technical performance and testing, as provided in §12.02 of this Franchise;
 - (2) compliance with the PEG Channel requirements, as provided in §14.01 and §14.02;
 - (3) compliance with the FCC customer service standards;
 - (4) a comparison of rates to any benchmarks or standards set by federal, state, or local agencies having jurisdiction; and
 - (5) any other topic deemed material or relevant by the City for its enforcement of this Franchise, subject to the confidentiality provisions in §18.03.
- C. All reports to be prepared under this subsection and submitted by Grantee shall be based on information since the previous performance evaluation up to and inclusive of the most current quarter available and not data that ends more than twelve (12) months before the time of the performance evaluation.
- D. Following receipt of the report, but not less than thirty (30) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. Grantee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, Grantee shall notify the City, in writing, explaining the reasons for such delay.
- E. The City Council shall hear any interested Persons during such performance evaluation. The Grantee shall be entitled to all the rights of due process consistent with the City proceedings including, but not limited to, the right to present evidence and the right to be represented by counsel.
- §5.03. Renewal. Grantee and City agree that the Cable Act shall govern Franchise renewal proceedings at the time of renewal.

SECTION 6
COMPLIANCE WITH CITY, STATE, AND FEDERAL LAWS

- §6.01. Compliance with Applicable Laws. Grantee shall at all times comply with all laws, rules, and regulations of the City, state and federal governments and any administrative agencies thereof which are applicable to all businesses in the City and/or all users of the Public Rights-of-Way. The express provisions of this Franchise constitute a valid and enforceable contract between the parties.
- §6.02. Subject to Police Power of the City. Construction, maintenance, and operation of Grantee's Cable System and all property of Grantee subject to the provisions of this Franchise shall be subject to all lawful police powers, rules, and regulations of the City. The City shall have the power at any time to order and require Grantee to remove or abate any pole, line, tower, wire, cable, guy, conduit, electric conductor, or any other structure or facility that is dangerous to life or property. In the event Grantee, after written notice, fails or refuses to act within fifteen (15) days of such written notice, City shall have the power to remove or abate the same at the expense of Grantee, all without compensation or liability for damages to Grantee except in instances when the damage is caused by negligence or willful misconduct of the City or its agents.
- §6.03. Notification in the Event of Preemptive Law. Grantee shall use its best efforts to notify the City of any change in law that materially affects Grantee's rights or obligations under this Franchise.

SECTION 7
CONDITIONS OF PUBLIC RIGHTS-OF-WAY OCCUPANCY

- §7.01. Use. All structures, wires, cables, equipment, and facilities erected or maintained by Grantee within the City shall be located as to cause minimum interference with the proper and intended use of the Public Rights-of-Way and with the rights or reasonable convenience of the owners or occupants of property which adjoins any of such Public Rights-of-Way. The location of all poles, towers, anchors, wires, cables, electronic conductors, conduits, manholes and other structures and appurtenances in, over, under, along, and across the present and future Public Rights-of-Way in the City shall be fixed under the supervision of the City or an authorized agent appointed by the City. Grantee agrees to comply with all other City laws, rules, or ordinances that govern the use of Public Rights-of-Way that may be lawfully promulgated by the City during the franchise term. In the event that there is substantial conflict between the requirements of this Franchise and any enacted Public Rights-of-Way standards, the franchise shall govern.
- §7.02. Excavation. Grantee may excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its facilities used to provide Cable Service under this Franchise. In the event a permit may ordinarily be required

for any excavation, a permit shall not be required for the installation of facilities to initiate service to a customer's property, or repair or maintenance of existing facilities unless such installation, repair or maintenance requires the breaking of pavement, excavation or boring. Grantee shall provide the City written notice within fifteen (15) days of any proposed breaking of pavement, excavation, or boring on any Public Rights-of-Way other than for the purposes of installation of facilities to initiate service to a customer's property, or repair or maintenance of existing facilities, prior to the commencement thereof.

Grantee shall provide the City with notice following any emergency maintenance that required the breaking of pavement, excavation, or boring on the Public Right-of-Way. Property owners or occupants of adjoining property shall be given reasonable notice. No Public Rights-of-Way shall be encumbered by construction, maintenance, removal, restoration, or repair work by Grantee for a longer period than shall be necessary to execute such work. When the Grantee shall make or cause to be made excavations or shall place obstructions in any Public Rights-of-Way, the public shall be protected by barriers and lights placed, erected, and maintained by the Grantee in accordance with any existing or future City, state, or federal requirements.

§7.03. Restoration. Grantee shall warrant any restoration work performed by or for Grantee in the Public Rights-of-Way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after a 48-hour notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within forty-five (45) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall reimburse the City in a manner agreeable to both parties.

§7.04. Relocation. Whenever by reason of the construction, repair, maintenance, relocation, widening, raising, or lowering of the grade of any Public Rights-of-Way by the City or by the location or manner of construction, reconstruction, maintenance, or repair of any public property, structure, or facility by the City, it shall be deemed necessary by the City for Grantee to move, relocate, change, alter, or modify any of its facilities or structures, such change, relocation, alteration, or modification shall be promptly made by Grantee upon thirty 30 days' written notice by the City. If the City requires Grantee to relocate its facilities located within the Public Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights-of-Way. Reasonable effort shall mean a review by the City Engineer of the available construction space in or under the Public Rights-of-Way. After making provision for the foreseeable future capacity requirements for City owned utilities and other public infrastructure of the City, the City Engineer shall allot any available excess among the City's franchisees on a first come, first serve basis with Grantee being given preference along with any other franchisee with similar right to relocation consideration. In the event that limited space is available for multiple relocated

franchised facilities, and all franchisees have an equal right to be considered for relocation, all available space shall be allotted in the same proportion as space was allotted in the Public Rights-of-Way from which the facilities are to be removed. Grantee shall pay the cost of relocating its facilities unless there are funds generally available to affected users of the Public Rights-of-Way for reimbursement of such costs, in which case Grantee shall be entitled to its share of such funding. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of the Grantee, if Grantee cannot make such application itself. In the event Grantee, after such notice, fails or refuses to commence, pursue, or complete such relocation work within a reasonable time, the City shall have the authority, but not the obligation, to remove or abate such structures or facilities and to require Grantee to pay to the City the reasonable cost of such removal or abatement, all without compensation or liability for damages to Grantee unless such damage was caused by the willful misconduct of the City or its agents. For the purposes of this Section 7.04, "reasonable time" means twenty-one (21) days unless Grantee provides notice to the City of its inability to commence, pursue or complete such relocation within twenty-one (21) days due to extenuating circumstances beyond Grantee's control. The parties should then meet and discuss a timeframe in which such relocation shall occur.

§7.05. Temporary Removal of Wire for Building Moving. Upon written request of any Person holding a building moving permit issued by the City, Grantee shall remove, raise, or lower its wires and cables temporarily to permit the moving of houses, buildings, or other bulky structures. The reasonable expense of such temporary removal, raising, or lowering shall be paid by the benefited Person, and Grantee may require such payment in advance, Grantee being without obligation to remove, raise, or lower its wires and cables until such payment shall have been made. Grantee shall be given written notice, at least five (5) business days in advance, to arrange for such temporary wire and cable adjustments.

§7.06. Tree Trimming. The Grantee shall have the authority to trim trees or other natural growth overhanging any of the Cable System in the Franchise Area to prevent branches from coming into contact with the Grantee's wires, cables or other equipment that may be damaged due to continued contact. The Grantee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, at its own expense, replace all trees or shrubs damaged as a result of such trimming in a mutually agreed manner with the property owner. From time to time, the City may pass ordinances regulating tree trimming or removal on or along City property, and Grantee shall comply with these ordinances.

§7.07. Approval of Plans and Specifications. In accordance with the City's right-of-way use regulations, Grantee shall provide complete plans and specifications for all construction (with the exception of individual drops) within Public Rights-of-Way. Approval of plans and specifications shall not be unreasonably delayed or denied. In the event of rejection, Grantee shall submit revised plans and specifications for

approval. This provision shall apply to each construction sequence if the construction is accomplished in phases.

§7.08. Underground Installation.

- A. In those portions of the City where telephone lines and electric utility lines are both located underground, Grantee's lines, cables, and wires shall also be placed underground. Grantee's lines, cables, wires, and similar facilities located above ground prior to the effective date of this Franchise shall be relocated underground by Grantee at the same time that all other above-ground utility lines (e.g., electric and telecommunications lines) located on the poles with Grantee's facilities are required to be placed underground. Grantee shall pay the cost of relocating its facilities unless there are funds generally available to affected users of the Public Rights-of-Way. It shall be the policy of the City that existing poles for electric and communications purposes be utilized by Grantee whenever possible.
- B. Whenever feasible and when a pathway is needed by Grantee, and at Grantee's sole discretion, City shall allow Grantee to place conduit and conduit appurtenances in trenches provided by City for City projects. The costs of providing and installing conduits and associated appurtenances shall be the sole responsibility of Grantee. With respect to City projects, the costs of City trenching, including side trenching and excavation for vault and equipment placement, backfill, and restoration, shall be the sole responsibility of the City.

§7.09. Facilities Location.

- A. From time to time, the City, or its representatives, may request identification of the specific location of certain Grantee Cable System facilities. The Grantee agrees to respond, if possible, to such request within forty-eight (48) hours of the receipt of the request. In the event that Grantee cannot locate such information within forty-eight (48) hours, Grantee shall notify the City to alert them. If Grantee fails to notify the City of its facilities locations within forty-eight (48) hours, and damage is caused to Grantee's facilities as a direct result, the Grantee shall hold the City harmless from all liability, damage, cost or expense resulting from the City's actions in this regard unless such damage was caused by the willful misconduct of the City or its agents.
- B. Within sixty (60) days of the effective date of this Franchise, Grantee shall provide the City with a current route map of the Cable System located within the City. Upon City request, but no more often than once each year during the term of this Franchise, the Grantee shall provide the City with an updated route map showing the changes that have occurred in the Cable System.

- C. Grantee agrees to obtain facilities location information from other users of the Public Rights-of-Way prior to Grantee's construction, reconstruction, maintenance, operations and repair of the Cable System facilities.

§7.10 Work of Contractors and Subcontractors. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and applicable law. Grantee shall be jointly and severally liable for all damages, injuries, or losses, including property and personal damages and for correcting all damage caused by any contractor or subcontractor working on Grantee's behalf.

§7.11 Standards. All work authorized and required hereunder shall be done in a safe, thorough, and workmanlike manner. Grantee must comply with all federal, State and local safety requirements, rules, regulations, laws, and practices, and deploy all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee must comply with the National Electrical Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards in effect at the time of the work being performed.

- A. Grantee shall ensure that all cable drops are properly bonded and grounded at the home, consistent with applicable code requirements in effect at the time of the work being performed. All non-conforming or non-performing cable drops shall be replaced by Grantee as necessary to conform to applicable code.
- B. Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable.
- C. All installations of equipment, lines, and facilities shall be installed in accordance with standard engineering practices and of sufficient height to comply with all federal, State, and local regulations, ordinances, and laws.
- D. Grantee and the City agree that nothing in this Franchise shall give Grantee the right to construct new poles without prior City approval. Furthermore, nothing contained in this Franchise gives Grantee a right of pole attachment to City facilities or facilities owned by third parties.

§7.12 Emergency Relocation. The City may require relocation of facilities at the Grantee's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety or welfare. The City shall request that

Grantee perform the relocation, if however, the Grantee fails to perform the relocation within the time necessary to avert the emergency, the City may perform the relocation itself, and recover the reasonable and necessary costs of the relocation. Within forty-five (45) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall reimburse the City in a manner agreeable to both parties.

SECTION 8 INDEMNIFICATION AND LIABILITY

§8.01. Indemnification.

- A. It is the intent of this Section and by its acceptance of this Franchise, Grantee specifically agrees, that Grantee for itself and its agents, employees, subcontractors, and the agents and employees of said subcontractors, shall indemnify and hold the City, its officers, agents, employees, and elected officials harmless from all liability actions, causes of action, lawsuits, judgments, claims, damages, penalties, costs or fees, including attorney's fees and costs of defense, for any injury to or the death of any Person or damage to or destruction of any property arising out of, resulting from or based upon, in whole or in part, any negligent act or omission of Grantee under this Franchise related to the construction, reconstruction, upgrade, operation, or maintenance of its Cable System. In the event that any action, suit or proceeding is brought or claim is made against the City based upon or arising out of any such negligent act or omission of the Grantee under this Franchise, the City shall give timely notice in writing of such action, suit, proceeding and tender such claim to the Grantee. However, the failure of the City to provide such notice in writing to Grantee shall not relieve Grantee of its duties and obligations under this Section, provided that Grantee is given sufficient advance notice to perform its duties under this Section.
- B. The City shall not and does not by reason of granting this Franchise, assume any liability of Grantee whatsoever for injury or death to Persons, damage to property, or penalties of any kind whatsoever. The provisions of this Section shall survive the expiration or early termination of this Franchise.
- C. Subject to applicable law, Grantee shall indemnify the City, its elected officials, officers, authorized agents, boards, and employees for any damages, claims, additional costs, or expenses assessed against, or payable by, the City related to, arising out of, or resulting from Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City. As part of its indemnity obligations pursuant to Section 8.01(A) the provisions of this Section 8.01(C) shall specifically include, but are not limited to, claims for delay, damages, costs, assessed against or payable by the City, by a contractor performing public work for or on behalf of the City.

D. Grantee shall indemnify and hold harmless the City from any Workers' Compensation claims to which Grantee may become subject during the term of this Franchise. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided per this Franchise, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees or other third party. This waiver has been mutually negotiated by the parties.

§8.02. Damages and Penalties. By acceptance of this Franchise, Grantee specifically agrees that it will pay all damages or penalties which the City, its officers, agents, employees, or contractors may legally be required to pay as a result of damages arising out of copyright infringements and all other damages arising out of Grantee's or Grantee's agents' installation, maintenance, or operation of the Cable System, except as referenced in Section 14 of this Franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, subject to Section 635A of the Cable Act and applicable law.

§8.03. Expenses. If any action or proceeding is brought against the City or any of its officers, agents, or employees for claims for damages or penalties described in this Section, the Grantee, upon written notice from the City, shall assume the investigation of defense and fully control any resolution or compromise thereof, including the employment of counsel and the payment of all expenses including the reasonable value of any services rendered by any officers, agents, employees or contractors of the City which are not unreasonably duplicative of services provided by Grantee and its representatives. The City shall fully cooperate with the Grantee.

§8.04. Separate Counsel. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, then upon the approval and consent of Grantee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and the Grantee shall pay the reasonable fees and expenses of such separate counsel. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

SECTION 9

INSURANCE REQUIREMENTS

§9.01. Minimum Coverage. Grantee shall maintain throughout the term of this Franchise:

- A. A commercial general liability insurance policy issued by a company duly authorized to do business in the State of Washington insuring the Grantee with respect to the installation, maintenance, and operation of Grantee's Cable System in the minimum amount of Two Million Dollars (\$2,000,000.00) per incident and Five Million Dollars (\$5,000,000.00) aggregate.
- B. An automobile liability insurance policy and, if necessary, a commercial umbrella liability insurance policy with a limit of not less than One Million Dollars (\$1,000,000) per accident. Such insurance shall cover liability arising out of any Grantee motor vehicle (including owned, hired, and non-owned vehicles).

§9.02. Increased Coverage. The City Council reserves the right to require Grantee to increase the minimum amounts of liability insurance coverage up to a maximum of Four Million Dollars (\$4,000,000) per incident if such increased coverage is deemed by City Council to be reasonably based on changes in statutory law, court decisions, or the claims history of the industry or the Grantee. Such requirement shall be expressed by resolution or ordinance.

§9.03. Endorsements. Grantee agrees that with respect to the insurance requirements contained in §9.01, all insurance certificates will contain the following required provisions:

- A. Name the City of Gig Harbor and its officers, employees, and elected representatives as additional insureds.
- B. Provide for thirty (30) days' notice to the City for cancellation, non-renewal or material change, or ten (10) days notice to the City in the event of non-payment of the premium.
- C. Shall be on an occurrence basis and shall be primary coverage of all losses resulting from Grantee's operations covered by the policies.

§9.04. Workers' Compensation. The Grantee shall maintain throughout the term of this Franchise workers' compensation and employers liability insurance in the amount required by all applicable federal and state laws.

§9.05. Certificate of Insurance. Upon acceptance of the Franchise, Grantee shall provide to the City and maintain on file throughout the term of the Franchise a certificate of insurance evidencing coverage as required in this Section.

§9.06. Insurance Term. The insurance required by §9.01 shall be kept in full force and effect by Grantee during this Franchise and thereafter until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of Grantee's Cable System, should such removal be required by City Council or undertaken by Grantee.

§9.07. Issuing Companies. Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

SECTION 10 PERFORMANCE BONDING

§10.01. Amount. Upon acceptance of the Franchise, Grantee shall furnish and file with the City a performance bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00). The bond shall be conditioned upon the faithful performance of the Grantee of all terms and conditions of the Franchise. If there is an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may require and Grantee shall thereupon establish and provide within thirty (30) days from receiving notice from the City, to the City as security for faithful performance by Grantee of all of the provisions of this Franchise, an additional performance bond in the amount of Twenty-Five Thousand Dollars (\$25,000).

§10.02. Reservation of Rights. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law.

§10.03. Endorsement. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled without notice to the City and issuance of a replacement bond. The City must be given thirty (30) days written notice by certified mail, return receipt requested, of intent to cancel or not to renew."

SECTION 11 CABLE SYSTEM CHARACTERISTICS

§11.01. Channel Capacity. Grantee's Cable System shall have the potential of providing no fewer than one hundred (100) Channels throughout the term of this Franchise. All Channels being offered to Subscribers within the Franchise Area will adhere to the technical standards set forth in paragraph 12.02 (A).

§11.02. New Construction. Any areas of the City where Grantee constructs new Cable System facilities, such facilities shall be built, at a minimum, to the same technical specifications as the Cable System existing in the City as of the effective date of this Franchise.

§11.03. Cable System Capabilities. Prior to the effective date of this Franchise, Grantee completed an upgrade of its Cable System. Concurrently, the Grantee modified

its Cable System from a traditional "Christmas tree architecture" to a hybrid fiber coaxial, fiber-to-the-node system architecture, with fiber-optic cable deployed from the headend to the node and coaxial cable deployed from the node to Subscriber's homes. Active and passive devices are capable of passing a minimum of 550MHz and capable of delivering more than 100 Channels of high quality analog or digital video signals, meeting or exceeding FCC technical quality standards. Emergency standby power is rated at a minimum of twelve (12) hours at the headend, two (2) hours at each fiber optic node located throughout the Cable System. During this Franchise, the Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications.

§11.04. Equal and Uniform Service. The Franchisee shall provide access to equal and uniform Cable Service offerings throughout the Franchise Area.

SECTION 12 OPERATIONAL STANDARDS

§12.01. Compliance with Applicable FCC Rules. Grantee shall comply with present and future applicable rules and regulations of the FCC including, but not limited to, technical standards, testing requirements, consumer protection standards and consumer electronics compatibility regulations and all other present and future rules and regulations of the FCC in connection with and relating to the operation of Grantee's Cable System.

§12.02. Technical Performance.

- A. Grantee's Cable System within the City shall meet or exceed all FCC and other applicable technical and signal quality standards for cable systems, including any such standards or regulations as hereinafter may be amended or adopted to the extent that compliance with such amended standards is mandated by law or regulation.
- B. Antennas, supporting structures, headend and associated equipment, outside plant used in the Cable System shall comply with any applicable federal, state or generally applicable City law.
- C. Grantee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical or telephone system located in any building, the cable system of another franchisee, or individual or master antennas used for receiving television or other broadcast signals.
- D. If the City contacts Grantee prior to the next FCC required test period (e.g., those generally conducted in February and August of each year), a City

representative may be present during the testing. Upon request, Grantee shall provide written summary reports of the results of such tests to the City.

- E. Grantee shall maintain all of its facilities and outside plant in a safe condition. Copies of the plant maintenance procedure manuals will be available for inspection at Grantee's office in Bremerton, Washington on written request, within thirty (30) days.
- F. Grantee shall keep and maintain a proper and adequate inventory of maintenance and repair parts for the Cable System. Grantee shall maintain or otherwise have available a work force of skilled technicians for Cable System repair and maintenance.
- G. Upon request, Grantee shall provide the City copies of all correspondence with the FCC related to technical performance of the Cable System in the Franchise Area. In the event that any complaints are filed with the FCC related to the Cable System operations, Grantee shall provide copies of such complaints as well as the resolution thereof to the City upon request.

§12.03. Parental Guidance Control. Upon request of a Subscriber, Grantee shall provide by sale and/or lease a device by which the Subscriber can prohibit viewing or use of a particular Cable Service(s) during periods selected by that Subscriber. Subscribers shall be notified in writing, by the Grantee of the availability of the device at least once per year.

§12.04. Customer Service. The Grantee shall provide customer service in accordance with the FCC standards set forth in 47 CFR 76.309(a-c). If the City enters into a subsequent franchise with any other competing cable operator and affords them more favorable terms relating to customer service standards Grantee shall be entitled to the benefit of the more favorable terms as well. Additionally, if the City subsequently adopts a Customer Service Standards ordinance the terms of that subsequent ordinance shall govern.

SECTION 13 SIGNALS TO BE CARRIED

§13.01. Required Programming Categories. To the extent they are reasonably available, Grantee shall carry the following general programming categories:

- A. News, Information and Government
- B. Movies
- C. Sports
- D. General Entertainment, Music and the Arts
- E. Children, Family
- F. Educational, Science, Foreign language

§13.02. Service for the Hearing Impaired. Grantee shall comply with any FCC requirements regarding altering or adapting programming for the hearing impaired. Grantee shall not take any action to remove or alter closed captioning provided for the hearing impaired as a part of any programming. Grantee shall deliver intact such closed captioning in the manner in which it arrives at the headend or from another origination source to the Cable System.

SECTION 14
PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS

§14.01. Initial Channels. Within forty-five (45) days of written request, Grantee shall dedicate one (1) Channel for the carriage of PEG Programming. The Grantee shall ensure that such PEG Channel is of a technical quality comparable to any other Channel offered over the Cable System. To the extent allowed by law, the City agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the City's use of the PEG Channels required herein.

§14.02. Additional Channels.

- A. Grantee shall make available up to two (2) additional PEG Channels (for a total of 3 PEG Channels) based on demonstrated community need and subscriber support for additional channels.
- B. If all the Video Programming Services offered by Grantee on the Cable System are in a digital format, Grantee shall likewise make the PEG Channels available in a digital format.

§14.03. Delivery of PEG Programming. PEG Programming may be in analog or digital format, so long as it is compatible with the technology utilized by the Cable System for delivery to Subscribers on the lowest tier of service in accordance with applicable law.

§14.04. Management and Control of PEG Channels. The City may, at its discretion, allocate and reallocate the PEG Channels amongst Public, Educational and Government Access Programming. The City may authorize a third party(ies) to control and manage the use of any or all PEG Channels dedicated for City use, and their related facilities. The City, or its designee, may formulate rules for the operation of PEG Channels consistent with this Franchise and federal law.

§14.05. Relocation of Access Channels. Grantee will use reasonable efforts to minimize the movement of PEG Channel assignments. Grantee shall provide the City with at least forty-five (45) days' notice, prior to the time any PEG Channel designation is changed, unless the change is required by federal law, in which case Grantee shall give the City the maximum notice possible. Grantee shall notify customers of the Access Channel's relocation in the form of a bill message. Any new Channel designations for the PEG Channels provided

pursuant to this Franchise shall be in full compliance with FCC signal quality and proof-of-performance standards.

§14.06. PEG Capital Support. Effective sixty (60) days after written request and continuing during the term of this Franchise, Grantee shall pay to City a Capital Contribution for PEG Access capital expenditures in the amount of fifteen cents (\$.15) per Subscriber per month. Grantee shall make Capital Contribution payments quarterly, no later than thirty (30) days following the end of the quarter. Grantee shall pay interest in accordance with IRS specified interest amounts for corporate underpayments for the applicable period, on PEG Capital Support payments, or portions thereof, that are paid subsequent to the specified payment dates. The City agrees that 47 C.F.R. §76.922 permits Grantee to add the cost of the Capital Contribution to the price of Cable Services and to collect the Capital Contribution from Subscribers. In addition, as permitted in 47 C.F.R. §76.985, all amounts paid as the Capital Contribution may be separately stated on Subscriber's bills as a Government Access capital equipment fee.

§14.07. Technical Assistance. Within four (4) hours of receipt of a request from the City regarding a problem with a PEG Channel, Grantee shall commence research to determine whether or not the problem with the PEG Channel is the result of matters for which Grantee is responsible and, if so, Grantee will take prompt corrective action. Such assistance will be at no charge to the City. Grantee is responsible for all maintenance, repair and replacement of any return lines and associated equipment from Grantee's side of the fiber termination panel at the PEG origination sites to the headend. The City is responsible for all maintenance, repair and replacement of facilities and equipment on the City-side of the fiber termination panel at the PEG origination sites. Grantee agrees to install equipment provided by the City at the PEG origination sites and provide technical support for the installation for six months after the date of installation.

SECTION 15 EMERGENCY USE OF THE CABLE SYSTEM

§15.01. Emergency Alert Capability.

- A. Grantee shall provide an operating Emergency Alert System ("EAS") in accordance with and at the time required by the provisions of federal laws, including FCC regulations.
- B. The City shall only permit appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System that in any manner results in an inappropriate use thereof. To the extent allowed by law, the City shall hold the Grantee, its employees and officers harmless from any claims arising out of the emergency use of the EAS facilities by the City, including, but not limited to, reasonable attorneys' fees and costs.

- C. Grantee shall ensure that the EAS is functioning properly at all times. It will test the EAS periodically, in a manner consistent with sound operational practices for emergency systems. Grantee will advise the City of the testing schedule and the City and/or its authorized representative may be present for the tests.

SECTION 16 FREE DROPS AND SERVICE

§16.01. Free Drops and Service. Free drops and service provided pursuant to this section are a voluntary initiative of Grantee and Grantee agrees to continue the service throughout the term of the Franchise to existing City owned and occupied buildings, schools and public libraries. Complimentary service is defined as standard installation, one outlet per building per campus and basic service. For purposes of this section, "school" means all State-accredited public and private K-12 schools. In addition, Grantee shall provide, at no cost to the City or other entity, throughout the term of this Franchise, one outlet of Basic Cable Service to new buildings that are owned or leased and occupied by the City, schools and public libraries where service is not being provided as of the effective date of this Franchise. If additional outlets of Basic Cable Service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

The complimentary Cable Service described herein shall be limited to those locations where the drop line from the feeder cable to such building does not exceed one hundred twenty-five aerial feet (125') or sixty feet (60') underground unless the City or other entity agrees to pay the actual incremental cost of such drop line in excess of one hundred twenty-five aerial feet (125') or sixty feet (60') underground.

This complimentary service is provided for the benefit of the Community and shall only be accessible to the employees of the receiving institutions. This complimentary service shall not be made available to the general public such as on a commercial basis. The City shall guarantee that its use will not conflict with Grantee's general policies regarding commercial contracts. The City shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service provided under this section.

§16.02 Low Income Discount. Grantee has historically granted a thirty percent (30%) discount to Subscribers who are low income and are aged 65 years or older or disabled to its Basic Cable Service Subscribers (provided they are not already receiving a package discount and provided further they are the legal owner or lessee/tenant of the dwelling unit). Grantee, as a voluntary initiative, is encouraged to continue to offer a discount to these individuals. For purposes of this discount, Subscribers are considered low income if their combined disposable income from all sources does not exceed the Housing and Urban

Development Standards for the Seattle/Everett Area for the current and preceding calendar year. As of the Effective Date of this Franchise Grantee is offering this low income discount as described herein.

SECTION 17
PAYMENT TO CITY

- §17.01. Amount and Time. As compensation for the right, privilege, and Franchise herein conferred, Grantee shall pay to City each year during the term of this Franchise a sum equal to five percent (5%) of the Grantee's Gross Revenues. Such payments shall be made quarterly within forty-five (45) days after the expiration of each calendar quarter. Accompanying the payment, Grantee shall submit a written report verified by an authorized representative of Grantee, containing an accurate statement of Grantee's Gross Revenues by category, and the computation thereof.
- §17.02. Annual Financial Report. Grantee shall file with the City within ninety (90) days following the end of each calendar year, or portion thereof during which the Franchise is in effect, a certified statement of Gross Revenues, prepared according to generally accepted accounting principles, showing Gross Revenues by significant category used in the computation of Franchise fee payments for the previous year.
- §17.03. Right of Inspection of Records. The City shall have the right to inspect Grantee's records showing the Gross Revenues from which payments to the City are computed and to recompute any and all amounts paid under this Franchise. The City's right to audit and the Grantee's obligation to retain records related to a Franchise fee audit shall expire six (6) years after each Franchise fee payment has been made to the City. The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the books and records of the Grantee. If after a financial audit it is agreed that the Grantee has under paid amounts owed to the City in excess of ten percent (10%) then the City may require the Grantee to reimburse the City for the actual cost of the audit, such cost not to exceed Five Thousand Dollars (\$5,000) for each year of the audit period.
- §17.04. Late Payment Interest Charge. In the event any payment due quarterly is not received within forty-five (45) days from the end of the preceding quarter, Grantee shall pay interest on the amount due in accordance with IRS specified interest amounts for corporate under-payments for the applicable period.
- §17.05. Acceptance. Payments received from the Grantee under this Section shall not in any way limit or impair any of the privileges or rights of the City, whether under this Franchise or otherwise. No acceptance of any payment shall be construed as an accord that the amount paid is the correct amount, nor shall acceptance be construed as a release of any claim the City may have for additional amounts payable under the provisions of this Section, subject to the limitations in §17.03.

§17.06. Acts of Non-Collection. Any transaction or arrangement made for the purpose of evading Franchise fees payable under this Franchise is prohibited.

§17.07. Additional Commitments Not Franchise Fees. The Franchise fee payable hereunder shall be exclusive of and in addition to all taxes, fees for municipal improvements, the PEG Capital Fee and other lawful obligations of Grantee to City, subject to applicable law.

Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any annual period, Grantee agrees that the additional commitments herein are neither Franchise fees as defined under any federal law in effect as of the effective date of this Franchise, nor are the additional payments to be offset or credited against any Franchise fee payments due to the City.

SECTION 18

RECORDS AND REPORTS

§18.01. Notice. Unless expressly otherwise agreed between the parties, every notice or response required by the Franchise to be served upon the City or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when hand delivered, or five (5) business days after having been posted in a properly sealed and correctly addressed envelope and sent by certified or registered mail, postage prepaid.

The notices or responses to the City shall be addressed as follows:

Office of the Mayor
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335

With a copy to:
City Clerk
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335

The notices or responses to the Grantee shall be addressed as follows:

Comcast of Puget Sound, Inc.
Attention: General Manager
1225 Sylvan Way
Bremerton, WA 98310

With a copy to:
Comcast of Puget Sound, Inc.
Attention: Franchising and Local Government Relations
15815 25th Avenue West
Lynnwood, Washington 98087

The City and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

§18.02. Books of Account. Grantee shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise and its exhibits. All such books of accounts and records related to enforcement of the Franchise shall be made available for inspection by the City at Grantee's office in Lynnwood, Washington, during normal business hours upon thirty (30) days' advance notice. If Grantee elects to move the books of accounts and records relating to the enforcement of this Franchise elsewhere, Grantee must make said books and records available and pay the travel costs, lodging, meals and any copying expenses or a City representative to visit the site where the books and records may be found, if such a review is requested by the City. Grantee shall maintain the books and records for Franchise compliance purposes for a period of five (5) years. If Grantee maintains books and records related to enforcement of the Franchise for a period greater than five (5) years, City shall have access to those records.

§18.03. Confidentiality. Notwithstanding anything to the contrary set forth in this Section, Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously indentifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State and federal law. Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act or any other applicable federal or State privacy law. In the event that the City receives a public records request for the disclosure of information Grantee has designated as confidential, trade secret or proprietary, the City shall promptly provide notice of such disclosure and a copy of any written request so that Grantee can take appropriate steps to protect its interests within ten (10) days of receiving notification of the City's intended disclosure. Nothing in the Section 18.03 prohibits the City from complying with RCW 42.56, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Grantee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order requested by Grantee which prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court

order, Grantee shall reimburse the City for any fines or penalties imposed for failure to disclose such records.

§18.04. Quarterly Reports. A report shall be filed by Grantee with the City within forty-five (45) days following the end of each calendar quarter, or portion thereof during which the Franchise is in effect. At the Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. Grantee shall notify the City of such a change thirty (30) days in advance. The material substance of the report shall be in a form reasonably acceptable to the City. The information contained within the quarterly report shall include, but not be limited to:

A. The Gross Revenue report required by subsection 17.01.

§18.05. Annual Report. A report shall be filed by Grantee with the City within ninety (90) days following the end of each calendar year, or portion thereof during which the Franchise is in effect. At the Grantee's option, the measurements and reporting above may be changed from calendar years to billing or accounting years. Grantee shall notify the City of such a change thirty (30) days in advance. The information contained within the annual report shall include, but not be limited to:

A. Total number of Subscribers and Basic Service only Subscribers, subject to subsection 18.03.

B. The Gross Revenue report required by subsection 17.02.

C. A summary of any new services being offered.

D. A PEG capital support recovery report.

Such report shall be certified by a representative of the Grantee knowledgeable of the operations of the Grantee within the City. Grantee shall also provide the City a copy of the publicly-available annual report of the Grantee's parent company, when available.

§18.06. Performance Reports. Upon written request, but no more frequently than once a year, the City may request a report which may include any or all of the following, depending on the needs of the City:

A. Records of all written complaints received by Grantee for the previous year. The term "complaint" as used herein refers to escalated concerns about any aspect of the Cable System or Grantee's cable operations.

B. Records of outages for the previous year, indicating date, duration, area, and the number of Subscribers affected, type of outage and cause.

- C. Records of service calls for repair and maintenance for the previous year, indicating the date and time service was required, the date of acknowledgment, the date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved.
- D. Records of installation/reconnection and requests for service extension for the previous year, indicating the date of request, date of acknowledgment, and the date and time service was extended.

SECTION 19 REGULATION OF RATES

- §19.01. City Regulation of Grantee's Rates. All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.
- §19.02. Notice of Rates. Upon request, Grantee shall provide a copy of its rates and charges for any and all of its Cable Services in the City and shall notify the City of any changes to such rates and charges in compliance with any timing requirements prescribed in FCC regulations.
- §19.03. Customer Billing. Customer billing shall be itemized by service(s) per FCC regulation 76 CFR 309 (B)(ii)(A).

SECTION 20 EMPLOYMENT REQUIREMENTS

- §20.01. Equal Opportunity in Employment. Grantee shall afford equal opportunity in employment to all qualified Persons. No Person shall be discriminated against in employment because of race, color, religion, national origin, or gender.

SECTION 21 PROHIBITION OF DISCRIMINATORY OR PREFERENTIAL PRACTICES

- §21.01. No Rate Discrimination. All Grantee rates and charges shall be published in the form of a publicly-available rate card, made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law. Grantee shall permit Subscribers to make any in- residence connections the Subscriber chooses without additional charge and without penalizing the Subscriber therefore. If any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged appropriate service charges by Grantee. Nothing herein shall be construed to prohibit:

- A. The temporary reduction or waiving of rates or charges in conjunction with promotional campaigns;
- B. The offering of rate discounts for Cable Service to governmental agencies or educational institutions; or
- C. Offering of bulk discounts for Multiple Dwelling Units.

SECTION 22
ASSIGNMENT OF FRANCHISE

- §22.01. City Approval of Assignment Required. This Franchise shall not be assigned, sold or transferred, or otherwise encumbered, to any third party that does not possess the legal, technical or financial qualifications to operate the Cable System without the prior consent of the City expressed by resolution or ordinance, and then only under such conditions as may be lawfully prescribed therein. Within thirty (30) days of receiving the request for transfer, the City shall notify the Grantee, in writing, of the information it requires to determine whether the FCC Form 394 (the transfer application) is complete so that the City can ascertain the legal, financial, and technical qualifications of the transferee. If the City has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving a complete FCC Form 394, consent by the City shall be deemed given. No assignment to any Person shall be deemed effective until the transferee has filed with the City an instrument in writing, duly executed, reciting the fact of such assignment, accepting the terms of this Franchise, and agreeing to comply with all lawful provisions hereof, subject to applicable law.
- §22.02. City Approval of Change of Control Required. The Grantee shall promptly notify the City of any proposed change of Control of the Grantee. For the purpose of determining whether the City shall consent to such change of Control, the City may inquire into the legal, financial, and technical qualifications of the prospective controlling party, but shall do so within thirty (30) days of receipt of the requested change of Control from the Grantee. Grantee shall assist the City in such inquiry and will respond within ten (10) days unless a longer time is reasonably necessary to respond or allowed by law. No change of Control to any Person shall be deemed effective until the transferee has filed with the City an instrument in writing, duly executed, reciting the fact of such change in Control, accepting the terms of this Franchise, and agreeing to comply with all lawful provisions hereof, subject to applicable law.
- §22.03 Change in Control Terms. In reviewing a request for assignment or change of Control, the City may inquire into the legal, technical, and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said assignment or change of Control upon such terms and conditions which are consistent with federal law;

provided, however, that any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee.

§22.04 No Waiver. The consent or approval of the City to any assignment of the Franchise or change in Control pursuant to this Section 22 shall not constitute a waiver or release of any rights of the City either pursuant to law or the Franchise itself.

SECTION 23

FRANCHISE VIOLATIONS, NOTICE AND LIQUIDATED DAMAGES

§23.01. Notice of Default; Opportunity to Cure; Public Hearing.

- A. Notice of Default. The City shall notify the Grantee, in writing, of any alleged failure to comply with a provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Grantee shall have thirty (30) days subsequent to receipt of the notice in which to:
1. respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below; or
 2. cure the default; or
 3. notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City, in writing and in detail, as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.
- B. If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with subsection (A)(2), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Grantee of the meeting, in writing, and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the

meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

- C. If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or violation within fifteen (15) days or within such other reasonable timeframe as the City shall determine.
- D. The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such determination may be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

§23.02. City Action in Event of Violation. Subject to the City's compliance with the cure notice and procedures given in §23.01 and in the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

- A. Seek liquidated damages pursuant to §23.03;
- B. In the case of violation of a material provision of the Franchise or other material violation as set forth in §24.01 and §24.02, seek to revoke the Franchise pursuant to §24.03;
- C. Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

Notwithstanding the foregoing, the City may not pursue monetary damages or liquidated damages in addition to the interest specified in §17.04 for late payment of Franchise fees; or monetary damages or liquidated damages in addition to the interest specified in §14.06 for late payment of the PEG Capital Fee.

§23.03. Liquidated Damages.

- A. If Grantee remains in violation following this cure period, the City may charge to and collect from Grantee the liquidated damages set forth in subsection (E) below, with liquidated damages beginning to accrue no earlier than the day following the end of the cure period set forth in §23.01 above. If the City pursues liquidated damages, the Grantee may elect, in response, to request to enter into arbitration pursuant to §23.04 below. If the Grantee enters into arbitration, liquidated damages shall be tolled from the date of Grantee's election for the full duration of the arbitration proceeding, before accruing again. If Grantee prevails at arbitration liquidated damages shall be waived, if the City prevails in

arbitration liquidated damages shall accrue until Grantee corrects the violation.

- B. The parties agree that actual damages that might be sustained by the City by reason of Grantee's violation of the Franchise provisions below, are uncertain and difficult to ascertain, and that the sums set forth below are reasonable compensation for such violation, and Grantee promises to pay, and the City agrees to accept, such sums as liquidated damages, and not as a penalty, in the event of such violation.
- C. Additionally such sums of money shall be considered liquidated damages due the City by Grantee by reason of inconvenience to the public and because of public works supervision and maintenance and other City administrative time and involvement which resulted in the expenditure of public funds due to Grantee's failure to comply with certain provisions in this Franchise.
- D. Grantee covenants that any such sums paid to the City under this Franchise provision shall not be included in the development of any rate, change, or price for services charged to Subscribers.
- E. The specific amounts of liquidated damages are as follows:
 - (1) For failure of Grantee to provide any report, certificate or map to the City as required by this Franchise, Fifty Dollars (\$50) per day.
 - (2) For failure to comply with the service availability requirements set forth in Section 4, the greater of Fifty Dollars (\$50) per day or One Dollar (\$1.00) per day per impacted Subscriber.
 - (3) For failure of Grantee to respond, restore or repair the Public Rights-of-Way within forty-eight (48) hours of notice by City under §7.03, Two Hundred Fifty Dollars (\$250) per day for every day following forty-eight (48) hours after Grantee's receipt of the notice.
 - (4) Should the City adopt any lawful and generally applicable ordinance governing the Public Rights-of-Way which includes administrative fees for City-performed relocation of Grantee facilities, such fees in the ordinance shall apply to the Grantee and supersede the ability of the City to collect liquidated damages under the Franchise for relocation violations.
 - (5) For failure of Grantee to provide a cable system in accordance with Section 11, One Thousand Dollars (\$1000) per day.

- (6) For failure of Grantee to provide the PEG Channels as required by Section 14, Two Hundred Fifty Dollars (\$250) per day.
- (7) For failure of Grantee to provide the notice of rates as required by §19.02, Twenty-Five Dollars (\$25) per day.
- (8) For departure of fifteen percent (15%) measured over a quarterly period from FCC Customer Service Standards, Fifty Dollars (\$50) per day.
- (9) For failure to comply with any other material breaches of the Franchise, Two Hundred Fifty (\$250) per day.

§23.04 Arbitration.

- A. All disputes relating to the interpretation, application or enforcement of liquidated damages under § 23.03 may be arbitrated as provided below.
- B. Either party may initiate arbitration by sending written notice to the other.
- C. In the event an arbitration is initiated, each party has fifteen (15) days from the date of receipt of written notice, to provide to the other party in writing, a list of six persons qualified to serve as arbitrators with no affiliation or relationship with either party that would tend to affect the person's ability to act as a neutral arbitrator, and acceptable to that party.
- D. The City and Grantee shall mutually select an arbitrator from the list within five (5) days after the exchange of proposed arbitrators information. If the City and Grantee are unable to agree upon an arbitrator within the time specified herein, then an arbitrator shall be appointed by the Chief Judge of the Federal District Court for the Western District of Washington or, if said judge declines to act, by the Presiding Judge of the Pierce County Superior Court.
- E. After an arbitrator has been selected, he or she shall take an oath to serve neutrally and impartially. The arbitrator shall then schedule such discovery or other exchange of documents and information as is appropriate to the issue and a date, time and place for hearing the presentations of the City and the Grantee. The hearing shall occur not less than sixty (60) days and not more than one hundred (100) days after the appointment of the arbitrator unless the parties mutually agree to a different schedule or an extension is granted by the arbitrator for good cause shown. The arbitrator shall make a written report to the City and the Grantee on their final determination within thirty (30) days after

completion of the hearing. The determination of the arbitrator shall constitute a final arbitration determination, appealable to a court of competent jurisdiction by either party.

- F. The arbitration shall be conducted in Seattle, Washington, in accordance with the existing rules of the American Arbitration Association, but not under the auspices or control of the AAA unless the parties so agree. Judgment upon any award by the arbitrator may be entered by the state or federal court having jurisdiction.
- G. Each party shall be responsible for its own costs of arbitration.
- H. Statutes of limitation applicable under Washington law shall apply to proceedings in arbitration.

§23.05. Force Majeure. Other than its failure, refusal, or inability to pay its debts and obligations, including, specifically, the payments to the City required by this Franchise, Grantee shall not be declared in default or be subject to any sanction under any provision of this Franchise in those cases in which performance of such provision is prevented by reasons beyond its control.

§23.06. Reservation of Rights. The rights reserved to the City under this Section are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right shall affect any other right the City may have.

§23.07. Venue and Jurisdiction. Venue and jurisdiction for any action for breach or default of this agreement will lie in Pierce County, Washington.

§23.08. No Third-Party Beneficiaries. Nothing in this Franchise is or was intended to confer third-party beneficiary status on any Person or any member of the public to enforce the terms of this Franchise.

§23.09. Captions. The captions and headings of Sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of this Franchise. Such captions shall not affect the meaning or interpretation of this Franchise.

SECTION 24

REVOCATION OF FRANCHISE

§24.01. General. In addition to all rights and powers of the City by virtue of this Franchise or otherwise, the City reserves, as an additional and as a separate and distinct power, the right to revoke the Franchise in accordance with the procedures specified herein if any of the following events occur or for any of the following reasons:

- A. Grantee by act or omission violates any material term, condition, or provision of this Franchise and fails or refuses to effect material compliance following the notice and opportunity to cure specified under §23.01.
- B. Grantee knowingly or willingly attempts to evade any material provision of this Franchise.
- C. Grantee knowingly makes a false entry or statement regarding any material provision under this Franchise in any reports or records provided to the City.
- D. Repeated and substantial violation or willful disregard of:
 - (1) the City's lawful ordinances and regulations related to the Public Rights-of-Way; or
 - (2) the FCC Customer Service Standards; or
 - (3) the Cable System technical performance requirements in Section 12.
- E. The occurrence of any event which may reasonably lead to the foreclosure or other similar judicial or non-judicial sale of all or any material part of the Cable System.
- F. Grantee becomes insolvent or is adjudged bankrupt or all or any part of Grantee's facilities are sold under an instrument to secure a debt and are not redeemed by Grantee within thirty (30) days from the date of such sale; provided, however, this shall not be an event of termination or cancellation in the event of bankruptcy proceeding and the trustee, receiver, or debtor in possession agrees in writing to be bound by the terms of this Franchise.
- G. Grantee has been found by a court of law to have practiced any fraud or deceit in its conduct or relations under this Franchise with the City, Subscribers or potential Subscribers.

§24.02. Method of Revocation. Should the City Council determine, following the process set forth in §23.01 (to the extent applicable,) that its selected course of action shall be to seek revocation of the Franchise, the City shall give Grantee written notice of such intent. The notice shall set forth the causes and reasons for the proposed revocation, shall advise Grantee that it will be provided an opportunity to be heard by City regarding such proposed action before any such action is taken, and shall set forth the time, date, and place of the hearing. In no event

shall such hearing be held less than thirty (30) days following delivery of such notice to Grantee. At the hearing, the Grantee shall be entitled to all rights of due process consistent with the City procedures including, but not limited to, the right to present evidence, examine witnesses and the right to be represented by counsel. Any such revocation of this Franchise shall be by ordinance.

- §24.03. Grantee May Appeal City's Decision. The Grantee may appeal the City's decision to revoke the Franchise to an appropriate court, which shall have the power to review the City's decision de novo and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City.

SECTION 25 VALUATION

- §25.01. Purchase Price of Cable System. If the Franchise is revoked for cause and the parties agree that the City may purchase the Cable System, the City may purchase the Cable System at an equitable price. If renewal of the Franchise is lawfully denied and the parties agree that the City may purchase the Cable System, the City may purchase the Cable System at fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the Franchise itself. Should the parties fail to agree upon the equitable price or the fair market value of the Cable System, the same shall be determined in an appropriate proceeding filed in any court having jurisdiction.

SECTION 26 FAILURE OF CITY TO ENFORCE FRANCHISE

- §26.01. No Waiver of Terms. The Grantee shall not be excused from complying with each and all of the terms, conditions, and provisions of this Franchise even though the City should upon one or more occasions fail to insist upon, to require, or to seek compliance with any such term, condition, or provision.

SECTION 27 RECOURSE, UNDERSTANDING, CONSTRUCTION, AND SEVERABILITY

- §27.01. Requirements and Enforcement. Except as expressly provided herein, Grantee shall have no monetary recourse whatsoever against City of any loss, cost, expense, or damage arising out of the provisions or requirements of this Franchise or because of the enforcement thereof by City or because of the lack of City's authority to grant all or any part of this Franchise.
- §27.02. Grantee's Understanding. Grantee expressly acknowledges that in accepting this Franchise, it relied solely upon its own investigation and understanding of the power and authority of City to grant this Franchise and that Grantee was not induced to accept this Franchise by any understanding, promise, or other

statement, verbal or written, by or on behalf of the City or by any third Person concerning any term or condition not expressed herein.

This Franchise, including all Exhibits, embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

§27.03. Construction of Franchise. By acceptance of this Franchise, Grantee acknowledges that it has carefully read the provisions hereof and is willing to and does accept all of the risks of the meanings of such provisions.

§27.04. Provisions Severable. If any provision, section, subsection, paragraph, sentence, clause, or phrase of this Franchise is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Franchise. It is the intent of the City in adopting this Franchise that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this Franchise are declared to be severable.

SECTION 28 ACCEPTANCE OF FRANCHISE

§28.01. Method of Acceptance. Within sixty (60) days from the publication date of this Franchise, Grantee shall file with the City Clerk a written instrument, executed and sworn to by a corporate officer of the Grantee before a Notary Public, in the following form signed in its name and behalf:

“To the Honorable Mayor and City Council of the City of Gig Harbor, Washington: For itself, its successors, and assigns, Comcast of Puget Sound, Inc., duly authorized to do business in the State of Washington, hereby accepts the attached Franchise and agrees to be bound by all of its terms, conditions, and provisions, subject to applicable law.

COMCAST OF PUGET SOUND, INC.

By: _____

Its: _____

Dated this _____ day of _____, 2012.”

§28.02. Acceptance of Franchise Not a Waiver. Acceptance of this Franchise by Grantee shall not constitute a waiver by it of any of its rights.

§28.03. Effective Date. Subject to the acceptance by Grantee, this Franchise shall be effective five (5) days after its publication and passage as required by law.

BY THE CITY COUNCIL AND APPROVED BY ITS MAYOR ON THIS ____th day of _____, 2012.

THE CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:

Angela S. Belbeck, Attorney for the City of Gig Harbor

Filed with the City Clerk:
Adopted by the City Council:
Publication Date:
Effective Date:



Subject: Public Hearing and First Reading of Ordinance – 2012 Comprehensive Plan Amendments

Proposed Council Action: Hold public hearing, review amendments and draft ordinance.

Dept. Origin: Planning Department

Prepared by: Jennifer Kester
Senior Planner *JK*

For Agenda of: October 22, 2012

Exhibits: Draft ordinance; Planning Commission recommendation; Planning Commission minutes

Initial & Date

Concurred by Mayor: *cut 10/15/12*
Approved by City Administrator: *R 10/15/12*
Approved as to form by City Atty: _____
Approved by Finance Director: *N/A*
Approved by Department Head: *TD 10/15/12*

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

The attached ordinance reflects the Planning Commission’s recommendation on the Transportation Element policy amendments forwarded to them for inclusion in the 2012 annual review cycle. After the docket hearing in February for the 2012 cycle, the Council decided not to forward the Glaser land use map amendment on to the Planning Commission for further processing.

Active Application:

PL-COMP-12-0002: Transportation Element. A city-sponsored Comprehensive Plan text amendment to update the Transportation Element to include additional policies that encourage and enhance pedestrian and vehicular connections in the downtown area.

The Planning Commission reviewed the proposed amendments at one public hearing and one work study session. No members of the public testified at the public hearing. At their September 20th meeting, the Planning Commission voted to recommend approval of the transportation policies. A notice of the Planning Commission recommendation and their findings is enclosed.

POLICY ANALYSIS

The process for Comprehensive Plan amendment (Chapter 19.09) states that the City Council shall consider the Planning Commission’s recommendations and after considering the criteria found in GHMC 19.09.170 make written findings regarding each application’s consistency or

inconsistency with the criteria. Those amendments which are consistent with the criteria should be approved. The applicable criteria for approval are included in the ordinance.

ENVIRONMENTAL ANALYSIS

The SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the proposed amendments on April 18, 2012 per WAC 197-11-340(2). The appeal period for the DNS expired on June 18, 2012.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

Having reviewed the proposed 2012 Comprehensive Plan amendments, the City of Gig Harbor Planning Commission recommended the City Council **APPROVE** the Transportation Element policies (PL-COMP-12-0002).

RECOMMENDATION / MOTION

Hold public hearing, review amendments and draft ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO GROWTH MANAGEMENT AND PLANNING, MAKING THE FOLLOWING AMENDMENT TO THE CITY OF GIG HARBOR COMPREHENSIVE PLAN FOR THE 2012 ANNUAL CYCLE: ADDING POLICIES TO THE TRANSPORTATION ELEMENT TO ENCOURAGE AND ENHANCE PEDESTRIAN AND VEHICULAR CONNECTIONS IN THE DOWNTOWN; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Gig Harbor plans under the Growth Management Act (chapter 36.70A RCW); and

WHEREAS, the Act requires the City to adopt a Comprehensive Plan; and

WHEREAS, the City adopted a revised GMA Comprehensive Plan as required by RCW 36.70A.130 (4) in December 2004; and

WHEREAS, the City is required to consider suggested changes to the Comprehensive Plan (RCW 36.70A.470); and

WHEREAS, except under circumstances not applicable here, the City may not amend the Comprehensive Plan more than once a year (RCW 36.70A.130); and

WHEREAS, the City is required to provide public notice and public hearing for any amendments to the Comprehensive Plan and the adoption of any elements thereto (RCW 36.70A.035, RCW 36.70A.130); and

WHEREAS, on February 27, 2012, the City Council evaluated the comprehensive plan amendment applications submitted for the 2012 annual cycle, held a public hearing on such applications, and forwarded the transportation element policies comprehensive plan amendment (PL-COMP-12-0002) to the Planning Commission for further processing in the 2012 Comprehensive Plan annual cycle; and

WHEREAS, Application PL-COMP-12-0001, the Glaser-Grandview St. land use map amendment, was not forwarded to the Planning Commission for further processing after the public hearing was closed on February 27, 2012; and

WHEREAS, on April 18, 2012, the City's SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the comprehensive plan amendment application (PL-COMP-12-0002), pursuant to WAC 197-11-340(2), which was not appealed; and

WHEREAS, the Planning Director notified the Washington State Department of Commerce of the City's intent to amend the Comprehensive Plan and forwarded a copy of the proposed amendments on April 19, 2012 pursuant to RCW 36.70A.106; and

WHEREAS, the Planning Commission held a work study session on September 6, 2012 to discuss the proposed amendments; and

WHEREAS, the Planning Commission held a public hearing on the Comprehensive Plan amendments on September 20, 2012; and

WHEREAS, after the public hearing on September 20, 2012, the Planning Commission voted to recommend approval of the proposed amendments as documented in the Planning Commission's written recommendations signed by Planning Commission Chair, Harris Atkins, dated September 26, 2012; and

WHEREAS, on _____, 2012, the Gig Harbor City Council had a public hearing and first reading of an Ordinance amending the Comprehensive Plan as recommended by the Planning Commission; and

WHEREAS, on _____, 2012, the Gig Harbor City Council had a second reading of an Ordinance amending the Comprehensive Plan as recommended by the Planning Commission;

Now, Therefore,

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

Section 1. Comprehensive Plan Amendments.

A. **Notice.** The City Clerk confirmed that public notice of the public hearing held by the City Council on the following applications was provided.

B. **Hearing Procedure.** The City Council's consideration of the comprehensive plan text amendments is a legislative act. The Appearance of Fairness doctrine does not apply.

C. **Testimony.** *To be inserted after public hearing*

D. **Criteria for Approval.** The process for Comprehensive Plan amendments (Chapter 19.09) states that the City Council shall consider the Planning Commission's recommendations and after considering the criteria found in GHMC 19.09.170 shall make written findings regarding each application's consistency or inconsistency with the criteria. The criteria found in GHMC 19.09.170 are as follows:

19.09.170 Criteria for approval.

A. The proposed amendment will further and be consistent with the goals, policies and objectives of the comprehensive plan; and

B. The proposed amendment is consistent with the Growth Management Act, the countywide planning policies and other applicable interjurisdictional policies and agreements, and/or other state or local laws; and

C. The proposed amendment will not adversely impact the city's ability to provide sewer and water, and will not adversely affect transportation facilities and other public facilities and services such as parks, police, fire, emergency medical services and governmental services; and

D. The proposed amendment advances the public interest; and

E. For text amendments which propose to increase density or intensity of permitted development and all land use map amendments, the following approval criteria also apply:

1. Adequate infrastructure, facilities and services are available to serve the proposed or potential development expected as a result of this amendment, according to one of the following provisions:

a. The city has adequate funds for needed infrastructure, facilities and services to support new development associated with the proposed amendments; or

b. The city's projected revenues are sufficient to fund needed infrastructure, facilities and services, and such infrastructure, facilities and services are included in the schedule of capital improvements in the city's capital facilities plan; or

c. Needed infrastructure, facilities and services will be funded by the developer under the terms of a development agreement associated with the comprehensive plan amendment; or

d. Adequate infrastructure, facilities and services are currently in place to serve expected development as a result of this comprehensive plan amendment based upon an assessment of land use assumptions; or

e. Land use assumptions have been reassessed, and required amendments to other sections of the comprehensive plan are being processed in conjunction with this amendment in order to ensure that adopted level of service standards will be met; and

2. For a land use map amendment, the subject parcels being redesignated are physically suitable for the allowed land uses in the designation being requested, including compatibility with existing and planned surrounding land uses; and

3. The proposed amendment will not create a demand to change land use designations of other properties, unless the change in land use designation for other properties is in the long-term interest of the community in general.

E. Applications. The City Council hereby enters the following findings and conclusions for each application:

1. COMP PL-12-0002 – Transportation Element.

Summary: Adding the following policies that encourage and enhance pedestrian and vehicular connections in the downtown area:

Two new policies under **Goal 11.1 CREATE AN EFFECTIVE ROAD AND SIDEWALK NETWORK**

Policy 11.1.10 Enhance walkability in the downtown area through sidewalk widening and improved sidewalk connections.

A. Provide for a pedestrian connection between Harborview Drive and Judson Street. The connection could be designed as a shared vehicular and pedestrian path with emphasis on pedestrian safety.

Policy 11.1.13 Encourage additional pedestrian or shared vehicular and pedestrian connections in the harbor area as development occurs to increase the ease of access and create useful and well-designed public ways.

Findings:

- a) Goal 11.1 of the Comprehensive Plan calls for the City to *create an effective road and sidewalk network*. The addition of the proposed policies to encourage and enhance connections in the downtown area provides more specificity on how that goal could be accomplished.
- b) The Council finds that the proposed policies are consistent with the Growth Management Act, Vision 2040 and the Pierce County Countywide Planning Policies as follows:
 - i. The Transportation Goal of the Growth Management Act is to *Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans*. (RCW 36.70A.020(3)). The Council finds that encouraging pedestrian and vehicular connections downtown meets this goal.
 - ii. Vision 2040 calls for improved local street patterns for walking and bicycling in order to enhance communities, connectivity and physical activity. (MPP-T-15)
 - iii. The adopted Countywide Planning Policies support the development of nonmotorized facilities. (Goal 8.5)
- c) The City Council finds that the proposed policies do not adversely affect the City's transportation facilities. Instead the policies help support improvements to the city's transportation facilities.
- d) This amendment serves the public interest by adding policies to encourage the development of infrastructure downtown for the citizens and users of Gig Harbor.

Conclusion: After consideration of the materials in the file, staff presentation, the Planning Commission recommendation, the City's Comprehensive Plan, criteria for approval found in Chapter 19.09 GHMC, applicable law, and public testimony, the City Council hereby **approves** application PL-COMP-12-0002 and hereby amends the Transportation Element accordingly.

Section 2. Transmittal to State. The Planning Director is directed to forward a copy of this Ordinance, together with all of the exhibits, to the Washington State Commerce Department within ten days of adoption, pursuant to RCW 36.70A.106.

Section 3. Severability. If any portion of this Ordinance or its application to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remainder of the Ordinance or the application of the remainder to other persons or circumstances.

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

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this ____ day of _____, 2012.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.



COMMUNITY DEVELOPMENT DEPARTMENT

NOTICE OF RECOMMENDATION
CITY OF GIG HARBOR PLANNING COMMISSION
PL-COMP-12-0002

TO: Mayor Hunter and Members of the Council
FROM: Harris Atkins, Chair, Planning Commission
RE: PL-COMP-12-0002 – Transportation Element

Having reviewed the proposal and after holding a public hearing on September 20, 2012, the City of Gig Harbor Planning Commission recommends the City Council **APPROVE** the following Comprehensive Plan amendment:

PL-COMP-12-0002: Transportation Element. Adding the following policies that encourage and enhance pedestrian and vehicular connections in the downtown area:

In the Transportation Element (Chapter 11): Two new policies under **Goal 11.1 CREATE AN EFFECTIVE ROAD AND SIDEWALK NETWORK**

Policy 11.1.10 Enhance walkability in the downtown area through sidewalk widening and improved sidewalk connections.
A. Provide for a pedestrian connection between Harborview Drive and Judson Street. The connection could be designed as a shared vehicular and pedestrian path with emphasis on pedestrian safety.

Policy 11.1.13 Encourage additional pedestrian or shared vehicular and pedestrian connections in the harbor area as development occurs to increase the ease of access and create useful and well-designed public ways.

CRITERIA FOR APPROVAL

The Planning Commission made this recommendation after reviewing the criteria for approval found in GHMC 19.09.170. The Planning Commission has determined that criterion E does not apply as the proposal is not a land use amendment and does not increase the density or intensity of permitted development. The recommendation is based on the following analysis of the applicable criteria:

A. The proposed amendment will further and be consistent with the goals, policies and objectives of the comprehensive plan; and

Goal 11.1 of the Comprehensive Plan calls for the City to *create an effective road and sidewalk network*. The addition of the proposed policies to encourage and enhance connections in the downtown area provides more specificity on how that goal could be accomplished.

B. The proposed amendment is consistent with the Growth Management Act, the countywide planning policies and other applicable interjurisdictional policies and agreements, and/or other state or local laws; and

The Planning Commission finds that the proposed policies are consistent with the Growth Management Act, Vision 2040 and the Pierce County Countywide Planning Policies as follows:

The Transportation Goal of the Growth Management Act is to *Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans*. (RCW 36.70A.020(3)). The Planning Commission finds that encouraging pedestrian and vehicular connections downtown meets this goal.

Vision 2040 calls for improved local street patterns for walking and bicycling in order to enhance communities, connectivity and physical activity. (MPP-T-15)

The adopted Countywide Planning Policies support the development of nonmotorized facilities. (Goal 8.5)

C. The proposed amendment will not adversely impact the city's ability to provide sewer and water, and will not adversely affect transportation facilities and other public facilities and services such as parks, police, fire, emergency medical services and governmental services; and

The Planning Commission finds that the proposed policies do not adversely affect the City's transportation facilities. Instead the policies help support improvements to the city's transportation facilities.

D. The proposed amendment advances the public interest; and

This amendment serves the public interest by adding policies to encourage the development of infrastructure downtown for the citizens and users of Gig Harbor.

Harris Atkins, Chairman
Planning Commission

Harris Atkins

Date 9/26/2012

cc: Planning File

City of Gig Harbor Planning Commission
Work Study Session
Planning and Building Conference Room
September 6, 2012
5:00 pm

PRESENT: Harris Atkins, Reid Ekberg, Craig Baldwin, Jim Pasin, and Bill Coughlin. Rick Gagliano and Michael Fisher were absent.

STAFF PRESENT: Staff: Tom Dolan and Jennifer Kester

CALL TO ORDER: at 5:00 p.m.

APPROVAL OF MINUTES:

Move to approve the minutes of June 21, 2012 as written. Pasin/Baldwin – Motion carried

Mr. Baldwin noted that on the minutes of July 5, 2012 he was listed as absent when he was present. Move to approve the minutes of July 5, 2012 as corrected. Pasin/Coughlin – Motion carried.

Ms. Kester noted that the minutes of August 16, 2012 had just been distributed tonight. Mr. Coughlin noted that Mr. Gagliano had intended to add some thoughts from the walking tour of August 16th. Ms. Kester agreed but said that she hadn't received those yet. It was decided that they would wait until the next meeting to adopt the minutes of August 16th and it would be noted at the bottom of the minutes the portions that were observations of a Planning Commission member.

WORK STUDY SESSION:

2012 Annual Comprehensive Plan Amendments

PL-COMP-12-0002: Transportation Element. A city sponsored Comprehensive Plan text amendment to update the Transportation Element to include additional policies that encourage and enhance pedestrian and vehicular connections in the downtown area.

Ms. Kester noted that these policies begin to implement some of the business strategies that were part of the Rod Stevens report. She noted that there needed to be supporting policies along capital projects on the books in order to partner with private developers to complete these projects.

Mr. Pasin asked why do the policies need to be so specific as to the streets. Ms. Kester stated that in sub-policies it does get a little more specific in order to identify the area. Mr. Pasin asked what a "shared vehicular pedestrian alley" meant. Ms. Kester said that it could mean many different things; it could have different materials to differentiate between the vehicular and pedestrian areas, but that the idea was to make sure that it

was an alley that could accommodate both. Discussion followed on what was meant by encourage. Ms. Kester went over the public and private streets in the area.

Senior Engineer Emily Appleton joined the meeting and gave a brief explanation of what the Engineering Department had intended in regard to the alleys vs. public roads in the area. She then discussed what shared vehicular and pedestrian areas meant. Mr. Dolan suggested more general language, stating something like “provide for a pedestrian connection between Harborview Dr and Judson St., due to the narrow existing rights of way for shared pedestrian/vehicular rights of way” so that it states that we want some kind of connection but it’s exact type and location can be figured as needed. Ms. Appleton stated that would be fine and meet the intent.

Mr. Atkins asked if this would be an appropriate time to add some policies regarding public parking. Mr. Dolan stated that he felt that there were already policies in the comprehensive plan that would allow the Planning Commission to explore those options.

Discussion followed on the importance of these policies in order to receive grants, update the public works standards and to accomplish capital projects.

Mr. Dolan stated that staff would rework the language and bring that back for the Public Hearing. Ms. Kester noted that the meeting would be held in the Community Rooms rather than the Council Chambers on September 20th at 5:00 for a work-study session and 6:00 for the public hearing. She asked if they wanted her to draft some initial findings or wait for the October meeting. The commission requested draft findings be developed for the September meeting.

OTHER BUSINESS

Appointment of an alternate DRB member

Mr. Dolan explained that currently Mr. Gagliano and Mr. Fisher are members of the DRB and recently we have had an issue when we didn’t have a quorum. He further explained that while Mr. Fisher is recuperating we should have an alternate and they could either attend all the meetings or only attend when necessary. Mr. Coughlin asked if this was temporary and Mr. Atkins explained that it would be a position that would always be filled. Mr. Atkins emphasized that if an alternate had attended a meeting on a certain project they should follow that project through. Mr. Pasin noted that it is a good learning experience to serve on the Design Review Board. Ms. Kester went over the makeup of the Design Review Board. It was decided to defer this issue until the next meeting so that everyone could check his or her schedules.

Work Study Session:

Downtown Zoning Code Amendments – Planning Commission review and identification of codes that inhibit the preservation of character-defining historic buildings

in the downtown. Follow-up discussion on downtown walking tour. Discussion of potential amendments and review schedule.

Ms. Kester stated that at the end of their walking tour she had suggested that the next step would be to take the previous discussion and select the items that warrant the development of code amendments. She went over the timeframes required for code amendment adoption. She added that their October 18th meeting has already been slated for an open house for the draft visioning statement. Mr. Dolan noted that staff can advise the City Council if more time is needed. Mr. Pasin felt that items 2, 4 and 6 could be worked on now (see below of list of items being referred to). Mr. Atkins wondered why #1 had been left out. It was decided to conduct a poll. Mr. Coughlin said 1 was a no brainer and that 6 was very critical. He agreed with Mr. Pasin that 2, 4 and 6 would make a big difference for the downtown. Mr. Baldwin said he liked 1, 2, 4 and 6. Mr. Atkins said he agreed with what had been said, start with 1, and then go to 6 then 2 and 4. Mr. Ekberg stated that he thought 1 and 2 were the easiest, he liked 4 and he liked 6 but didn't see how we would get there. Ms. Kester talked about what would be required to bring the proposals forward from here. Discussion followed on different ways to approach each of the proposals and different scenarios if the proposals were adopted. It was decided that 2 and 6 would be phase 1 and then they would think about 1 and 4 next. Ms. Kester said she would bring back language for 2 and 6 at the next meeting.

- 1. Grandfather existing building sizes (sq footage) in the DB Zone. Allow existing non-historic buildings to be torn down and re-built within the existing building envelope. (DRB approval required.)*
- 2. Allow increased floor area within an existing building's envelope (mezzanines, etc).*
- 3. Provide building size allowances to eligible or listed historic buildings in the View Basin if the front façade is preserved.*
- 4. Consider height increase allowances for buildings in the View Basin (up to 2 stories).*
- 5. Consider incentives for first floor retail/restaurant.*
- 6. Consider increasing the cost of remodel threshold for nonconforming buildings (currently 50% of replacement value).*

Mr. Atkins noted that he will not be at the first meeting in October. Mr. Ekberg said he won't be at the next meeting.

Ms. Kester noted that the city website now has the Town Hall meeting data posted. Discussion followed on some of the data gathered. Ms. Kester talked about what will happen at the open house on October 18th and how things will go forward after that for the visioning process.

ADJOURNMENT

MOTION: Move to adjourn at 6:41p.m. Baldwin/Coughlin – Motion carried.

City of Gig Harbor Planning Commission
Work Study Session and Public Hearing
Community Rooms
September 20, 2012
5:00 pm

PRESENT: Harris Atkins, Rick Gagliano, Craig Baldwin, Jim Pasin, and Bill Coughlin. Reid Ekberg and Michael Fisher were absent.

STAFF PRESENT: Staff: Jennifer Kester

CALL TO ORDER: at 5:00 p.m.

APPROVAL OF MINUTES:

The minutes of August 16th, 2012 were deferred to the next meeting to allow Mr. Gagliano time to provide additional notes.

Mr. Pasin noted in the minutes of September 6th the word “mean” needs to be added.

MOTION: Move to accept the minutes of September 6th, 2012 as corrected Pasin/Baldwin – motion carried.

WORK STUDY SESSION:

Downtown Zoning Code Amendments – Planning Commission review and identification of codes that inhibit the preservation of character-defining historic buildings in the downtown. Discussion of potential amendments.

Ms. Kester noted that at the last meeting they had decided to work on items 2 and 6 of the downtown code amendments. Item 2 was regarding the allowance of increased floor area within an existing building envelope (such as a mezzanine) and item 6 was to consider increasing the remodel threshold for nonconforming buildings. She provided some beginning code language for them to discuss.

Discussion was held on item 2. Mr. Pasin asked if this allowance was only for commercial structures. Ways in which you could expand gross floor area were discussed along with the need to possibly allow increased height for certain situations. Mr. Gagliano asked if they needed to specify whether the expansion needed to have additional parking. Ms. Kester said yes, that should be specified.

Discussion followed on item 6. Ms. Kester asked which zoning district this would apply to. She also noted that there are nonconforming uses of land and nonconforming structures and felt that they needed to clarify the application of this amendment. She further explained the nonconforming rules in the Shoreline Master Program. Discussion followed on ways to promote the retention of historic structures.

Mr. Coughlin asked about the tower on the church for example and Ms. Kester stated that the mass you have is the mass you would get. Mr. Gagliano noted that in some instances a building may be slightly over their property line and the city would have an opportunity to buy back some property to widen sidewalks. Ms. Kester said that it could say "unless it crosses a property line". She also noted that there are some issues with adverse possession.

They then went over the uses not allowed in DB and whether there were any existing non conformities for each. Mr. Gagliano noted that there needed some special exceptions for historic structures and Ms. Kester agreed and suggested perhaps requiring DRB review. Discussion continued on legal lots of record.

Ms. Kester spoke about keeping their focus more narrow or creating loop holes.

PUBLIC HEARING

2012 Annual Comprehensive Plan Amendments

PL-COMP-12-0002: Transportation Element. A city-sponsored Comprehensive Plan text amendment to update the Transportation Element to include additional policies that encourage and enhance pedestrian and vehicular connections in the downtown.

Chairman Atkins opened the public hearing at 6:00 p.m. Ms. Kester identified which of the policies would be affected and read them for the record.

The commission continued discussion on the proposed amendment. Mr. Pasin wondered if "downtown area" was the correct terminology. Ms. Kester stated that the term was intended to be fuzzy. Mr. Atkins wondered if it should say "harbor area".

There being no one present who wished to speak Mr. Atkins closed the public hearing at 6:10 p.m. Ms. Kester noted that she had prepared a recommendation but also pointed out that she needed to revise the title. Everyone agreed to change the terminology to harbor area.

MOTION: Move to accept the staff recommendation as presented with the exception that policy 11. 1.13 shall strike the word "downtown" and substitute the word "harbor". Gagliano/Pasin. Ms. Kester suggested a friendly amendment that the motion is a recommendation to the council and to authorize the chairman to sign. The amendment was accepted and the motion passed unanimously.

OTHER BUSINESS

Discussion continued on amendment #6. Ms. Kester asked which zones this should apply to, should it apply to a nonconforming use, structure or both. What should the threshold of rebuilding be, is it a percentage? How do we deal with historic structures that are eligible or are on the historic registry? What do we say about parking? Can

parcels be combined and still be given this right and can buildings be combined and be given this right? Mr. Pasin said he would like to discuss the parking issue. Mr. Coughlin stated that he didn't feel you should have to provide additional parking. Mr. Gagliano said he had heard business owners complaining about lack of parking. Mr. Pasin said he had heard the general public state that there is adequate parking. Mr. Gagliano felt that the city should provide more parking, but he didn't feel that building owners should have to provide more parking if they upgrade their building. Mr. Baldwin agreed that they should not require more parking. Mr. Atkins pointed out that the issue of parking also related to item #2 – Allow increased floor area within an existing building's envelope. Everyone agreed that if they are trying to provide an incentive then parking should not be required for either of these items. Ms. Kester asked for additional input on #2 regarding which areas it would apply to and what about height. Mr. Gagliano stated that he would say that if it's a flat roof building the height of the parapet is the maximum you could go to and it's a pitched roof the height of the ridge if the maximum and you could create dormers. Mr. Atkins asked if someone could find out if there are any nonconforming uses in relation to item #6. Discussion followed and everyone agreed that the existence of existing nonconforming uses didn't matter. The commission continued discussing the height issue. Ms. Kester felt that she had enough information to craft some language and item 2 and 6.

DRB Alternate

Mr. Pasin volunteered to serve as the alternate for a period of no more than 6 months. Ms. Kester clarified that quorum would be determined prior to a DRB meeting and then Mr. Pasin would be asked to attend. She noted that even if there was a quorum, he could attend at his option if Michael Fisher couldn't attend.

MOTION: Move to create a position for an alternate DRB member from the Planning Commission. Coughlin/Gagliano – Motion carried

MOTION: Move to appoint Jim Pasin to serve as the alternate for no more than 6 months. Coughlin/Gagliano – Motion carried.

OTHER BUSINESS

Mr. Gagliano drew a map illustration of what could occur in terms of heights and views if these incentive proposals were instituted. He noted where it would not make any impact.

Ms. Kester went over the schedule of upcoming meetings.

ADJOURNMENT

MOTION: Move to adjourn at 6:55 p.m. Pasin/Gagliano – Motion carried.