

Gig Harbor City Council Meeting

***On Tuesday due to
Veteran's Day Holiday
November 13, 2012
5:30 p.m.***



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
Tuesday, November 13, 2012 – 5:30 p.m.
(on Tuesday due to Veteran's Day Holiday)**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes Oct. 22, 2012.
2. Receive and File: Minutes of Council Worksession on SMP Oct. 22, 2012.
3. Liquor License Action: Application: Finholm Grocery.
4. Memorandum of Understanding with DNR for Removal of Invasive Vegetation at Ancich Park.
5. Contracts for Lobbying Services.
6. Resolution No. 913 – Sole Source Purchase of Equipment, Software, and Technical Support for Water Department SCADA System.
7. Resolution No. 914 – Sole Source Purchase of Equipment – Refurbished Stormwater Filter Cartridges.
8. Well No. 11 Production Well – Public Works Contract Award.
9. Second Reading of Ordinance – 2012 Comprehensive Plan Amendments.
10. Burnham Drive/Borgen Blvd. Roundabout Ramp Metering Project – Consultant Services Contract.
11. 2013 A/C Water Main Surveying – Consultant Services Contract.
12. Donkey Creek Restoration & Transportation Improvements Project – Public Works Contract Award.
13. Approval of Payment of Bills Nov. 13, 2012: Checks #70959 through #71106 in the amount of \$1,668,596.90.
14. Approval of Payroll for the Month of Oct.: Checks #6771 through #6786 and direct deposits in the amount of \$322,572.05.

OLD BUSINESS:

1. Public Hearing – Interim Ordinance No. 1248 – Development Regulations for FEMA Designated Special Flood Hazard Areas.

NEW BUSINESS:

1. Public hearing on 2013 Revenue Sources.
2. Resolution No. 915 - 2013 Property Tax Levy and Resolution No. 916 - 2013 Excise Property Tax Levy.
3. First Public Hearing and First Reading of Ordinance - 2013 Proposed Budget.
4. First Reading of Ordinance – Amendment to Employee Bonding Requirements.
5. First Public Hearing – Amendment to the Development Agreement with Harbor Hill LLC.

STAFF REPORT:

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Operations Committee: Thu. Nov 15th at 3:00 p.m.
2. Civic Center closed Thu. Nov. 22nd and Fri. Nov. 23rd for Thanksgiving Holiday.
3. Boards and Candidate Review Committee: Mon. Nov. 26th at 4:00 p.m.

ADJOURN:

MINUTES OF GIG HARBOR CITY COUNCIL MEETING – October 22, 2012

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

CALL TO ORDER: 5:30 p.m.

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.

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

PRESENTATIONS:

Harbor Hope Network Proclamation. Lance Brown and Neil Simpson accepted the signed proclamation from Mayor Hunter. Mr. Brown explained that Harbor Hope Network was created to form partnerships to prevent teen suicide. The organization works to inventory resources, helps to identify holes in the safety net, and identifies low-cost counseling for teens. He thanked the city for its support, and said they would welcome comments and suggestions.

OLD BUSINESS:

1. Second Reading of Ordinance - Comcast Franchise Agreement. Finance Director David Rodenbach introduced attorney Elana Zana to present an update on the ordinance. Ms. Zana addressed the concerns voiced at the first reading and explained that she talked with the representatives from Comcast to learned that there is no option

to return cable boxes in Gig Harbor. She explained that citizens are able to return the box in either Tacoma or Bremerton, or there is an option to obtain boxes for mailing the return for \$15.00. She then said that there are seven facilities within the city that receive free cable, and eight residents receive a 30% senior / low income discount on basic cable. She offered to answer additional questions.

Councilmember Perrow voiced appreciation that Hans Hechtman addressed his questions and that Comcast seems to be willing to work with the city. He described the cumbersome process to obtain the senior / low-income discount and suggested that the city develop a website link for citizens to obtain information on cable and other utility services.

MOTION: Move to adopt Ordinance No. 1249 renewing the franchise agreement with Comcast of Puget Sound Inc. for Cable Television Services in the City.
Ekberg / Young – unanimously approved.

NEW BUSINESS:

1. Public Hearing and First Reading of Ordinance – 2012 Comprehensive Plan Amendments. Senior Planner Jennifer Kester introduced this ordinance for proposed amendments to the Transportation Element of the Comprehensive Plan.

Mayor Hunter opened the public hearing at 5:43 p.m. No one came forward to speak and the public hearing was closed. Ms. Kester addressed questions, and Council concurred that the second reading can return on the Consent Agenda.

STAFF REPORT:

City Administrator Denny Richards briefly reported on several items:

- Visioning Meeting on Thursday.
- Maritime Pier Completion.
- 56th & Point Fosdick Project – completed early and under budget. He will check with DOT regarding removal of the rusted fencing.
- He will be out of the office in November during the Budget Worksessions.
- City's inability to compensate the Gig Harbor Boatshop for their pile driving project.

PUBLIC COMMENT: None.

MAYOR'S REPORT / COUNCIL COMMENTS:

Councilmember Guernsey commented on the recent loss of Planning Commissioner Michael Fisher. She said that he was a valued member of the Planning Commission and a passionate supporter of Gig Harbor. She thanked his family for sharing him with us, stressing that he was a leader, a teacher, and a very special friend that will be greatly missed.

Councilmember Malich requested that we move the second Budget Worksession on November 6th to another night due to the important presidential election. It was discussed that it has always been on these two dates.

Councilmember Guernsey asked the reason for the scheduling, as she will be gone during those dates. She suggested that next year we move the budget worksessions a week earlier or have a second meeting in December to accommodate passage before January 1st.

Councilmember Payne also recognized the contribution made by Michael Fisher, calling him a selfless volunteer who had a lot of input on shaping the draft Shoreline Master Program update.

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 SMP WORKSESSION:

MOTION: Move to adjourn at 6:00 p.m.
Kadzik / Perrow – unanimously approved.

CD recorder utilized: Tracks 1002 – 1019

Charles L. Hunter, Mayor

Molly Towslee, City Clerk

MINUTES OF WORK STUDY SESSION GIG HARBOR CITY COUNCIL
DRAFT SHORELINE MASTER PROGRAM
October 22, 2012

PRESENT: Councilmembers Ekberg, Guernsey, Perrow, Malich, Payne, Kadzik, and Mayor Hunter. Councilmember Young had another obligation.

STAFF PRESENT: City Administrator Denny Richards, Senior Planner Peter Katich, Senior Planner Jennifer Kester, Planning Director Tom Dolan, and City Clerk Molly Towslee.

OTHERS PRESENT: City Attorney Angela Belbeck, Kim Van Zwalenburg, Dept. of Ecology, and several citizens.

CALL TO ORDER: at 6:05 p.m. by Mayor Hunter. City Attorney Angela Belbeck explained that this is a workstudy session to hear from staff and to ask questions, and that there would be no public testimony taken at this time. She said that there would additional public hearings later in the process.

Senior Planner Peter Katich explained that he would give an overview of the staff response to public comments received on February 29th on the draft Shoreline Master Program and address any questions Council may have. He pointed out that the staff recommendations were shown highlighted in grey in the packet.

Mr. Katich presented background on the three major concerns that had been addressed:

1. Change designation on several parcels from Urban Conservancy to Low-Intensity Use.
2. Cabins along Harborview Drive – reinstate variance process.
3. Aquaculture in Henderson Bay / Burley Lagoon – proposed removal from UGA.

Mr. Katich briefly touched on several other items and addressed questions from Council. He explained that the expected schedule for the process was for a resolution to come before Council in November or early December with a recommendation to transmit the draft SMP to the Department of Ecology. That would trigger a 180 day review process and possible public hearing; DOE would then transmit a letter back to Gig Harbor with recommendations for final adjustments. After that, there would be a public hearing and ordinance before Council. When adopted the SMP would go back to Ecology, then there would be another 60-day appeal period to the Growth Management Hearing Board based on the record at the local level.

Mr. Katich introduced Kim Van Zwalenburg, Dept. of Ecology, who has been working with the city through the process. He then continued to address Councilmember questions on the draft plan.

The meeting adjourned at 6:50 p.m.

Respectively submitted,

Molly Towslee, City Clerk



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: 10/25/12

UBI: 603-199-557-001-0002

License: 409399 - 1U County: 27
Tradename: FINHOLM'S GROCERY & DELI
Loc Addr: 8812 N HARBORVIEW DR STE B
GIG HARBOR WA 98332-2167
Mail Addr: 9312 S TACOMA WAY STE 170
LAKEWOOD WA 98499-4466
Phone No.: 253-851-2229 BYUNG UN KANG

APPLICANTS:
UPRISE CORPORATION
KANG, BYUNG UN 1970-08-10
YOO, HEE JUNG 1975-06-07

Privileges Applied For:
BEER/WINE REST - BEER/WINE
OFF PREMISES

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

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

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



Business of the City Council
City of Gig Harbor, WA

Subject: MOU with DNR to remove invasive vegetation at Ancich Park

Proposed Council Action: A motion to Accept the MOU with DNR to remove invasive vegetation at Ancich Park.

Dept. Origin: Administration

Prepared by: Lita Dawn Stanton Special Projects

For Agenda of: November 5, 2012

Exhibits: MOU

Concurred by Mayor: Initial & Date
Approved by City Administrator:
Approved as to form by City Atty:
Approved by Finance Director:
Approved by Department Head:

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and n/a values.

INFORMATION / BACKGROUND

In order to improve conditions at the recently acquired Ancich property located a 3555 Harborview Drive, the Department of Natural Resources will provide a team of volunteers to perform the work necessary to help eradicate invasive vegetation (Himalayan blackberry and knotweed) from the site.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

n/a

RECOMMENDATION / MOTION

Move to: Approve the MOU with DNR.



MEMORANDUM OF UNDERSTANDING

MOU No. 13-159

This Memorandum of Understanding (MOU) is between the Aquatics Division of the Department of Natural Resources, referred to as DNR, and the City of Gig Harbor, referred to as the CITY.

The purpose of the MOU is to remove invasive vegetation and restore nearshore habitat at Ancich Park in the City of Gig Harbor. We agree to the provisions and statements outlined below.

1.01 Definitions:

Department of Natural Resources-an agency of the state of Washington.

City of Gig Harbor- a city in the state of Washington

Memorandum of Understanding - The Department of Natural Resources enters into memoranda of understanding, in good faith, with public and private agencies to collaborate on and/or coordinate programs, and to define institutional linkages along broad areas of concern. Memoranda of understanding are not legal contracts and do not strictly obligate the resources of the Department.

2.01 Objectives.

- Help eradicate invasive vegetation (Himalayan blackberry and knotweed) from Ancich Park and remove creosote-treated wood debris from approximately 150 feet of shoreline to enhance habitat value and increase water accessibility.

3.01 Work Activity: Controlling invasive vegetation using physical methods and removing and disposing of creosote treated wood debris.

4.01 Functions/Roles/Tasks of Agencies/Parties:

DNR shall:

- Coordinate with the CITY to assist removing and clearing alien vegetation from Ancich Park.
- Coordinate with the CITY to remove and dispose of 5 creosote treated poles and debris from tidelands at Ancich Park.

CITY Shall:

- Provide logistical support and general direction to meet the invasive plant control and nearshore clean-up project objectives.

5.01 Terms and Conditions

- (1) **Effective Dates.** This MOU is effective between November 1, 2012 and December 31, 2012.
- (2) **Amendments.** This MOU shall be amended by written mutual consent of the parties.
- (3) **Termination.** Either party may terminate this MOU by notifying the other party, at the addresses given, of the termination and specifying the termination date.

6.01 Project Coordinators.

(1) The Project Coordinator for the DNR is Kevin Anderson, Restoration Specialist, (360) 296-3293.

(2) The Project Manager for the CITY is Lita Stanton, Special Projects, (253) 853-7609

CITY OF GIG HARBOR

Dated: _____

By: _____

Title: _____

Address: _____

Phone: _____

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____

By: _____
Kristin Swenddal

Title: Division Manager

Address: PO Box 47027
1111 Washington Street SE
Olympia, WA 98504-7027



Business of the City Council
City of Gig Harbor, WA

Subject: Contracts for Lobbying Services

Proposed Council Action:

Authorize the Mayor to execute state & federal contracts for lobbying services with Gordon Thomas Honeywell.

Dept. Origin: Administration

Prepared by: Dennis Richards

For Agenda of: November 13, 2013

Exhibits: Lobbying Agreements

Initial & Date

Concurred by Mayor:

CH 10/30/12

Approved by City Administrator:

R-10/29/12

Approved as to form by City Atty:

Approved by Finance Director:

CF 10/30/12

Approved by Department Head:

| Expenditure | Amount | Appropriation |
|--------------------|--------------------|---------------|
| Required \$118,000 | Budgeted \$120,000 | Required \$0 |

INFORMATION / BACKGROUND

There are two proposed contracts for consulting services with Gordon Thomas Honeywell. The first one is for state lobbying services, and the second contract is for federal lobbying services. These contracts are both one-year in duration (January-December 2013) but may be extended for one year under the same terms upon negotiation of a revised scope of work no later than December 1, 2013.

There are no proposed increases in either contract.

Under these two agreements, GTH will continue to pursue state and federal appropriations requests and will also assist on any policy/legislative matters that may affect the City.

For 2013, GTH will continue to advocate for Gig Harbor on such federal issues as Surface Transportation Reauthorization funding for Harbor Hill Drive extension, Cushman Trail extension, sales tax leakage from sales originating from out-of-state, emerging federal funding opportunities, and transfer of the Gig Harbor Lighthouse sand spit property from the Coast Guard to the City.

Since the City's contract with GTH for state lobbying services began, the City's legislative agenda has been increasingly proactive, technical, and aggressive. The city administrator believes that the City's investment in this state lobbying contract has more than paid for itself—examples include \$3 million in wastewater grants, the maritime pier grant (\$378,000), and the unlocking of HBZ funding.

GTH will continue to advocate on behalf of the City and maintain a presence in Olympia to defend against proposals that may hurt Gig Harbor as well as to proactively lobby for

legislative changes and funds that will help Gig Harbor. GTH will also continue to advocate for Frontage Road and other transportation funding; inclusion of City road projects in a potential State transportation package to be approved by voters; impact fee exemption for low income housing; public records reform; Cushman Trail funding; and protecting funding already allocated to Gig Harbor.

The scope of work, which by adopting these contracts becomes the City's legislative agenda, is attached as an exhibit to each contract.

FISCAL CONSIDERATION

This item is identified as Objective No. 3 in the 2013 Administration Budget. \$120,000 is included in the 2013 adopted budget for these two contracts--\$40,000 for the state lobbying agreement, and \$78,000 for the federal lobbying agreement.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize the Mayor to execute the attached state & federal contracts for lobbying services with Gordon Thomas Honeywell.

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

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

RECITALS

WHEREAS, the City desires to obtain lobbying services; and

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

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

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

TERMS

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant fees in amount not to exceed Seventy Eight Thousand Dollars (\$78,000), or Six Thousand Five Hundred Dollars (\$6,500.00) per month, beginning January 1, 2013, for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill

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

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** beginning on January 1, 2013. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2013.

V. Termination

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

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

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

VI. Discrimination

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

VII. Indemnification

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

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

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

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

VIII. Insurance

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

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

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

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

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

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

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

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work

hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

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

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

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

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

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

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

CONSULTANT

CITY OF GIG HARBOR

By: _____
President

By: _____
Mayor

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

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

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

Exhibit A Scope of Work – Federal Governmental Affairs Services

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

- Identify and track all congressional legislation and budgets relevant to the City of Gig Harbor, and lobby the City of Gig Harbor's position to Congress;
- Identify and track all federal grants that are available to the City of Gig Harbor
- Lobby the Washington State Congressional delegation to pursue one or more congressionally directed funding requests in the FY2014 Congressional Budget, or a project related to a federal funding grant program.
- Organize for City of Gig Harbor officials, local community leaders and business leaders to support the congressional requests.
- Provide the City with frequent reports and updates;
- Organize events and meetings to promote the City of Harbor to relevant members of the Washington State Congressional delegation.

Exhibit B Billing Rates

As described in Section II of this agreement, a monthly service fee of Six Thousand Five Hundred Dollars (\$6,500.00) per month shall be charged to provide the services described in this agreement. This fee will cover all work performed by Dale Learn and Travis Lumpkin in the Washington DC office.

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

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

RECITALS

WHEREAS, the City desires to obtain lobbying services; and

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

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

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

TERMS

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount not to exceed Forty Thousand (\$40,000), or Three Thousand Three Hundred Thirty Three Dollars (\$3,333) per month, beginning January 1, 2013, for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** beginning on January 1, 2013. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2013.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement,

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

VI. Discrimination

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

VII. Indemnification

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

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

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

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

VIII. Insurance

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

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

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

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

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

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

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

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

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

CONSULTANT:

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

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

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

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

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

CONSULTANT

CITY OF GIG HARBOR

By: _____
President

By: _____
Mayor

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

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

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

Exhibit A Scope of Work

The Consultant shall provide the City of Gig Harbor with the following Washington State legislative governmental affair services:

The Consultant shall:

1. Identify and track all legislation relevant to the City of Gig Harbor;
2. Provide the City with frequent reports and updates during the legislative session;
3. Provide monthly updates during the legislative interim.
4. Attend all relevant legislative hearings where the City of Gig Harbor's interests are directly affected;
5. Work throughout the year with the City of Gig Harbor to develop and implement legislative objectives and strategy;
6. Coordinate with City of Gig Harbor officials to testify at relevant legislative hearings; and
7. Lobby to pass, defeat or amend legislation that directly affects the City of Gig Harbor's interests.

In addition to the above, the Consultant shall perform the following specific tasks:

1. Pursue a transportation budget request for Harbor Hill, and support transportation funding requests for Frontage Road along Highway 16, and State Route 302.
2. Pursue a capital funding request for improvements to Anchich Brothers Property.
3. Pursue legislation allowing the Pierce County Flood Control to impose variable rates.
4. Work with the Association of Washington Cities to further legislation on local government finance, including legislation regarding liquor profits and taxes.
5. Works with the Association of Washington cities to further legislation on Public Records Act reform.

Exhibit B Billing Rates

As described in Section II of this agreement, a monthly service fee of Three Thousand Three Hundred Thirty Three dollars (\$3,333.00) per month shall be charged to provide the services described in this agreement. This fee will cover all work performed by Briahna Taylor, and Meghan Howey.



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

Subject: Resolution – Sole Source Purchase of Equipment, Software, and Technical Support for Water Department SCADA System

Proposed Council Action: Approve the Resolution waiving competitive bidding for the purchase of SCADA system equipment and software and authorize Water Department Superintendent to issue a purchase order to Technical Systems, Inc., in the amount not to exceed \$49,942.55 necessary to purchase and install new SCADA system equipment and software.

Dept. Origin: Public Works/Engineering

Prepared by: Jeff Langhelm 

For Agenda of: November 13, 2012

Exhibits: Resolution and Quote

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 10/30/12

R- 10/31/12

VIA EMAIL 10/30/12

JF 10/12

MM 10/30/12

| | | | | | |
|-----------------------------|--------------|------------------------|-----------|-------------------------------|-----|
| Expenditure Required | \$ 49,942.55 | Amount Budgeted | \$ 50,000 | Appropriation Required | \$0 |
|-----------------------------|--------------|------------------------|-----------|-------------------------------|-----|

INFORMATION/BACKGROUND

The City of Gig Harbor Water Department operates and maintains a water system consisting of six wells, six reservoirs, and related appurtenances (e.g. pumps, valves, alarms, etc.). These wells and reservoirs control water pressures and fire flow availability for the City's Water System and are operated by a supervisory control and data acquisition (SCADA) system. The SCADA system is a critical piece of infrastructure that consists of one computer located at the City Shop building. This computer and the SCADA system operate 24 hours a day for each day of the week.

The current SCADA system computer and software were placed into service in 2004 by Technical Systems, Inc. (TSI) with a Windows 2000 operating system and a 2001 version of Wonderware software. TSI continues to provide technical support to the City for the SCADA system. However, the computer and software that currently operate the SCADA system are outdated and reaching the end of the anticipated lifespan.

Due to the critical nature of this software and the reliance on City Staff to operate the software in a reliable, predictable and familiar manner in emergency situations, Staff is requesting the continued use of Wonderware Software and programming and technical support by Technical Systems, Inc.

FISCAL CONSIDERATION

The 2012 City of Gig Harbor Budget includes funding for the proposed computer equipment,

software, and support in the Water Division Operating fund. The budget summary for this item is provided in the table below:

| | |
|---|-----------------|
| 2012 Budget for Water Division – Operating, Objective No. 14 | \$ 50,000.00 |
| Requested 2012 Expenses: | |
| SCADA System Equipment and Software (Technical Systems, Inc.) | (\$ 49,942.55) |
| Remaining 2012 Budget = | \$ 57.45 |

BOARD OR COMMITTEE RECOMMENDATION

Purchase of this equipment and software is based on the City's 2012 Budget adopted by City Council. This purchase is not based on a separate board or committee recommendation.

RECOMMENDATION/MOTION

Approve the Resolution waiving competitive bidding for the purchase of SCADA system equipment and software and authorize Water Department Superintendent to issue a purchase order to Technical Systems, Inc., in the amount not to exceed \$49,942.55 necessary to purchase and install new SCADA system equipment and software.

RESOLUTION NO. 913

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON WAIVING THE REQUIREMENT FOR COMPETITIVE BIDS FOR PURCHASE OF SCADA SYSTEM EQUIPMENT, SOFTWARE, AND TECHNICAL SUPPORT FOR THE CITY'S WATER DEPARTMENT.

WHEREAS, the City of Gig Harbor's Water Department operates and maintains a water system consisting of six wells, six reservoirs, and related appurtenances (e.g. pumps, valves, alarms, etc.); and

WHEREAS, these wells and reservoirs control water pressures and fire flow availability for the City's Water System and are operated by a supervisory control and data acquisition (SCADA) system; and

WHEREAS, the SCADA system operates 24 hours a day for each day of the week and is a critical piece of infrastructure that consists of one computer located at the City Shop building; and

WHEREAS, the current SCADA system computer and software were placed into service in 2004 by Technical Systems, Inc. (TSI) with a Windows 2000 operating system and a 2001 version of Wonderware software and TSI continues to provide technical support to the City for the SCADA system; and

WHEREAS, the computer and software that currently operate the SCADA system are outdated and reaching the end of the anticipated lifespan; and

WHEREAS, the City desires to continue to use Wonderware software and TSI as an 'in-kind' replacement with technological as it is compatible with existing infrastructure and processes; and

WHEREAS, due to the critical nature of this software and the reliance on City Staff to operate the software in a reliable, predictable and familiar manner in emergency situations, Staff is requesting the continued use of Wonderware Software and programming and technical support by Technical Systems, Inc.; and

WHEREAS, the City's purchasing policy set forth in Resolution No. 593 authorizes the waiver of competitive bidding in the event the product comes from a sole supplier; Now, therefore,

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

Section 1. Waiver of Competitive Bidding. As authorized by Section 2 of Resolution No. 593, competitive bidding is hereby waived for the purchase of equipment, software, and technical support for the City Water Department's SCADA system from Technical Systems, Inc. as the sole source of the product and services.

RESOLVED this 13th day of November, 2012.

CITY OF GIG HARBOR

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

FILED WITH THE CITY CLERK: 10/31/12
PASSED BY THE CITY COUNCIL: 11/13/12
RESOLUTION NO. 913



Technical
Systems
Inc.

2303 196th Street SW
Lynnwood, WA 98036
Tel 425.775.5696
Fax 425.775.9074
TSIcontrols.com

October 26, 2012

Jeff Langhelm, PE
Senior Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Reference: City of Gig Harbor Telemetry
Subject: Computer and Wonderware Upgrade and Misc Programming: – Ref. quote #
6337 Rev. 1

Dear Mr. Langhelm:

Technical Systems, Inc. (TSI) is pleased to provide a quote for the above referenced projects. TSI's pricing does not include the cost to bond TSI's portion of the project.

TSI's price for the equipment/software purchase and installation: **\$ 28,675.00**

TSI's price for the equipment/software programming and testing: **\$12,435.00**

TSI's price for training and technical support: **\$4,920.00**

This project does not include the 8.5% Gig Harbor sales tax or bonding.

Terms: Net 30
FOB: Lynnwood WA
Freight: Prepaid

This quote is valid for 90 days.

Please call me if you have any questions regarding this quote.

Sincerely,

Andrew Palmberg

Andrew Palmberg, P.E.
Technical Systems Inc.

Scope of Work

Replace Computers and upgrade Wonderware

TSI Provides:

- The following new hardware to be installed and set up at the Gig Harbor maintenance facility:
 - Qty 1 Desktop with Windows 7 OS and current version of Office
 - Qty 1 32" Monitor
 - Qty 1 Ink Jet Printer
 - Upgrade to version 10.1 Intouch 3K tag w/ I/O
 - Upgrade to Development Studio version 10.1 Large 5K/3K/500
 - Qty 1 Win 911 upgrade w/ Modems
 - Qty 1 PC Anywhere for Windows 7
 - Qty 1 1500 VA Uninterruptible Power Supply for backup power
 - Historian
 - HMI Reports
- Programming to covert the existing Wonderware applications to the current version and to reconfigure Win 911, PCAnywhere and the printers. Programming for Historian and HMI Reports for 5 reports to be determined by the City. Programming to allow City to input maintenance schedules, etc. from the Wonderware screen. Testing of the new configuration
- Startup
- O&M Documentation
- One Year Warranty

STANDARD INCLUSIONS

We provide the following unless specifically excluded on our bill of material:

- 1) Equipment shipped FOB factory with freight allowed, tailgate, destination.
- 2) Field wiring diagrams showing interconnection of field instruments and instrumentation panels.
- 3) Instruction manuals as required.
- 4) All necessary field start-up and calibration of the equipment we supply.

STANDARD EXCLUSIONS

We do NOT include the following unless specifically included in our bill of material:

- 1) Pipe, tubing, valves or fittings between the instrument and the process.
- 2) Mounting brackets, stanchions, supports or mounting pads not an integral part of the instrument.
- 3) Labor to install the equipment.
- 4) The Cost, (if due to local union regulations), to have local craftsman make adjustments or wiring modifications to our equipment during start-up and calibration.
- 5) Any material or services not in our quoted sections.
- 6) This proposal is based on award of a supply purchase order and does not include any of the costs associated with bonding or subcontract administration. If bonding or a subcontract is required they can be provided for additional cost.

RECOMMENDATION / MOTION

Move to: Approve the Resolution waiving competitive bidding for the purchase of 135 refurbished Stormwater Filter Cartridges, with Contech Engineered Solutions/Stormwater Management Inc. as the sole source supplier, and authorize the Mayor to execute a purchase order necessary to purchase the Stormwater Filter Cartridges for the Quail Run Stormwater facility which is operated and managed by the City.

RESOLUTION NO. 914

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON WAIVING THE REQUIREMENT FOR COMPETITIVE BIDS FOR REPLACEMENT OF THE STORMWATER FILTER CARTRIDGES LOCATED AT QUAIL RUN STORMWATER TREATMENT VAULTS FROM CONTECH ENGINEERED SOLUTIONS/STORMWATER MANAGEMENT INC.

WHEREAS, the City of Gig Harbor (the City) is required to properly operate and maintain all public stormwater control and treatment facilities per the City's National Pollutant Discharge Elimination System (NDPES) Phase 2 Municipal Stormwater Permit issued by the Washington State Department of Ecology; and

WHEREAS, at the Quail Run stormwater control and treatment facility operated and managed by the City, it was found that the stormwater filter cartridges in the treatment vaults need to be replaced; and

WHEREAS, Contech Engineered Solutions/Stormwater Management Inc. originally supplied the stormwater filter cartridges; and

WHEREAS, Contech Engineered Solutions/Stormwater Management Inc. is the sole source owner, manufacturer, distributor and supplier for the stormwater filter cartridges; and

WHEREAS, the City's purchasing policy set forth in Resolution No. 593 authorizes the waiver of competitive bidding in the event the product comes from a sole supplier; Now, therefore,

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

Section 1. Waiver of Competitive Bidding. As authorized by Section 2 of Resolution No. 593, competitive bidding is hereby waived for the replacement of stormwater filter cartridges, as Contech Engineered Solutions/Stormwater Management Inc. is the sole supplier of the product.

RESOLVED this 13th day of November, 2012.

CITY OF GIG HARBOR

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

FILED WITH THE CITY CLERK: 10/31/12
PASSED BY THE CITY COUNCIL: 11/13/12
RESOLUTION NO. 914



Quotation

| | | | | | |
|---------------------------|-----------------------|---------------------|-------------------------------|---------------------|---|
| Quote # QUO-136040-ZC3HF5 | | | | | |
| Date | 10/17/2012 | Account Name | City of Gig Harbor | Reply-To | |
| Quote # | QUO-136040-ZC3HF5 | Contact Name | Wayne Matthews | Contech Rep. | Dave Jerke |
| | | Phone | (253) 853-1646 | Address | 11835 NE Glenn Widing Dr. Portland, OR 97220 |
| Project Name | MAINT Quail Run -1703 | Fax | (253) 853-7597 | Phone | (503) 258-3137 |
| Project # | 472437 | Email | matthewsw@cityofgigharbor.net | Fax | (877) 927-4602 |
| Project City/State | Gig Harbor, WA | | | Email | DJerke@conteches.com |

Contech's offer to sell the products described in this quotation is expressly conditioned upon Buyer's assent to the Contech Conditions of Sale ("Contech COS") included herewith and/or viewable at www.conteches.com/cos. A valid tax exemption certificate must be issued to Contech or sales tax will be added.

| Item # | Description | Pieces | Quantity | Extended Unit Price | Unit | Unit Total |
|--------|--|--------|----------|---------------------|--------------------|------------------|
| | Cartridge - Refurbished, 18" StormFilter Slip - CSF - System Type : StormFilter Vault, Structure Size : Panel - 11.5x36.5, # Carts : 135 | 135.00 | 135.00 | \$65.00 | EA | \$8,775.00 |
| | Maintenance - Freight - Notes for Quote : Shipping to customer yard. | 1.00 | 1.00 | \$725.00 | EA | \$725.00 |
| | Maintenance - Freight - Notes for Quote : Return freight for empty cartridges. Empty cartridges must be packaged same as replacements were received. | 1.00 | 1.00 | \$725.00 | EA | \$725.00 |
| | | | | | Total | \$10,225.00 |
| | | | | | (Tax not included) | Net Total |
| | | | | | | \$10,225.00 |

Standard Notes

1. Contech Engineered Solutions offers replacement cartridges that contain the proper media per the original system design. Contech ships replacement cartridges to the Customer or Customer may pick cartridges up as a Will Call from our Portland Production Facility prior to the actual field work. Delivery schedules must be confirmed in advance. Replacement cartridges are typically available for shipment within 10 business days of signed authorization. Contech will notify the Customer when the cartridges are available. Customer is responsible for having a representative available and prepared to offload the palletized cartridges at the time of delivery. If Customer is planning on a Will Call, Customer is responsible for providing a copy of the executed and accepted Cartridge Exchange Quote at the time of Will Call. Cartridges will not be released without this documentation.

Customer agrees to return an equal number of empty complete and undamaged cartridges to Contech no later than 30 days after delivery or Will Call. A charge of \$500.00 per cartridge will be incurred by the Customer if empty cartridges are not returned. Empty cartridges must be returned to:

16300 NE Mason Street
Portland, OR 97230

For proper credit, a copy of the executed and accepted Cartridge Exchange Quote must accompany the empty cartridges at the time of return. Cartridges will not be accepted without this documentation.

The Customer is responsible for all coordination with the maintenance contractor, their jurisdiction and disposal facility. Contech can work with the customer to provide training.

Contech does not provide a Certificate of Compliance for inspection or maintenance as part of the Cartridge Exchange Program.

Scope Of Work

Maintenance

Maintenance

Inspection and or cleaning services to be performed and the related charges are based upon the assumption of unrestricted access, dry conditions, non-hazardous materials, no inappropriate discharges, no requirements for permitted traffic control, and reasonable pollutant loading. Reasonable pollutant loading is defined as an accumulation not greatly exceeding the level at which cleaning is recommended by the manufacturer of the BMP. If site conditions suggest the presence of hazardous materials, all work will be stopped. The Customer may be required to characterize (via analytical testing) the accumulated materials for disposal prior to conducting the field work. Work arising from the presence of regulated materials in excess of permitted levels will be billed as extra services. Regulated materials include but are not limited to: Pesticides, Herbicides, Insecticides, Solvents, Fuels, Strong Acids or Bases, Free Oils and/or Greases. Additional costs arising from any of the aforementioned conditions will be agreed upon by the Seller/Buyer prior to work being performed.



Quotation

Quote # QUO-136040-ZC3HF5

PAYMENT TERMS ARE 1/2%-10, NET 30 DAYS FROM DATE OF INVOICE UNLESS MATERIAL IS OTHERWISE NOTED AS NON-STANDARD ABOVE. IF NON-STANDARD, PAYMENT TERMS ARE 1/3 AT ORDER ACCEPTANCE AND PRIOR TO START OF PRODUCTION, 2/3 NET 30 DAYS FROM DATE OF INVOICE. THIS OFFER IS SUBJECT TO CREDIT APPROVAL. PRICES QUOTED APPLY ONLY TO THE REFERENCED PROJECT AND ARE IN EFFECT FOR 30 DAYS FROM THE DATE OF QUOTATION. SELLER RESERVES THE RIGHT TO ADJUST PRICES AFTER 30 DAYS FROM THE DATE OF QUOTATION BUT THE CONTECH COS REMAIN APPLICABLE. PRICES ARE BASED ON ESTIMATED QUANTITIES SHOWN. IF A DIFFERENT QUANTITY IS PURCHASED, CONTECH RESERVES THE RIGHT TO ADJUST THE PRICES. THIS QUOTATION CONTAINS THE ENTIRE AGREEMENT WITH RESPECT TO PURCHASE AND SALE OF PRODUCTS DESCRIBED AND SUPERSEDES ALL PREVIOUS COMMUNICATIONS, BUYER'S SIGNATURE BELOW, DIRECTION TO MANUFACTURE, OR ACCEPTANCE OF DELIVERY OF GOODS DESCRIBED ABOVE, SHALL BE DEEMED AN ACCEPTANCE OF THE CONTECH COS. SELLER EXPRESSLY REJECTS ANY OTHER TERMS AND CONDITIONS. PRICES ARE F.O.B. ORIGIN WITH FREIGHT ALLOWED TO THE JOBSITE WITH UNLOADING BY OTHERS AT A TRUCK ACCESSIBLE LOCATION. THIS QUOTATION IS ISSUED BY CONTECH ENGINEERED SOLUTIONS LLC FOR ITSELF AND/OR ON BEHALF OF ONE OR MORE OF ITS SUBSIDIARIES, INCLUDING BUT NOT LIMITED TO KEYSTONE RETAINING WALL SYSTEMS LLC.

| Acceptance | | Contech Engineered Solutions LLC. | |
|--|--|-----------------------------------|----------------|
| WE HEREBY ORDER THE DESCRIBED MATERIAL SUBJECT TO ALL TERMS AND CONDITIONS OF THIS QUOTATION AND IN THE Contech COS INCLUDED HEREWITH AND VIEWABLE AT www.conteches.com/cos | | By | Dave Jerke |
| Company | | (O) | (503) 258-3137 |
| By | | (F) | (877) 927-4602 |
| Title | | (Cell) | |
| Date | | Title | |



Quotation

Quote # QUO-136040-ZC3HF5

Contech - CONDITION OF SALES

1. ACCEPTANCE. This quotation is an offer to sell to potential customer(s). BUYER'S RIGHT TO ACCEPT THIS OFFER IS LIMITED TO BUYER'S ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON AND THE ATTACHED OR ACCOMPANYING QUOTE, AND NO TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE IN THIS OFFER ARE BINDING ON SELLER. THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OF WARRANTIES NOT FULLY EXPRESSED HEREIN.

2. LIMITED WARRANTIES. Seller warrants that it can convey good title to the goods sold under this contract and that they are free of liens and encumbrances. Seller also warrants that the goods sold under this contract are free from defects in material and workmanship for a period of one year after the date of delivery. There are no warranties, express or implied with respect to products sold hereunder which are misused, abused, or used in conjunction with mechanical equipment improperly designed, used or maintained or which are used, supplied for use or made available for use in any nuclear application of which Seller has not been notified in writing by Buyer at the time of order for the products sold hereunder. SELLER MAKES NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS CONTRACT.

3. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY. Seller's liability hereunder shall be limited to the obligation to repair or replace only those products proven to have been defective in material or workmanship at the time of delivery, or allow credit, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product sold or required to be sold under this contract shall NOT in any case exceed the purchase price paid by Buyer for such products. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, LOST PROFITS, CLAIMS FOR LABOR, OR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER BUYER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES.

4. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY FOR FAILURE OR DELAY IN DELIVERY. NO DELIVERY DATES ARE GUARANTEED. BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ONLY LIABILITY FOR ANY DELAY IN DELIVERY SHALL BE LIMITED AS SET FORTH IN PARAGRAPH 3 OF THIS CONTRACT.

5. FORCE MAJEURE. In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance, which is (i) due to any act of God, the performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood or other casualty, governmental regulation or requirement, shortage or failure of raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller's is capable of settling any such labor problem.

6. BUYER'S OBLIGATION TO PASS ON LIMITATION OR WARRANTIES AND REMEDIES. In order to protect Seller against claims by Buyer's buyer, if Buyer resells any of the goods purchased under this agreement, Buyer shall include the language contained in paragraphs 2 and 3 of this agreement, dealing with Seller's limitations of warranties and remedies, in an enforceable agreement with Buyer's buyer, or otherwise include language in an enforceable agreement with its buyer that makes Seller's limitation of warranties and remedies binding on its buyer. Buyer shall also include a provision in its agreement with its buyer applying Ohio law to any claims its buyer might assert against Seller with respect to goods manufactured by Seller, and requiring its buyer to bring any such action against Seller either in federal district court in Cincinnati, Ohio or the common pleas court for Butler County, Ohio. Buyer shall defend, indemnify and hold Seller harmless from any and all claims, causes of action, damages, losses or expenses (including reasonable attorneys' fees) that Seller incurs by reason of Buyer's failure to comply with this paragraph. paragraph.

7. PASSAGE OF TITLE. Title to the products sold hereunder shall pass upon delivery to the carrier at the point of shipment. Neither

Buyer nor the consignee shall have the right to divert or reassign such shipment to any destination other than specified in the bill of lading without permission of the Seller. Unless otherwise agreed Seller reserves the right to select the mode of transportation.

8. PAYMENTS AND LATE CHARGES ON PAST DUE ACCOUNTS. Buyer represents that Buyer is solvent and can and will pay for the products sold to Buyer in accordance with the terms hereof. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this contract or any other contract between Buyer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract. All deliveries shall be subject to the approval of Seller's Credit Department. Seller reserves the right, before making any delivery, to require payment in cash or security for payment, and if Buyer fails to comply with such requirement, Seller may terminate this contract. A late charge of 1-1/2% monthly (18% annual rate) or the maximum allowed by state law, if less, will be imposed on all past due accounts.

9. TRANSPORTATION CHARGES. Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges.

10. CLAIMS BY BUYER. Buyer shall thoroughly inspect products sold under this contract immediately upon receipt to verify for itself that they conform to the specifications of the contract. Buyer must notify Seller of claims for failure or delay in delivery within 30 days after the scheduled delivery date. Buyer must notify Seller of any claims for nonconforming or defective goods within 30 days after the nonconformity or defect was or should have been discovered. In addition, Seller must be given an opportunity to investigate the claim before Buyer disposes of the material, or else Buyer's claim will be barred. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless the Buyer shall have entered full details thereof on its receipt to the carrier.

11. MECHANICAL PROPERTIES; CHEMICAL ANALYSES. Data referring to mechanical properties or chemical analysis are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.

12. PATENTS. Seller shall indemnify Buyer against attorneys' fees and any damages or costs awarded against Buyer in the event any legal proceeding is brought against Buyer by a third person claiming the material delivered hereunder in itself constitutes an infringement of any U.S. patent, provided Buyer gives Seller prompt notice of any such suit being brought, gives Seller the opportunity to defend any such suit, and cooperates with Seller with respect to any such defense; unless the material is made in accordance with material designs, or specifications required by Buyer, in which case Buyer shall similarly indemnify Seller.

13. PERMISSIBLE VARIATIONS. The products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

14. TECHNICAL ADVICE. Buyer represents that it has made its own independent determination that the products it is purchasing under this contract meet the design requirements of Buyer's project and are suitable for Buyer's intended application. Buyer further represents that it has not relied in any respect on any written or oral statements or advice from Seller, other than the standard product specifications set forth in the most recent addition of Seller's published product brochures, in making that determination.

15. TAXES. If this proposal includes furnishing labor to install products, applicable use taxes have been included in the prices quoted. However, no other tax imposed in respect of the sale of the products sold hereunder is included in any quotation by Seller. Any tax shall be added and paid by Buyer as part of the purchase price.

16. BUYER'S RIGHT OF TERMINATION. Buyer may terminate this contract in whole or in part upon notice in writing to Seller. Seller shall thereupon cease work and transfer to Buyer title to all completed and partially completed products and to any raw materials or supplies acquired by Seller especially for the purpose of performing this contract, and Buyer shall pay Seller the sum of the following:
(1) the contract price for all products which have been completed prior to termination;
(2) the cost to Seller of the material or work in process as shown on the books of Seller in accordance with the accounting practice

consistently maintained by Seller plus a reasonable profit thereon, but in no event more than the contract price;
(3) the cost f.o.b. Seller's plant of materials and supplies acquired especially for the purpose of performing this contract; and
(4) reasonable cancellation charges, if any, paid by Seller on account of any commitment(s) made hereunder.

17. SELLER'S RIGHT OF TERMINATION. In addition to the other rights of termination provided for in this contract, and if this contract is made pursuant to any governmental rule or regulation, plan, order or other directive, upon the directive, effected or impaired, termination thereof, Seller shall have the option of canceling this contract in whole or in part.

18. WAIVER. Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

19. DELIVERY. Unless otherwise agreed to in writing by the Seller, the Buyer hereby agrees to take delivery of the materials on this order within the later of thirty (30) days after the wanted date shown on the face of the order or within thirty (30) days after notification, oral or written, that the materials are ready for shipment. In the event that the Buyer does not arrange to take delivery of the materials in accordance with this Contract, Seller, at Seller's option, may:
(a) invoice the Buyer for the materials less freight if applicable; store the material in Seller's yard for a period not to exceed sixty (60) days from the date of invoice; charge a storage fee not to exceed 5% per month or fraction thereof of the selling price of the stored materials; add any applicable price increases listed on the face of the order; charge for any repair work to protective coatings harmed by weathering while such material is being stored; and charge applicable freight when shipment to the Buyer is made. Materials remaining in storage after sixty (60) days from the invoice date shall become the property of the Seller for disposition at the Seller's discretion. In that event, Buyer shall not be liable for the invoice price of the materials, but shall be liable for the storage fee and any repair work to protective coatings; or
(b) cancel the order and invoice the Buyer for cancellation charges, which shall be 25% of the selling price of the materials if the materials are standard, in-stock material, or the full selling price if the materials are special or nonstandard in nature and were especially fabricated for the Buyer.

20. PERIOD OF LIMITATIONS. Buyer and Seller agree that any action by Buyer against Seller for a breach of this contract, including any action for breach of warranty, or otherwise in connection with the goods sold under this contract, must be commenced by Buyer against Seller within one year after the cause of action therefore accrues.

21. CONFLICTING PROVISIONS OFFERED BY BUYER. Any terms and conditions of any purchase order or other instrument issued by the Buyer, in connection with the subject matter of this document, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any matter whatsoever unless accepted by Seller in writing.

22. SEVERABILITY. In case any provision of this contract shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

23. APPLICABLE LAW. This contract shall be governed by, and construed and enforced in accordance with, the laws of Ohio. Buyer and Seller specifically agree that any legal action brought relating to this contract will be brought and tried in the federal district court in Cincinnati, Ohio, or, in the absence of jurisdiction, the Butler County Court of Common Pleas in Hamilton, Ohio.

REV. 06/08



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

Subject: Well No. 11 Production Well – Public Works Contract Award

Dept. Origin: Public Works

Proposed Council Action: Award and authorize the Mayor to execute a Public Works Contract with Tacoma Pump and Drilling Company, Inc., in an amount not exceed \$479,244.50 for the award of the Well No. 11 Production Well Project and authorize the City Engineer to approve additional expenditures up to \$20,000 to cover any cost increases that may result from contract change orders.

Prepared by: Jeff Langhelm *JD*

For Agenda of: November 13, 2012

Exhibits: Public Works Contract

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty: *VIA EMAIL 11/2/12*

Approved by Finance Director: *11/5/12*

Approved by Department Head: *11/5/12*

Initial &
Date

CLH 11/5/12

[Signature] 11/2/12

[Signature] 11/5/12

[Signature] 11/5/12

| | | | | | |
|-----------------------------|--------------|------------------------|-----------|-------------------------------|------|
| Expenditure Required | \$499,244.50 | Amount Budgeted | \$800,000 | Appropriation Required | \$ 0 |
|-----------------------------|--------------|------------------------|-----------|-------------------------------|------|

INFORMATION/BACKGROUND

The City's available instantaneous water supply has been steadily diminishing due to increased water demands within the City of Gig Harbor's water service area. Currently, if the City's highest production supply well is removed from service during the peak summer season, the remaining supply wells will likely not be able to meet the City's water demands. To provide a redundant supply well the development of a new deep aquifer supply well is identified in the City's Comprehensive Plan and the City's Water System Plan.

As a result, the City's 2010, 2011, and 2012 budgets have identified work being performed for development of a new deep aquifer supply well, also known as Well No. 11. Based on information from 2010 and 2011 provided from a well evaluation and test well, the drilling of a new production well in the vicinity of the Skansie water tank was recommended.

Based on the satisfactory results from the Well No.11 test well drilled in 2011, the City submitted a new application to the Washington Department of Ecology (DOE) for non-additive water rights for a production well in the same general vicinity of the Well No. 11 test well. DOE approved this water right application on May 15, 2012.

This proposed public works contract provides for the drilling a 1,000 ft deep production well with a diameter of 16 inches. The anticipated success of this production well is based on the best available science. However, there is no certainty on the actual yield of this test well or a future production well.

BID RESULTS

This project was bid using the City's Public Works bidding process. The Engineer's Opinion of Probable Cost was \$551,000. A total of two bid proposals were received by the City on October 31, 2012. Bid results from each bidder are summarized below.

| No. | Bidder | Bid Amount |
|-----|--------------------------|--------------|
| 1 | Tacoma Pump and Drilling | \$479,244.50 |
| 2 | Schneider Water Services | \$559,811.18 |

FISCAL CONSIDERATION

The 2012 Water Division Capital Fund allocated the following for this project:

| | |
|---|----------------------|
| 2012 Budget for Deep Aquifer Well Development, Water Capital, Objective No. 1 | \$ 1,000,000.00 |
| Anticipated 2010 Expenses: | |
| Carollo Consultant Services Contract | \$ (143,847.00) |
| Carollo Consultant Services Contract Amendment | \$ (13,350.00) |
| Public Works Construction Contract – Well 11 Production Well | \$ (479,244.50) |
| Public Works Construction Contract – Change Order Authority | \$ (20,000.00) |
| Estimated Remaining 2012 Budget = | \$ 343,558.50 |

BOARD OR COMMITTEE RECOMMENDATION

This contract work is based on recommendations provided in the City's Water System Plan and the 2012 Budget adopted by City Council. This contract work is not based on a separate board or committee recommendation.

RECOMMENDATION/MOTION

Award and authorize the Mayor to execute a Public Works Contract with Tacoma Pump and Drilling Company, Inc., in an amount not exceed \$479,244.50 for the award of the Well No. 11 Production Well Project and authorize the City Engineer to approve additional expenditures up to \$20,000 to cover any cost increases that may result from contract change orders.

CONTRACT FORM

**CITY OF GIG HARBOR
WELL #11 PRODUCTION WELL PROJECT
CWP-1120**

THIS AGREEMENT, made and entered into, this ____ day of _____, 2012, by and between the City of Gig Harbor, a Non-Charter Code city in the State of Washington, hereinafter called the "City", and Tacoma Pump and Drilling Co., Inc., hereinafter called the "Contractor."

WITNESSETH:

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

1. The Contractor shall do all of the work and furnish all of the labor, materials, tools, and equipment necessary for the construction of the Well #11 Production Well Project, all in accordance with the Technical Specifications, Conditions of the Construction Contract and Supplementary Conditions of the Contract, and shall perform any changes in the Work, all in full compliance with the contract documents entitled "Well #11 Production Well Project Manual, CWP-1120," which are by this reference incorporated herein and made a part hereof; and agrees to accept payment for the same in accordance with the said Project Manual, including the schedule of prices in the "Proposal," the sum Four Hundred Seventy-Nine Thousand Two Hundred Forty-Four Dollars and Fifty Cents (\$479,244.50), including state sales tax, subject to the provisions of the Project Manual.
2. Work shall commence and contract time shall begin as stated in Section SC-2.04 of the Supplementary Conditions. All Contract Work shall be physically complete as stated in Section 01 12 16.
3. The Contractor agrees to pay the City the sum of \$798.74 per day for each and every working day all Work remains uncompleted after expiration of the specified completion time, as liquidated damages.
4. The Contractor shall provide for and bear the expense of all labor, materials, tools and equipment of any sort whatsoever that may be required for the full performance of the Work provided for in this Contract upon the part of the Contractor.
5. The term "Project Manual" shall mean and refer to the following: "Invitation to Bidders," "Bid Form," "Addenda" if any, "Specifications," "Plans," "Contract," "Performance Bond," "Payment Bond," "Notice to Proceed," "Change Orders" if any, and any documents referenced or incorporated into the Project Manual, including, but not limited to the Standard General Conditions, the Supplementary Conditions and the Technical Specifications.
6. The City agrees to pay the Contractor for materials furnished and Work performed in the manner and at such times as set forth in the Project Manual.

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

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

CITY of GIG HARBOR:

CONTRACTOR:

Charles L. Hunter, Mayor
City of Gig Harbor
Date: _____

Print Name: _____
Print Title: _____
Date: _____

ATTEST:

City Clerk

APPROVED FOR FORM:

City Attorney

***** END CONTRACT FORM *****



Subject: Second Reading of Ordinance –
2012 Comprehensive Plan
Amendments

Proposed Council Action: Adopt ordinance

Dept. Origin: Planning Department

Prepared by: Jennifer Kester *JK*
Senior Planner

For Agenda of: November 13th, 2012

Exhibits: Ordinance; Planning Commission
recommendation; Planning Commission minutes

Initial & Date

Concurred by Mayor: *CLH 10/31/12*
Approved by City Administrator: *R 10/31/12*
Approved as to form by City Atty: *amail 10/10/12*
Approved by Finance Director: *N/A*
Approved by Department Head: *TD 10/31/12*

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

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

Adopt 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 October 22, 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.** No members of the public testified at the public hearing on October 22, 2012.

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)

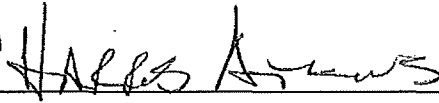
C. The proposed amendment will not adversely impact the city's ability to provide sewer and water, and will not adversely affect transportation facilities and other public facilities and services such as parks, police, fire, emergency medical services and governmental services; and

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



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.



Business of the City Council
City of Gig Harbor, WA

Subject: Burnham Drive/Borgen Blvd Roundabout Ramp Metering Project - Consultant Services Contract

Proposed Council Action: Approve and authorize the Mayor to execute the Consultant Services Contract with H.W. Lochner, Inc. in the not to exceed amount of Seventy-three Thousand Eight Hundred Ninety-five Dollars and Zero Cents (\$73,895.00)

Dept. Origin: Public Works/Engineering

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

For Agenda of: November 13, 2012

Exhibits: Consultant Services Contract, Scope of Work, Estimated Cost and Fees

Initial & Date

Concurred by Mayor:

Handwritten initials and date: CLH 11/9/12

Approved by City Administrator:

Approved as to form by City Atty:

Handwritten initials and date: email 11/7/12

Approved by Finance Director:

Handwritten initials and date: PR 11-12

Approved by Department Head:

Handwritten initials and date: 11/8/12

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and dollar amounts (\$73,895.00, \$190,000, \$0).

INFORMATION / BACKGROUND

An identified low cost improvement contained in the Gig Harbor SR16/Burnham Drive/Borgen Blvd Report recommended the ramp metering of the westbound SR16 Burnham Drive/Borgen Blvd off ramp. As noted in this report, during the PM peak hours, the eastbound approach volumes are so high that they do not leave sufficient gaps in the roundabout circulating traffic for the SR16 northbound off ramp approach for vehicles to enter. This contract provides for the final design and preparation of construction bid ready plans and specifications for this ramp metering system.

FISCAL CONSIDERATION

This project is funded by Hospital Benefit Zone (HBZ) monies adopted by City of Gig Harbor Ordinance No. 1242 and Pierce County Ordinance No. 2012-22.

BOARD OR COMMITTEE RECOMMENDATION

This project was one of many HBZ Projects discussed at the February 16, 2012 Public Works Committee meeting.

RECOMMENDATION / MOTION

Approve and authorize the Mayor to execute the Consultant Services Contract with H.W. Lochner, Inc. in the not to exceed amount of Seventy-three Thousand Eight Hundred Ninety-five Dollars and Zero Cents (\$73,895.00).

**PROFESSIONAL SERVICES CONTRACT
(Architects, Engineers, Land Surveyors, Landscape Architects)
BETWEEN THE CITY OF GIG HARBOR AND
H.W. LOCHNER, INC.**

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

RECITALS

WHEREAS, the City is presently engaged in the design of SR16/Burnham Drive/Borgen Boulevard Roundabout Ramp Metering Project and desires that the Consultant perform services necessary to provide the following consultation services; and

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

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

TERMS

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

2. **Payment.**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Seventy-three Thousand Eight Hundred Ninety-five Dollars and Zero Cents (\$73,895.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of

the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

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

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

4. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by March 30, 2013; provided however, that additional time shall be granted by the City for excusable days or extra work.

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

{ASB983048.DOC;1\00008.900000\}

6. **Non-Discrimination.** The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. **Indemnification.**

A. The Consultant 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 resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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

8. **Insurance.**

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

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

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

3. Professional Liability insurance with no less than \$1,000,000 per occurrence. All policies and coverages shall be on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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

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

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

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

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

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

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

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

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

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

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

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

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

CONSULTANT: H.W. Lochner, Inc.
ATTN: Al King
400 108th Avenue NE, Suite 401
Bellevue, WA 98004
(425) 454-454-3160

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

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

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

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

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its: _____

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SCOPE OF SERVICES EXHIBIT A

An identified low cost improvement contained in the "Gig Harbor SR 16/Burnham Drive NW/Borgen Blvd Report" included the metering of the westbound SR 16 Burnham Drive NW/Borgen Blvd off ramp. During the PM peak the eastbound approach volumes are so high that they do not leave sufficient gaps in the roundabout circulating traffic for the SR 16 northbound off ramp approach to enter. The City would like to analyze operations at these roundabouts to determine whether metering of the eastbound approach to the Burnham roundabout can provide significant operational benefits during the peak periods; and develop appropriate plans and specifications to implement the recommended solutions.

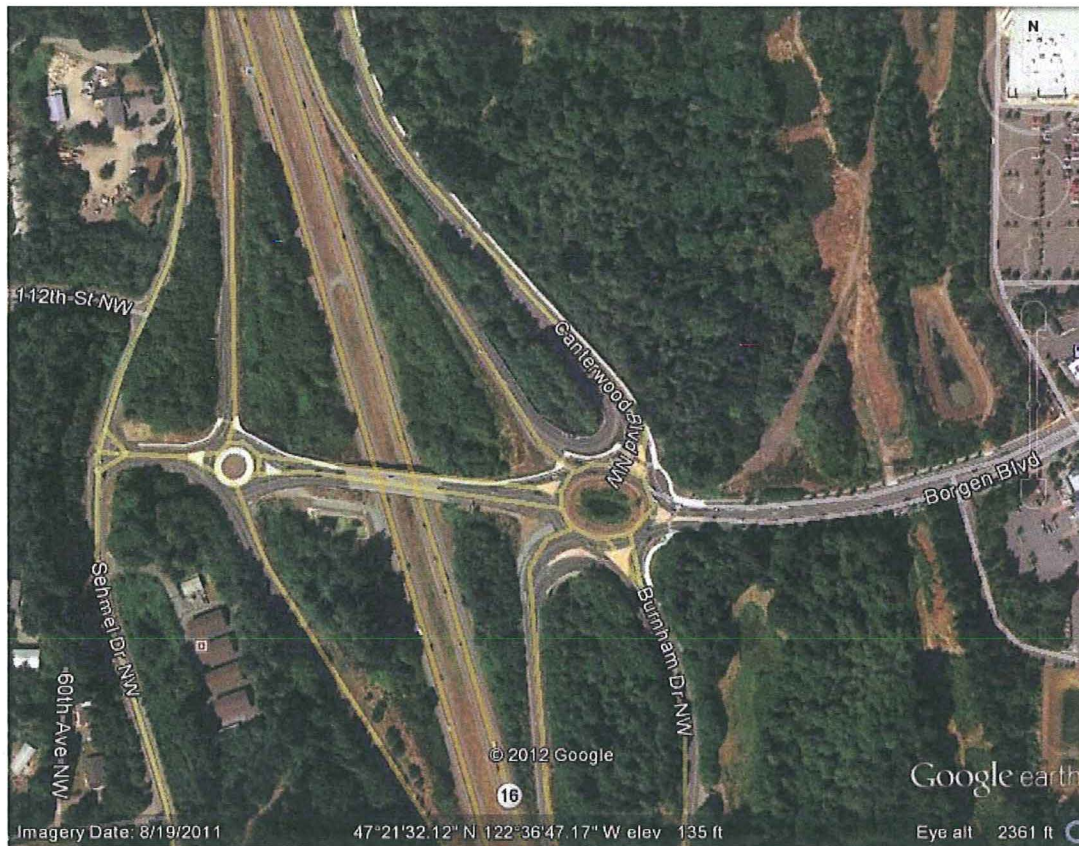


Figure 1 Semmel and Burnham Drive NW Roundabouts

The purpose of this work plan is to:

- Analyze the operations at the Burnham Drive Roundabout to identify operational deficiencies
- Develop an approach to improving operations at the Burnham roundabout with both the City and WSDOT
- Provide appropriate documentation to WSDOT for approval
- Develop a design for metering an approach to the Burnham roundabout
- Prepare the final design plans and documents to implement the project.
- Provide support and prepare for one Public meeting
- Attend one City Council meeting and to present information on the project design
- Provide bid assistance

The work will be conducted over an approximate nine-month period beginning November 1st, 2012 and ending July 30th, 2013.

Project Assumptions

1. For the purposes of budgeting, the anticipated length of the project will be approximately nine months.
2. The CONSULTANT will attend and provide support for one public meeting conducted by the City.
3. The City will provide the logistical support to reserve all meeting locations.
4. The City will prepare a summary of the meeting and public comments.
5. Traffic analysis and modeling using SIDRA 5.1 will be conducted as part of this project. This effort will not include any simulation.
6. WSDOT will provide the CONSULTANT with the most recent VISSIM model of the interchange.
7. No changes to existing channelization are anticipated and therefore no WSDOT approvals will be required.
8. WSDOT will provide specification for the software and hardware that is consistent with their typical metering installations.
9. The City will provide a copy of plans showing existing conduit at the roundabout.
10. The project will need to provide a T-1 line.
11. It is assumed that a new CCTV camera will be needed to allow monitoring of the metered approach to the Burnham/Borgen roundabout.
12. WSDOT will provide direction on the siting of the CCTV camera.
13. A new service cabinet will be required to provide power to the new CCTV camera.
14. Communications to the new CCTV camera will be achieved through a T-1 connection.

15. WSDOT's signal permit needs to be completed and approved by the Regional Administrator prior to design.
16. The CONSULTANT will prepare a "Construction Agreement" between the City and WSDOT.
17. WSDOT will participate in the observation of the ramp metering using the initial timing plan and assist in determining a final timing plan for the meter.
18. The City will provide current peak hour traffic counts.
19. The City will provide their current traffic model which is currently being updated.
20. Except for the WSDOT signal permit, the City will obtain all other State or City permits. No environmental work is anticipated within this contract.
21. No right-of-way needs are anticipated for this project.
22. The City will provide available geotechnical reports within the project area. No additional geotechnical technical information will be required.
23. Plans will be developed to WSDOT standards as the project is located within limited access.
24. Plans will be based on previous CAD drawings in the area provided by the City. No additional surveying will be required.
25. There will be concurrent reviews of plans between WSDOT and the City.
26. Contract specifications will conform to the 2012 WSDOT Specifications and City of Gig Harbor Public Works Standards.
27. WSDOT and the City will provide electronic versions of current plans for the Sehmel Drive and Burnham Drive roundabouts. The City will prepare the bid forms, contracts and Division 1 and the CONSULTANT will provide construction plans and Division 2-9 of the Special Provisions.
28. The Special Provisions will require the CONSULTANT to provide Maintenance of Traffic Plans for WSDOT/City approval.
29. Construction support services are not included within this contract with the exception of responses to bidder inquiries.
30. The 60% submittal will be limited to one combined review opportunity by the City and WSDOT. The 90% submittal will be limited to one combined review opportunity by the City and WSDOT. Additional submittal and reviews will be subject to additional fees.

TASK 1: Project Management

The CONSULTANT shall be responsible for on-going management this project in accordance with the provisions of the Agreement. On-going management will include responsibility for completing the work on time and within the Agreement budget. The CONSULTANT shall:

- Provide a monthly status/progress report with monthly invoices to the City that will describe work performed by the CONSULTANT during the current reporting period.

- Meet with the City each month during the project to review the overall project status, schedule, budget and outstanding issues. These meetings may be through telephone conference calls. For purposes of estimating time required for this sub element, it is assumed that nine meetings will be held during the project and will include preparation time. Maintain regular contact with the City Project Manager and maintain regular coordination with City staff for this project in accordance with the provisions of the Agreement. Regular coordination with the City will include involving the City staff in all aspects of the project. For purposes of estimation time required for this sub element, it is assumed that three meetings will be held at the City's offices to review plans, with other communications conducted through e-mails and telephone calls. It is assumed that a site visit will be included in the first coordination meeting at the City. It is assumed that WSDOT will participate in meetings with the City and that no additional meetings will be required,
- Coordinate with WSDOT as needed for completion of this project. Under this task, the CONSULTANT will meet with the City and WSDOT staff to determine the minimal level of effort required for appropriated documentation to obtain WSDOT project approval.
- The CONSULTANT shall provide quality assurances and quality control (QA/QC) throughout the life of the agreement to provide administration, accounting, budget monitoring, scheduling, communications and engineering procedures leading to the final product.

Deliverables:

- Monthly Status/Progress Reports and Monthly Invoices

TASK 2: Analysis

Under this task, the CONSULTANT will use SIDRA 5.1 to analyze current conditions to develop performance measures including delay, queue length, stop rate etc. and document them in a memorandum. The CONSULTANT will also use SIDRA 5.1 to develop and model a design that addresses the current operational issues at the Burnham Drive/Borgen Blvd roundabout. This model will provide key performance measures for the proposed design. The analysis will be carried out for the peak hour only. The analysis will include an estimation of the maximum queue at the eastbound approach to the roundabout to determine if there is any impact on the roundabout at the southbound SR 16 off and on-ramps.

Deliverables:

- Submittal of electronic output files from SIDRA 5.1 modeling.

TASK 3: Technical Memorandum

The CONSULTANT will prepare a technical memorandum that summarizes the analysis conducted in Task 2, provides a summary of the results of simulations run by WSDOT, and justifies that a basic metering system for the Burnham Drive NW/Borgen Blvd Roundabout during the PM peak period. The memorandum will document that the metering will not adversely impact the Sehmel Roundabout. The Technical Memorandum will also include

recommendations for initial timing for the ramp meter to fulfill the requirements of WSDOT's Signal Permit.

Deliverables:

- Technical Memorandum (assume 10 pages).

TASK 4: Public Involvement

The CONSULTANT will provide support, prepare graphics of design drawings and attend one public meeting and one council meeting coordinated by the City staff regarding the findings and design of the improvements.

Deliverables:

- Graphics for community/council meeting and Council Presentation

TASK 5: Interim Design (60% Design)

Under this task, the CONSULTANT will:

- Prepare the interim (60%) plans for the design.
- Prepare a conceptual level cost estimate using the plans developed in the 60% design.
- Prepare Special Provisions.
- Prepare a utility agreement to provide a T-1 connection for the new CCTV camera.

Deliverables:

- Stop line placement.
- Signing and electrical plans.
- CCTV plans and details.
- Maintenance of Traffic plans.
- Cost estimates for preliminary design shall be completed in accordance with the standard WSDOT bid items.
- Amendments and Special Provisions in WSDOT format.

TASK 6: Final Design

This task will include the development of the (90%) plans, and final (100%) PS&E plans for the proposed improvements.

6.1 90 % Project Design: The CONSULTANT will prepare the 90% project plans including Signing plans, and signal/electrical and CCTV plans. The CONSULTANT will also develop special provisions and cost estimate. The intent of the 90% submittal is to provide the City and WSDOT with the opportunity to review and comment on "bid ready" documents. The final (100%) submittal will incorporate these review comments.

6.1.1 Signing Plans and stop bar placement: The CONSULTANT will prepare signing plans to support the metering of roundabout approaches.

6.1.2 Signal/Electrical and CCTV Plans: The CONSULTANT will prepare signal/electrical plans that show power, communications and equipment locations to support the metering of roundabout approaches. The CONSULTANT shall also prepare plans for a new CCTV camera to be located as directed by WSDOT. The CONSULTANT will show required supporting equipment including a power service cabinet.

6.1.3 Maintenance of Traffic Plans: The CONSULTANT will prepare Maintenance of Traffic Plans specific to the construction work on this project.

6.1.4 Cost Estimate: The CONSULTANT will calculate quantities and prepare an estimate of construction costs using bid items.

6.1.5 Specifications: The CONSULTANT will review the WSDOT/APWA/City's Standard Construction Specifications and prepare special provisions for these items not included or are changed from the standard specifications. The City will prepare the complete final bid package for the project.

Deliverables:

- Two sets of Interim 90% Project Plans, Specifications and Construction Estimate for the City, two sets for WSDOT and two sets for the CONSULTANT.

6.2 Final 100% PS&E Design

Based on City's comments from their review of the 90% plans and specifications, the CONSULTANT will prepare the final project design plans for signing and electrical designs. The CONSULTANT will also finalize special provisions and the estimate of probable construction costs. It is assumed that there are no major changes from the 90% design submittal.

Deliverables:

- Camera-ready Final Project Plans, Specifications and Construction Estimate with Engineer's stamp.
- Electronic copy of all drawings (AutoCAD and PDF format), specifications (Word and PDF format) and cost estimate (Excel and PDF format) versions as determined by the City.
- Two sets (one set 11" x 17" paper and one set 22" x 34" mylar) of Final Project Plans, Specifications and Construction Estimate with Engineer's stamp for the City and two sets for the CONSULTANT team.

Task 7: WSDOT Documentation

The CONSULTANT will prepare the WSDOT Signal Permit for approval of the Regional Administrator. The CONSULTANT will assemble the necessary documentation to support the permit. The CONSULTANT will prepare the 'Construction Agreement' for the project between WSDOT and the City of Gig Harbor.

Deliverables:

- Draft and Final WSDOT Signal Permit
- Draft and Final WSDOT Construction Agreement

Task 8: Observation and final meter timing plan

The CONSULTANT will observe peak hour operations after construction and installation of the ramp meter and immediately after initializing metering based on the initial recommended timing plan. The CONSULTANT will document queuing at the eastbound approach to the SR 16/Burnham Drive NW/Borgen Blvd roundabout and at the SR 16 northbound off-ramps to the roundabout. Based on observations, the CONSULTANT will work with WSDOT to develop a final recommended timing plan for the meter.

Deliverables:

- Memorandum documenting operational observations and proposed final meter timing plan.

Task 9: Bid Assistance

The CONSULTANT will provide assistance during the bidding process for this project. This work will include the preparation of responses to bidder's questions and preparing addenda as required. For budgeting purposes, it is assumed that no addenda will be required and only three requests for information.

The City will prepare a summary of the bids (bid tabulation).

Deliverables:

- Written responses to bidder's questions, through addenda.

EXHIBIT B

SR 16/Burnham Drive NW/Borgen Blvd Roundabout Metering Project City of Gig Harbor

SUMMARY OF PROJECT COSTS

| Classification | Direct Salary Cost | Total Hours | Direct Salary | Total Costs |
|-------------------------------------|-----------------------|----------------|------------------|------------------|
| Project Manager | \$ 56.03 | 80 | \$ 4,482 | |
| Senior Project Engineer | \$ 55.47 | 140 | \$ 7,766 | |
| Design Engineer | \$ 51.56 | 120 | \$ 6,187 | |
| CAD Technician (Technical Support) | \$ 35.89 | 140 | \$ 5,025 | |
| QA/QC | \$ 60.02 | 4 | \$ 240 | |
| Administrative Assistant | \$ 26.55 | 14 | \$ 372 | |
| Salary Costs: | | 498 | | \$ 24,072 |
| Overhead @ 178.41%: | | | | \$ 42,947 |
| NET FEE @ 28% on Direct Salary | | | | \$ 6,740 |
| Total HWL Labor Cost: | | | | \$ 73,759 |
| Direct Reimbursables: | | | | |
| Travel: (within Pierce county only) | \$ 25.00 | | | |
| Reproduction: | \$ 100.00 | | | |
| Communications | \$ - | | | |
| Other Costs (Tolls 4 trips) | \$ 11.00 | | | |
| Reimbursables Subtotal: | | | | \$ 136 |
| Firm Total: H.W. Lochner, Inc. | | | | \$ 73,895 |
| TOTAL LOCHNER TEAM AMOUNT | | | | \$ 73,895 |



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

Subject: 2013 A/C Water Main Surveying – Consultant Services Contract

Proposed Council Action: Approve and authorize the Mayor to execute a Consultant Services Contract with Larson and Associates, for topographic surveying related to the 2013 Asbestos Cement Water Main Replacement Project in an amount not to exceed \$22,160.00 and authorize the City Engineer to approve additional expenditures up to \$2,000 to cover any costs increases.

Dept. Origin: Public Works/Engineering

Prepared by: Jeff Langhelm *AL*

For Agenda of: November 13, 2012

Exhibits: Consultant Services Contract with Scope and Fee

| | |
|--|-------------------|
| | Initial & Date |
| Concurred by Mayor: | <i>AL</i> 11/6/12 |
| Approved by City Administrator: | _____ |
| Approved as to form by City Atty: | VIA EMAIL 11/2/12 |
| Approved by Finance Director: | <i>SP</i> 11/8/12 |
| Approved by Department Head: | <i>AL</i> 11/8/12 |

| | | | | | |
|-----------------------------|--------------|------------------------|--------------------------|-------------------------------|-----|
| Expenditure Required | \$ 22,160.00 | Amount Budgeted | See Fiscal Consideration | Appropriation Required | \$0 |
|-----------------------------|--------------|------------------------|--------------------------|-------------------------------|-----|

INFORMATION/BACKGROUND

The City's annual goal for replacement of asbestos cement (AC) water main is approximately 4,300 LF per year. In 2012 the City applied for a \$2.0 million state appropriation for replacement of approximately 8,500 LF of the City's remaining AC water main. The City was awarded this state appropriation in June 2012. At the September 24 Council Meeting the City Council authorized the Mayor to sign the \$2.0 million grant agreement with the Washington State Department of Health. This grant has now been executed by the Department of Health.

The proposed consultant services contract will provide the surveying services for the collection of topographic survey data of the roadways where the anticipated AC water main replacements will occur. This survey data will be the basis for the design and construction of the 2013 AC Water Main Replacement Project completed by City Staff.

FISCAL CONSIDERATION

The 2013 AC Water Main Project is a fully reimbursable project (up to \$2.0 million) from the executed Department of Health grant agreement. The surveying services are identified in the grant as reimbursable design engineering expenses.

The proposed 2013 City of Gig Harbor Budget includes funding for the proposed work in the Water Division – Capital Fund. The budget summary for this item is provided in the table below:

| | |
|--|---------------------------|
| Proposed 2013 Budget for Water Division – Capital, Objective 5 | \$ 2,000,000.00 |
| Requested 2012-2013 Expenses: | |
| <i>Surveying Services – Larson & Assoc. (Design Engineering)</i> | (<i>\$ 22,160.00</i>) |
| <i>Surveying Services – Additional Expenditures</i> | (<i>\$ 2,000.00</i>) |
| <i>Permitting (Environmental/Cultural Review)</i> | (<i>\$ 40,000.00</i>) |
| <i>Construction Contract</i> | (<i>\$1,920,840.00</i>) |
| <i>Materials Testing Contract</i> | (<i>\$ 15,000.00</i>) |
| Remaining 2013 Budget = | \$ 0.00 |

Note: *Italicized* expenses indicate anticipated project items.

BOARD OR COMMITTEE RECOMMENDATION

This contract work was based on recommendations provided in the City’s Water System Plan and the proposed 2013 Budget. This contract work was not based on a separate board or committee recommendation.

RECOMMENDATION/MOTION

Approve and authorize the Mayor to execute a Consultant Services Contract with Larson and Associates, for topographic surveying related to the 2013 Asbestos Cement Water Main Replacement Project in an amount not to exceed \$22,160.00 and authorize the City Engineer to approve additional expenditures up to \$2,000 to cover any costs increases.

PROFESSIONAL SERVICES CONTRACT
(Architects, Engineers, Land Surveyors, Landscape Architects)
BETWEEN THE CITY OF GIG HARBOR AND
LARSON AND ASSOCIATES
LAND SURVEYORS AND ENGINEERS, INC.

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Larson and Associates Land Surveyors and Engineers, Inc., a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the topographic survey of right-of-way as shown on Attachment 1 and desires that the Consultant perform services necessary to provide the following consultation services; and

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

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

TERMS

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

2. **Payment.**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Twenty-two Thousand One Hundred Sixty Dollar and Zero Cents (\$22,160.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly

rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

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

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

4. **Duration of Work.** The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by June 30, 2013; provided however, that additional time shall be granted by the City for excusable days or extra work.

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

6. **Non-Discrimination.** The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. **Indemnification.**

A. The Consultant 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 resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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

8. **Insurance.**

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

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

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but

- is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000 per occurrence. All policies and coverages shall be on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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

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

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

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

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

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

Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

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

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

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

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

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

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

15. **Written Notice.** All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same

{ASB983048.DOC;1\00008.900000\ }

is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT:
Larson and Associates
Land Surveyors and Engineers, Inc.
ATTN: Rich Larson
4401 South 66th Street
Tacoma, WA 98409
(253) 474-3404

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

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

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

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

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its: _____

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

Scope of Services:

Larson and Associates will provide the City with a topographic map of the 9 locations on Attachment "1". The length of the project is approximately 9,000 lin. ft. and the map will include the entire width of the right of way. The City will provide underground utility locations and any right of way maps that may be available from their files. It is understood that Larson and Associates will establish the right of way widths of the different map locations using existing maps of record and that said lines are preliminary. If the City decides that additional right of way may be necessary a cost has been added to our proposal for Title reports and legal descriptions. All work shall be completed in early January with the exact date to be determined in the final contract.

The map shall include:

- 1) All existing utilities above and below ground
- 2) Sidewalks, curbs, gutters, and pavement edges
- 3) Vegetation
- 4) Contours at 1 foot intervals
- 5) Survey monuments
- 6) Any property corners that are visible
- 7) All structures (buildings, rockeries, fences, etc.)
- 8) Channelization (striping, x-walks, signs, etc)

The finished product will be provided using the following:

- 1) APWA symbols/linetypes
- 2) Auto CAD 2010 file format
- 3) Horizontal Datum=NAD 83 using Wash. State Plane South Coordinates
- 4) Vertical Datum= NGVD 29

9) APWA symbols/linetypes

A) Field survey

2 man survey crew with robotic total sta. 64 hrs @ \$140/hr. \$ 8960

C) Auto Cad Drafting

Drafter 64 hrs @ \$70 hr. \$ 4480

D) Traffic Control

36 hrs @ \$ 55.00 hr \$ 1980

E) Title Reports if requested 4 @ \$250

\$ 1000

F) Legal descriptions and sketch maps if needed

4 @ \$500 ea. \$ 2000

G) Project Management PLS

8 hours @ \$85.00 hr. \$ 680

Total Cost \$ 22,160

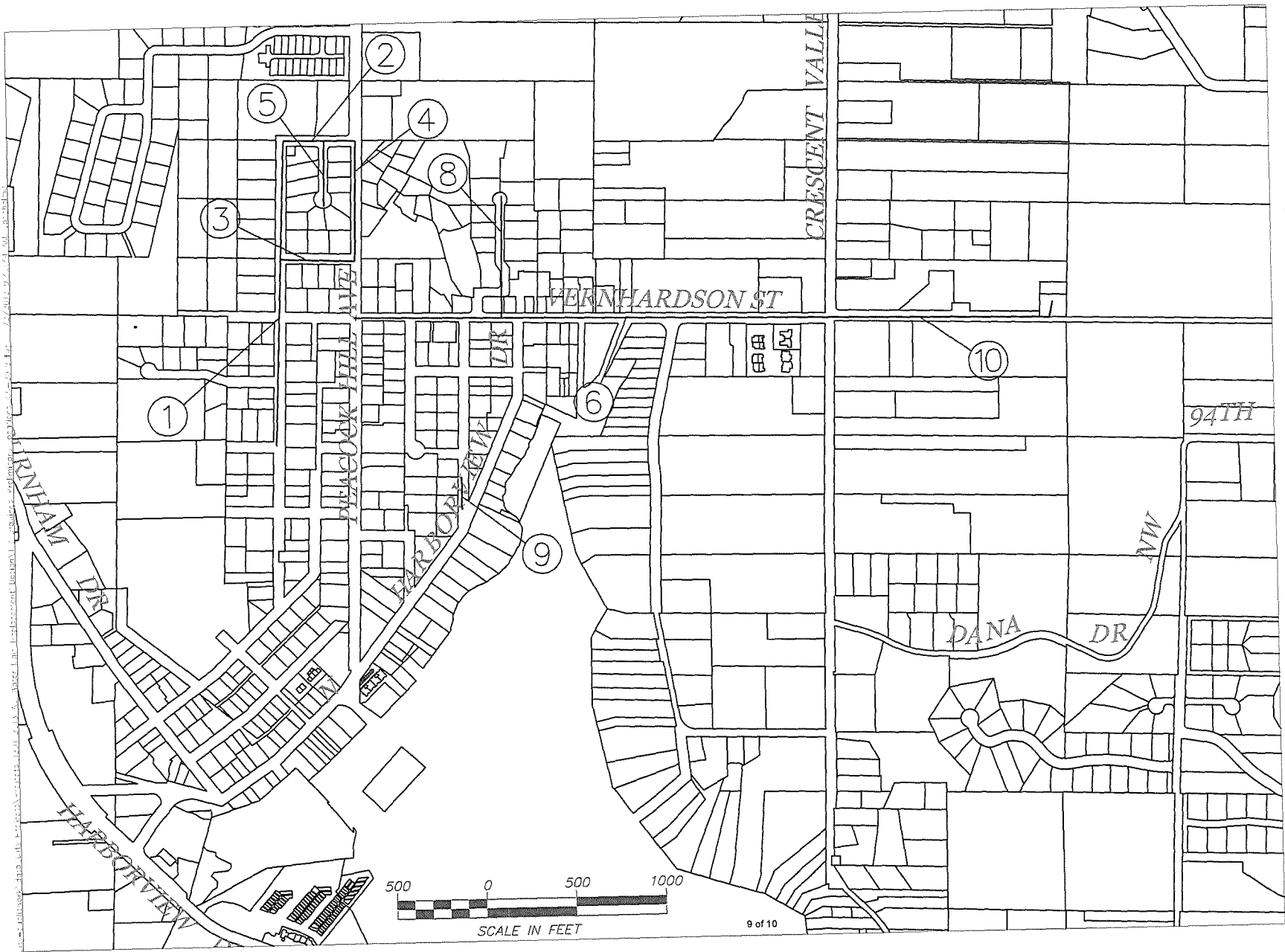
As a finished product, we will provide the City with an electronic file and 2 hard copies of each map.

Thank you for allowing Larson and Associates to present you with this proposal. If you have any questions please call me at (253) 377-6549 ?

Sincerely,

Richard R Larson, PLS , Pres.

Larson & Assoc.; Land Surveyors & Engr's. , Inc




CITY OF GIG HARBOR
WATER SYSTEM

2013 A/C WATER MAIN
 LOCATION MAP
 SEC. 5, T. 21 N., R. 2 E., W.M.
 SEC. 6, T. 21 N., R. 2 E., W.M.
 SEC. 31, T. 22 N., R. 2 E., W.M.
 SEC. 32, T. 22 N., R. 2 E., W.M.

Attachment #1

Consent Agenda - 11
 Page 11 of 12

LARSON AND ASSOCIATES
Land Surveyors Engineers, Inc.
 4401 South 66th Street
 Tacoma, WA 98409
 253-474-3404

EXHIBIT B

Client: City of Gig Harbor
Project: 2013 A/C Water Main Replacements
Work Order:
Date: 10/31/2012

| | | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="6" style="text-align: center;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="6" style="text-align: center;">HOUR BREAKDOWN</th> </tr> <tr> <th colspan="6" style="text-align: center;">Staff Labor Hours Required by Task</th> </tr> <tr> <th style="text-align: center;">Licensed Surveyor</th> <th style="text-align: center;">2-Man Crew</th> <th style="text-align: center;">Cad Drafter</th> <th style="text-align: center;">Billable Crew</th> <th style="text-align: center;">TOTAL HOURS</th> <th style="text-align: center;">LABOR TOTAL</th> </tr> <tr> <th style="text-align: center;">\$ 85.00</th> <th style="text-align: center;">\$ 140.00</th> <th style="text-align: center;">\$ 70.00</th> <th style="text-align: center;">\$ 55.00</th> <th></th> <th></th> </tr> </thead> </table> </th> <th style="text-align: center;">OTHER DIRECT COSTS</th> <th style="text-align: center;">TOTAL COSTS</th> </tr> </thead> </table> | | | | | | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="6" style="text-align: center;">HOUR BREAKDOWN</th> </tr> <tr> <th colspan="6" style="text-align: center;">Staff Labor Hours Required by Task</th> </tr> <tr> <th style="text-align: center;">Licensed Surveyor</th> <th style="text-align: center;">2-Man Crew</th> <th style="text-align: center;">Cad Drafter</th> <th style="text-align: center;">Billable Crew</th> <th style="text-align: center;">TOTAL HOURS</th> <th style="text-align: center;">LABOR TOTAL</th> </tr> <tr> <th style="text-align: center;">\$ 85.00</th> <th style="text-align: center;">\$ 140.00</th> <th style="text-align: center;">\$ 70.00</th> <th style="text-align: center;">\$ 55.00</th> <th></th> <th></th> </tr> </thead> </table> | | | | | | HOUR BREAKDOWN | | | | | | Staff Labor Hours Required by Task | | | | | | Licensed Surveyor | 2-Man Crew | Cad Drafter | Billable Crew | TOTAL HOURS | LABOR TOTAL | \$ 85.00 | \$ 140.00 | \$ 70.00 | \$ 55.00 | | | OTHER DIRECT COSTS | TOTAL COSTS |
|--|--|--|---------------|-------------|-------------|----------------|--------------|--|--------------|--|--|------------------------------------|--|----------------|--|--|--|-------------------|------------|------------------------------------|---------------|-------------|-------------|----------|-----------|-------------------|------------|-------------|---------------|--------------------|-------------|----------|-----------|----------|----------|--|--|--------------------|-------------|
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| HOUR BREAKDOWN | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Staff Labor Hours Required by Task | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| \$ 85.00 | \$ 140.00 | \$ 70.00 | \$ 55.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| TASK NO. | TASK DESCRIPTION | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Preliminary Research | 36 | | | | 36 | \$ 3,060.00 | | \$ 3,060.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | Field Survey | | 64 | | | 64 | \$ 8,960.00 | | \$ 8,960.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | Auto Cad Drafting | | | 64 | | 64 | \$ 4,480.00 | | \$ 4,480.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | Traffic Control | | | | 36 | 36 | \$ 1,980.00 | | \$ 1,980.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 | Title Reports (4 @ \$250 ea.) | | | | | | | \$ 1,000.00 | \$ 1,000.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6 | Legal Descriptions and Sketch Maps (4 @ \$500 ea.) | | | | | | | \$ 2,000.00 | \$ 2,000.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7 | Project Management | 8 | | | | 8 | \$ 680.00 | | \$ 680.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| | Total | 44 | 64 | 64 | 36 | 208 | \$ 19,160.00 | \$ 3,000.00 | \$ 22,160.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |



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

Subject: (CPP 0914) Donkey Creek Restoration and Transportation Improvements Project - Construction Contract Award

Proposed Council Action: Award and authorize the Mayor to execute a Public Works Contract with MidMountain Contractors, Inc. in an amount not exceed \$3,020,451.90 for the award of Bid Schedules A and B (Base Bid), C (Harborview Frontage) and D (VMS Boards) in the Donkey Creek Restoration and Transportation Improvements Project Contract Documents and authorize the City Engineer to approve additional expenditures up to \$150,000 to cover any cost increases that may result from contract change orders.

Dept. Origin: Public Works/Engineering

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

EM 11.8.12

For Agenda of: November 13, 2012

Exhibit: Public Works Contract
Bid Tabulation Summary

Initial &
Date

Concurred by Mayor:

CLH 11/7/12

Approved by City Administrator:

Approved as to form by City Atty:

11/8/12

Approved by Finance Director:

Approved by Department Head:

| Expenditure Required | Amount | Appropriation |
|----------------------|------------------------------------|-----------------|
| \$ 3,170,451.90 | Budgeted* *2013 proposed | Required |
| | \$ 3,402,000.00 | \$ 0 |

INFORMATION/BACKGROUND

The City received two grants for this project: \$1,461,000 through US Housing and Urban Development (HUD) and \$800,000 through US Fish and Wildlife (USFW). Since 2010, work on the project has consisted of refining the project concept and completing preliminary and final design and permitting. On September 6, 2012 the City received the final environmental clearance from HUD. This was the last step in the environmental process necessary to comply with the grant agreement requirements prior to advertising the project for construction bids. The plans and specifications were completed and the project was first advertised for bids on September 12, 2012.

In order to accurately track project costs related to each funding source and to increase the flexibility of the City to award the project, the contract documents were prepared to include four bid schedules;

- Schedule A – base bid for the roadway and bridge improvements
- Schedule B – base bid for the estuary improvements
- Schedule C – additive bid for the Harborview Drive frontage
- Schedule D – additive bid for three portable changeable message signs

Schedule A is for the construction of roadway improvements, including a new bridge on North

Harborview Drive, and City-owned utility work on Austin Street, North Harborview Drive and Harborview Drive. It contains all work under the HUD grant agreement. **Schedule B** is for construction of the estuary restoration and contains all work under the USFW grant agreement. **Schedule C** is for construction of the frontage improvements between Austin Estuary Park and North Harborview Drive. **Schedule D** will provide for up to three dedicated portable, changeable message signs to be furnished, maintained and operated during construction and supplied to the City at the completion of the project.

BID RESULTS: The Donkey Creek Estuary Restoration and Roads Project was bid using the City's Public Works bidding process. A total of seven (7) bid proposals were received by the City of Gig Harbor on October 10, 2012 with bid totals for Schedules A, B, C and D ranging from the low bid of \$ 3,020,451.90 to a high bid of \$4,203,381.01. More detailed information can be found in the attached bid tabulation.

During the bid opening conducted by the City Engineer, it was notated and verbally mentioned that the Proposal Signature sheet was missing from MidMountain's bid. On Monday, November 5, 2012, the City Engineer received a bid protest letter from the second lowest bidder, Quigg Bothers, Inc., indicating their intent to protest the City's intent to award the construction contract to Mid Mountain, contending that this irregularity is not a waivable minor irregularity and that the City should either award the contract to Quigg Brothers or reject all bids and readvertise this project. After consultation with the City Attorney's office the City concluded the bid protest was not timely submitted, and even if it had been timely submitted the irregularity could nonetheless be waived and the bid awarded to MidMountain.

FISCAL CONSIDERATION

The 2012 City of Gig Harbor Budget includes \$1,961,000 to complete the design and permitting and begin construction of this project. The 2013 proposed Budget includes an amount totaling \$3,402,000 for the construction contract work and other work associated with construction management, special inspection and materials testing services and public outreach. Of that amount, \$1,201,000 is reimbursable by the US HUD grant and \$671,000 is reimbursable by the USFW grant. The remaining amounts are proposed to be funded by the Stormwater (\$300,000), Water (\$220,000) and Sewer (\$275,000) Utility funds, the GHN LID (\$135,000) fund and the HBZ (\$600,000) fund.

BOARD OR COMMITTEE RECOMMENDATION

None. The Public Works Committee was advised of the project status at the regularly scheduled meeting on September 20, 2012.

RECOMMENDATION/MOTION

Award and authorize the Mayor to execute a Public Works Contract with MidMountain Contractors, Inc., in an amount not exceed \$3,020,451.90 including retail sales taxes and the award of all Bid Schedules A, B, C and D of the Contract Documents and authorize the City Engineer to approve additional expenditures up to \$150,000 to cover any cost increases that may result from contract change orders.

**DONKEY CREEK RESTORATION AND TRANSPORTATION
IMPROVEMENTS PROJECT CPP-0914**

PUBLIC WORKS CONTRACT

THIS AGREEMENT, made and entered into, this ____ day of _____, 20____, by and between the City of Gig Harbor, a Non-Charter Code city in the State of Washington, hereinafter called the "City", and MidMountain Contractors, Inc., organized under the laws of the State of Washington, located and doing business at, 825 Fifth Avenue, Kirkland, WA 98033, mailing address P.O. Box 2909, Kirkland, WA 98083-2902 hereinafter called the "Contractor."

WITNESSETH:

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

The Contractor shall do all of the work and furnish all of the labor, materials, tools, and equipment necessary to complete the work under this contract, which requires improvements to existing roadways including construction of a new shared path, sidewalks, curb and gutter, guardrail; rockery walls and soldier pile retaining walls; single-span concrete girder bridge, installation of storm drainage pipes and structures; illumination systems; striping; permanent signing; traffic control; removal of an existing stream culvert, stream and estuary restoration; dewatering; grading and plantings; temporary erosion and sediment control measures; and other work, all in accordance with the attached Contract Documents called "Donkey Creek Restoration and Transportation Improvements Project, CPP-0914", these Special Provisions, and the Standard Specifications which are by this reference incorporated herein and made a part hereof; and agrees to accept payment for the same in accordance with the said contract documents, including the schedule of prices in the "Proposal," for Bid Schedules A, B, C, and D the sum of Three Million Twenty Thousand Four Hundred Fifty-one Dollars and Ninety Cents (\$3,020,451.90), subject to the provisions of the Contract Documents, the Special Provisions, and the Standard Specifications.

1. The Notice to Proceed will be given within 21 days after the contract has been executed BY BOTH PARTIES. The Contractor shall commence construction activities on the project site within ten (10) calendar days of the Notice to Proceed date, unless otherwise DIRECTED BY THE OWNER in writing. Contract time shall begin on the first working day following the Notice to Proceed Date. Work shall be substantially complete in accordance with Section 1-08.5 of the Special Provisions in the Contract Documents.
2. The Contractor agrees to pay the City for liquidated damages incurred according to Standard Specification 1-08.9 per day for each and every day all work remains uncompleted after expiration of the specified time, as liquidated damages.
3. The Contractor shall provide for and bear the expense of all labor, materials, tools, and equipment of any sort whatsoever that may be required for the full performance of the work provided for in this Contract upon the part of the Contractor.
4. The term "Contract Documents" shall mean and refer to the following: "Invitation to Bidders," "Bid Proposal," "Addenda" if any, "Specifications," "Plans," "Contract," "Performance Bond," "Maintenance Bond," "Payment Bond," "Special Provisions," "Notice to Proceed," "Change Orders" if any, and any documents referenced or incorporated into the Contract Documents, including, but not limited to the Washington State Department of Transportation's "2010 Standard Specifications for Road, Bridge, and Municipal Construction," including the American Public Works Association (APWA) General Special Provisions.

5. The City agrees to pay the Contractor for materials furnished and work performed in the manner and at such times as set forth in the Contract Documents.
6. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, assigns, agents, subcontractors, and employees, does hereby agree to the full performance of all of the covenants herein contained upon the part of the Contractor.
7. It is further provided that no liability shall attach to the City by reason of entering into this Contract, except as expressly provided herein.

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

CITY of GIG HARBOR:

CONTRACTOR:

Charles L. Hunter, Mayor
City of Gig Harbor

Print Name: _____

Print Title: _____

ATTEST:

City Clerk

APPROVED FOR FORM:

City Attorney

(CPP 0914) Donkey Creek Restoration and Roads

Construction Contract Bid Tabulation Summary Page

October 17, 2012
page 1 of 1

| | MidMountain Schedule Summary | Quigg Bros., Inc. Schedule Summary | Stan Palmer Construction Schedule Summary | Tucci & Sons, Inc. Schedule Summary | Active Construction, Inc. Schedule Summary | Johansen Excavating, Inc. Schedule Summary | Ceccanti Schedule Summary |
|--|---------------------------------|---------------------------------------|--|--|---|---|------------------------------|
| Schedule A - ROADS | \$ 1,997,847.25 | \$ 1,991,648.00 | \$ 2,169,913.50 | \$ 2,303,874.10 | \$ 2,307,218.43 | \$ 2,191,680.50 | \$ 2,890,270.00 |
| Schedule B - ESTUARY | \$ 653,613.50 | \$ 900,257.00 | \$ 756,853.00 | \$ 655,622.00 | \$ 795,018.40 | \$ 935,729.75 | \$ 944,706.00 |
| Schedule B ESTUARY - Tax (8.5%0 | \$ 55,557.15 | \$ 76,521.85 | \$ 64,332.51 | \$ 55,727.87 | \$ 67,576.56 | \$ 79,537.03 | \$ 80,300.01 |
| Subtotal Schedule B ESTUARY: | \$ 709,170.65 | \$ 976,778.85 | \$ 821,185.51 | \$ 711,349.87 | \$ 862,594.96 | \$ 1,015,266.78 | \$ 1,025,006.01 |
| A+B: | \$ 2,707,017.90 | \$ 2,968,426.85 | \$ 2,991,099.01 | \$ 3,015,223.97 | \$ 3,169,813.39 | \$ 3,206,947.28 | \$ 3,915,276.01 |
| Schedule C - HARBORVIEW DRIVE FRONTAGE | \$ 287,934.00 | \$ 389,226.00 | \$ 411,144.00 | \$ 345,172.00 | \$ 259,567.90 | \$ 343,176.00 | \$ 240,105.00 |
| A+B+C: | \$ 2,994,951.90 | \$ 3,357,652.85 | \$ 3,402,243.01 | \$ 3,360,395.97 | \$ 3,429,381.29 | \$ 3,550,123.28 | \$ 4,155,381.01 |
| Schedule D - VMS | \$ 25,500.00 | \$ 36,000.00 | \$ 8,400.00 | \$ 60,000.00 | \$ 57,000.00 | \$ 52,650.00 | \$ 48,000.00 |
| A+B+C+D: | \$ 3,020,451.90 | \$ 3,393,652.85 | \$ 3,410,643.01 | \$ 3,420,395.97 | \$ 3,486,381.29 | \$ 3,602,773.28 | \$ 4,203,381.01 |

| Sched | Spec Section | Item | Unit | Qty | MidMountain | | Quigg Bros., Inc. | | Stan Palmer Construction | | Tucci & Sons, Inc. | | Active Construction, Inc. | | Johansen Excavating, Inc. | | Ceccanti | |
|-----------------------------|--------------|---|------|---------|--------------|---------------|-------------------|---------------|--------------------------|---------------|--------------------|---------------|---------------------------|---------------|---------------------------|---------------|--------------|---------------|
| | | | | | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension | Unit Price | Extension |
| C-54. | 8-14 | Cement Conc. Sidewalk | SY | 50.0 | \$ 36.00 | \$ 1,800.00 | \$ 35.00 | \$ 1,750.00 | \$ 23.00 | \$ 1,150.00 | \$ 40.00 | \$ 2,000.00 | \$ 39.00 | \$ 1,950.00 | \$ 88.05 | \$ 4,402.50 | \$ 20.00 | \$ 1,000.00 |
| C-55. | SP 8-14 | Cement Conc. Shared Path | SY | 230.0 | \$ 40.00 | \$ 9,200.00 | \$ 42.00 | \$ 9,660.00 | \$ 22.00 | \$ 5,060.00 | \$ 26.00 | \$ 5,980.00 | \$ 33.00 | \$ 7,590.00 | \$ 36.00 | \$ 8,280.00 | \$ 20.00 | \$ 4,600.00 |
| C-56. | 8-14 | Cement Conc. Bike Ramp | EA | 1.0 | \$ 1,100.00 | \$ 1,100.00 | \$ 600.00 | \$ 600.00 | \$ 1,150.00 | \$ 1,150.00 | \$ 1,500.00 | \$ 1,500.00 | \$ 1,600.00 | \$ 1,600.00 | \$ 805.00 | \$ 805.00 | \$ 900.00 | \$ 900.00 |
| C-57. | 8-14 | Cement Conc. Sidewalk Ramp Type Perpendicular A | EA | 9.0 | \$ 1,150.00 | \$ 10,350.00 | \$ 1,000.00 | \$ 9,000.00 | \$ 825.00 | \$ 7,425.00 | \$ 1,000.00 | \$ 9,000.00 | \$ 1,000.00 | \$ 9,000.00 | \$ 930.00 | \$ 8,370.00 | \$ 900.00 | \$ 8,100.00 |
| C-58. | SP 8-20 | Illumination and Electrical System Complete | LS | 1.0 | \$ 22,500.00 | \$ 22,500.00 | \$ 25,000.00 | \$ 25,000.00 | \$ 21,000.00 | \$ 21,000.00 | \$ 21,000.00 | \$ 21,000.00 | \$ 25,000.00 | \$ 25,000.00 | \$ 20,425.00 | \$ 20,425.00 | \$ 24,083.00 | \$ 24,083.00 |
| C-59. | 8-21 | Permanent Signing | LS | 1.0 | \$ 3,800.00 | \$ 3,800.00 | \$ 3,000.00 | \$ 3,000.00 | \$ 3,100.00 | \$ 3,100.00 | \$ 1,000.00 | \$ 1,000.00 | \$ 650.00 | \$ 650.00 | \$ 550.00 | \$ 550.00 | \$ 450.00 | \$ 450.00 |
| C-60. | 8-22 | Plastic Bicycle Lane Symbol | EA | 1.0 | \$ 365.00 | \$ 365.00 | \$ 75.00 | \$ 75.00 | \$ 350.00 | \$ 350.00 | \$ 325.00 | \$ 325.00 | \$ 370.00 | \$ 370.00 | \$ 340.00 | \$ 340.00 | \$ 250.00 | \$ 250.00 |
| C-61. | 8-23 | Paint Line | LF | 2,000.0 | \$ 0.38 | \$ 760.00 | \$ 0.50 | \$ 1,000.00 | \$ 0.40 | \$ 800.00 | \$ 0.34 | \$ 680.00 | \$ 0.39 | \$ 780.00 | \$ 0.50 | \$ 1,000.00 | \$ 1.00 | \$ 2,000.00 |
| C-62. | 8-23 | Plastic Traffic Arrow | LF | 4.0 | \$ 165.00 | \$ 660.00 | \$ 75.00 | \$ 300.00 | \$ 155.00 | \$ 620.00 | \$ 150.00 | \$ 600.00 | \$ 171.00 | \$ 684.00 | \$ 78.50 | \$ 314.00 | \$ 150.00 | \$ 600.00 |
| C-63. | 8-24 | Gravity Block Wall | SF | 75.0 | \$ 25.00 | \$ 1,875.00 | \$ 35.00 | \$ 2,625.00 | \$ 85.00 | \$ 6,375.00 | \$ 40.00 | \$ 3,000.00 | \$ 35.00 | \$ 2,625.00 | \$ 26.00 | \$ 1,950.00 | \$ 22.00 | \$ 1,650.00 |
| SUBTOTAL SCHEDULE C: | | | | | | \$ 287,934.00 | | \$ 389,226.00 | | \$ 411,144.00 | | \$ 345,172.00 | | \$ 259,567.90 | | \$ 343,176.00 | | \$ 240,105.00 |
| D-1 | 9-35 | Portable Changeable Message Sign | EA | 3.0 | \$ 8,500.00 | \$ 25,500.00 | \$ 12,000.00 | \$ 36,000.00 | \$ 2,800.00 | \$ 8,400.00 | \$ 20,000.00 | \$ 60,000.00 | \$ 19,000.00 | \$ 57,000.00 | \$ 17,550.00 | \$ 52,650.00 | \$ 16,000.00 | \$ 48,000.00 |
| SUBTOTAL SCHEDULE D: | | | | | | \$ 25,500.00 | | \$ 36,000.00 | | \$ 8,400.00 | | \$ 60,000.00 | | \$ 57,000.00 | | \$ 52,650.00 | | \$ 48,000.00 |



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

Subject: Public Hearing on Adopted Interim Ordinance Implementing FEMA Option #3 - Permit-by-Permit Demonstration of Compliance under the Endangered Species Act

Dept. Origin: Planning Department/Legal

Prepared by: Peter Katich, Sr. Planner
Angela Belbeck, City Attorney

Proposed Council Action: Hold a public hearing. No Action is required after the hearing unless the Council desires to make additional findings. If that is the case, Council should direct staff to return with an amended ordinance incorporating additional findings.

For Agenda of: November 13, 2012

Exhibits: Adopted Interim Ordinance No. 1248

| | |
|--|--------------------|
| Concurred by Mayor: | Initial & Date |
| Approved by City Administrator: | <u>CKH 11/5/12</u> |
| Approved as to form by City Atty: | <u>by email</u> |
| Approved by Finance Director: | |
| Approved by Department Head: | <u>TD 11/5/12</u> |

| | | | | | |
|-----------------------------|--------|------------------------|--------|-------------------------------|-----|
| Expenditure Required | \$ n/a | Amount Budgeted | \$ n/a | Appropriation Required | \$0 |
|-----------------------------|--------|------------------------|--------|-------------------------------|-----|

INFORMATION/BACKGROUND

On September 24, 2012, the City Council with a majority of plus one vote of the whole Council passed an interim ordinance at first reading (Ordinance No. 1248). The interim ordinance establishes development regulations that apply to all non-exempt development within FEMA established Special Flood Hazard Areas and within all areas 200 feet landward of Special Flood Hazard Areas. The development regulations require the preparation of a Habitat Assessment or letter from the National Marine Fisheries Service (NMFS) or FEMA that establishes compliance with the requirements of the Endangered Species Act relative to listed threatened and endangered species and associated habitat areas.

In regard to the background associated with the interim ordinance, in *National Wildlife Federation and Public Employees for Environmental Responsibility v. FEMA, et al.*, 345 F. Supp. 2d 1151 (2004), the U.S. District Court for the Western District of Washington ruled that FEMA must undergo formal consultation under Section 7 of the Endangered Species Act ("ESA") because the implementation of the National Flood Insurance Program ("NFIP") may affect listed species found in the Puget Sound Region. As a result of the consultation, National Marine Fisheries Service ("NMFS") issued a Biological Opinion on September 22, 2008, documenting the adverse effects of FEMA's NFIP on listed species found in the Puget Sound Region, which includes Puget Sound Chinook Salmon, Puget Sound Steelhead and Southern Resident Killer Whales. The Biological Opinion can be viewed at:

https://pcts.nmfs.noaa.gov/pls/pcts-pub/pcts_upload.summary_list_biop?p_id=29082.

The Biological Opinion has generated numerous questions in implementing its requirements, and staff has attended workshops heavily attended by many of the 122 jurisdictions affected in the

State of Washington. John Graves from FEMA's Mitigation Division sent a letter dated September 21, 2011 (received September 23, 2011) acknowledging receipt of the City's Option 2 submittal package, acknowledging that the City is defaulting to Option 3, and included a "Frequently Asked Question" memo regarding Option 3 implementation.

In order to maintain eligibility in the NFIP, participants must demonstrate compliance with the Biological Opinion by choosing one of three options provided by FEMA: Option 1 - adopt the FEMA-developed ESA compliant model ordinance; Option 2 - meet FEMA checklist for ESA compliance with current regulations; or Option 3 - permit by permit demonstration of ESA compliance. The model ordinance under Option 1 is drafted for communities with rivers and does not work with the City's developed shoreline. The City originally requested review by FEMA for Option 2 but that option would not become effective until the City completes the update of its Shoreline Master Program in 2013. If a jurisdiction does not implement Options 1 or 2, the default is to Option 3. This requires the City to maintain documentation from the applicant obtained from a habitat assessment or Section 7 consultation with NMFS that demonstrates compliance with the ESA.

Interim Ordinances No's. 1223 and 1234 adopted by the city on September 26, 2011 and March 12, 2012, respectively, implemented FEMA's Option 3 to address the requirements of the NMFS Biological Opinion over the past year as the city has continued to move forward on the update of the master program. Interim Ordinance No. 1234 was to expire on September 26, 2012 and was replaced by Ordinance No. 1248, which is substantively the same as those regulations originally adopted under Ordinance No. 1223 and 1234.

Staff is currently revising the draft master program in response to City Council direction provided at the October 22, 2012 work study session in preparation for bringing the draft document back to Council for approval of a resolution authorizing the submittal of the draft document to the Department of Ecology (Ecology) by the end of the year. Ecology's review process is approximately 180 days in length followed by a 60-day appeal process with any appeal of the master program decided by the State Growth Management Hearings Board.

Due to this lengthy and somewhat uncertain time period, and the success of the Option 3 approach over the past year, staff will, by separate ordinance to be considered by Council in the future, propose the adoption of the FEMA Option 3 approach on a permanent basis. That ordinance is tentatively scheduled for Council consideration at a January, 2013 meeting.

FISCAL CONSIDERATION

None.

BOARD OR COMMITTEE RECOMMENDATION

n/a

RECOMMENDATION/MOTION

Hold a public hearing. No action is needed after the hearing unless the Council desires to make additional findings. If that is the case, the Council should direct staff to return with an amended ordinance incorporating the additional findings.

ORDINANCE NO. 1248

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING INTERIM DEVELOPMENT REGULATIONS RELATING TO DEVELOPMENT IN SPECIAL FLOOD HAZARD AREAS AND WITHIN 200 FEET LANDWARD OF SPECIAL FLOOD HAZARD AREAS; MAKING FINDINGS OF FACT; REQUIRING A HABITAT ASSESSMENT OR LETTER FROM NMFS OR FEMA ESTABLISHING COMPLIANCE WITH THE ENDANGERED SPECIES ACT; SETTING A PUBLIC HEARING FOR NOVEMBER 13, 2012, IN ORDER TO TAKE PUBLIC TESTIMONY REGARDING THE INTERIM DEVELOPMENT REGULATIONS; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in *National Wildlife Federation and Public Employees for Environmental Responsibility v. Federal Emergency Management Agency, et al.*, 345 F. Supp. 2d 1151 (2004), the United States District Court for the Western District of Washington ruled that the Federal Emergency Management Agency ("FEMA") must undergo formal consultation under Section 7 of the Endangered Species Act ("ESA") because the implementation of the National Flood Insurance Program ("NFIP") may affect listed species found in the Puget Sound Region; and

WHEREAS, as a result of the consultation, National Marine Fisheries Service ("NMFS") issued a Biological Opinion on September 22, 2008, that documented the adverse effects of FEMA's NFIP on listed species found in the Puget Sound Region, which includes Puget Sound Chinook Salmon, Puget Sound Steelhead and Southern Resident Killer Whales; and

WHEREAS, cities that participate in the NFIP must demonstrate compliance with the Biological Opinion by choosing one of three options provided by FEMA: Option #1 - adopt the FEMA-developed ESA compliant model ordinance; Option #2 - meet FEMA checklist for ESA compliance with current regulations; or Option #3 - permit by permit demonstration of ESA compliance; and

WHEREAS, the City is currently undergoing review by FEMA for Option #2 but that option cannot become effective until the City completes the update of its Shoreline Master Program; and

WHEREAS, in anticipation of the requirements for Option #2 being met, on September 26, 2011, the City Council adopted Ordinance No. 1223 which adopted interim regulations for a period of six months implementing Option #3 while the City awaited meeting the requirements for Option #2. Ordinance No. 1223 was extended another six months under Ordinance No. 1234; and

WHEREAS, the interim regulations adopted under Ordinance No. 1223 as extended under Ordinance No. 1234 expire on September 26, 2012; and

WHEREAS, because the provisions of the interim regulations expire on September 26, 2012 and the City is unable to hold a public hearing prior to the expiration, the Gig Harbor City Council has determined that an emergency exists which necessitates that this ordinance be

enacted as a new interim development regulation on an emergency basis in order to preserve the public health, safety, and welfare and to avoid vesting of development applications that are contrary to the provisions of this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals set forth above are hereby adopted as the Gig Harbor City Council's findings in support of the interim development regulations imposed by this ordinance. The Gig Harbor City Council may, in its discretion, adopt additional findings after conclusion of the public hearing referenced in Section 3 below.

Section 2. Interim Development Regulations.

A. Definitions.

1. "Biological Opinion" means that certain opinion issued by the National Marine Fisheries Service on September 22, 2008, recommending changes to the implementation of the National Flood Insurance Program in order to meet the requirements of the Endangered Species Act in the Puget Sound watershed.

2. "Biologist, qualified" means a person who possesses a bachelor's degree from an accredited college in biology, a branch of biology, limnology, biometrics, oceanography, forestry or natural resource management, with experience preparing reports for the relevant type of habitat.

3. "Endangered Species Act" or "ESA" means 16 U.S.C. 1531 *et seq.*, as amended.

4. "Habitat Assessment report" means a report prepared by a qualified biologist that assesses the proposed development and identifies potential impacts, required mitigation, and whether or not the development adversely affects water quality, water quantity, flood volumes, flood velocities, spawning substrate and/or floodplain refugia for listed salmonids under the requirements of the Endangered Species Act.

5. "Likely to Adversely Affect" or "LAA" means the effects of the development will result in short- or long-term adverse effects on listed species or designated habitat area.

6. "May Affect, Not Likely to Adversely Affect" or "NLAA" means the effects to the listed species or designated critical habitat are insignificant and/or discountable.

7. "No Effect" or "NE" means the development has no effect whatsoever to the listed species or designated critical habitat.

8. "Riparian Buffer Zone" includes all parcels located within 200 feet landward from the +9 elevation (NGVD 1929 datum).

9. "Special Flood Hazard Area" or "Area of Special Flood Hazard" has the same meaning as set forth in GHMC 18.10.040(C) and as determined under GHMC 18.10.050(B).

B. Habitat Assessment Required. In addition to the requirements set forth in chapter 18.10 GHMC, if applicable, and other applicable development regulations in the Gig Harbor Municipal Code, no development permits may be issued on any parcel partially or fully within the Special Flood Hazard Area or Riparian Buffer Zone unless the Planning Director or designee, after review of a Habitat Assessment report provided by applicant, has determined the development meets the standards of NE or NLAA, or the applicant submits a letter from the National Marine Fisheries Service ("NMFS") or the Federal Emergency Management Agency ("FEMA") stating that the development complies with the requirements under the Biological Opinion and the ESA.

C. Process. The Planning Director or designee shall review the Habitat Assessment Report to determine whether the development meets the standard of NE, NLAA or LAA. If the Planning Director or designee determines that the development is LAA, then the City may not issue the development permit unless the development is redesigned to a point where the assessment is NLAA or NE. If a development cannot be redesigned to meet the standard of NLAA or NE, the development may only be permitted if the applicant submits a letter from NMFS or FEMA demonstrating concurrence through a consultation under Section 7 or 4(d) of the ESA or issuance of an incidental take permit under Section 10 of the ESA. The Habitat Assessment and/or concurrence letter from NMFS or FEMA shall be retained in the permit file.

D. Exemptions. The following development is exempt from the requirements set forth in Section B above:

1. Repair or remodel of an existing building in its existing footprint, including buildings damaged by fire or other casualties;
2. Removal of noxious weeds;
3. Replacement of non-native vegetation with native vegetation;
4. Lawn and garden maintenance;
5. Removal of hazard trees;
6. Normal maintenance of public utilities and facilities; and
7. Restoration or enhancement of floodplains, riparian areas and streams that meet federal and state standards.

Section 3. Public Hearing. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council hereby sets a public hearing for November 13, 2012 at 5:30 p.m. or as soon thereafter as the matter may be heard in order to take public testimony on the amendments adopted by this ordinance. The City Council may, in its discretion, adopt additional findings justifying the interim development regulations after the close of the hearing.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 5. Copy to Commerce Department. Pursuant to RCW 36.70A.106(3), the City Clerk is directed to send a copy of this ordinance to the State Department of Commerce for its files within ten (10) days after adoption of this ordinance.

Section 6. Effective Period for Interim Regulations. The interim development regulations adopted by this ordinance shall remain in effect for a period of six months, and shall automatically expire unless the same are extended as provided in RCW 36.70A.390 and

RCW 35A.63.220 prior to expiration, or unless the same are repealed or superseded by permanent regulations prior to expiration. The provisions of this ordinance supersede the provisions of Ordinance No. 1223 as extended by Ordinance No. 1234.


Section 7. Declaration of Emergency. The Gig Harbor City Council hereby finds and declares that an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public health, safety and welfare.

Section 8. Publication. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

Section 9. Effective Date. This ordinance shall take effect immediately upon passage by a majority vote plus one of the entire membership of the Council, as required by RCW 35A.12.130.


PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 24th day of September, 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: 09/19/12
PASSED BY THE CITY COUNCIL: 09/24/12
PUBLISHED: 10/03/12
EFFECTIVE DATE: 09/24/12
ORDINANCE NO: 1248



Business of the City Council
City of Gig Harbor, WA

Subject: Public hearing: General fund 2013 revenue sources

Dept. Origin: Finance

Prepared by: David Rodenbach, Finance Director

For Agenda of: November 13, 2012

Proposed Council Action:
No action required

Exhibits: N/A

Concurred by Mayor:

Approved by City Administrator

Approved as to form by City Atty:

Approved by Finance Director:

Initial & Date

CLH 10/29/12
R- 10/29/12

DR 10/29

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

INFORMATION / BACKGROUND

Chapter 251, Laws of 1995 (RCW 84.55.120) requires a public hearing on revenue sources for the next year's general fund budget. The hearing must include considerations of possible increases in property tax revenues.

General Fund Revenue Summary

| Revenue Source | 2011 | 2012 Estimated | 2013 Budget |
|----------------------------|----------------------|----------------------|----------------------|
| Property tax | \$ 1,618,478 | \$ 2,014,545 | \$ 2,193,008 |
| Sales tax | 4,740,986 | 4,448,150 | 4,932,000 |
| Other taxes | 1,562,332 | 1,675,038 | 1,699,549 |
| Licenses and permits | 1,009,514 | 1,365,652 | 1,002,245 |
| Intergovernmental revenues | 292,069 | 248,297 | 143,690 |
| Charges for services | 206,175 | 228,625 | 236,233 |
| Fines and forfeits | 145,290 | 131,794 | 135,159 |
| Miscellaneous | 272,208 | 364,626 | 98,658 |
| Total revenues | 9,847,052 | 10,476,727 | 10,440,542 |
| Beginning fund balance | 1,803,676 | 2,290,104 | 1,825,382 |
| Total resources | \$ 11,650,728 | \$ 12,766,831 | \$ 12,265,924 |



Business of the City Council
City of Gig Harbor, WA

Subject: 2013 Regular Property Tax Levy and Excess Property Tax Levy Resolutions

Proposed Council Action: Adopt resolutions in two separate motions

Dept. Origin: Finance
Prepared by: David Rodenbach, Finance Director
For Agenda of: November 13, 2012
Exhibits: Two Resolutions

Initial & Date

Concurred by Mayor: *CHH 10/29/12*
Approved by City Administrator: *R 10-29-12*
Approved as to form by City Atty: *per email*
Approved by Finance Director: *CR 10/29*

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

INFORMATION / BACKGROUND

These resolutions set the City's regular tax levy and excess levy (Eddon Boat bonds) for property tax collection in 2013.

FISCAL CONSIDERATION

The planned levy for collection in 2013 is \$2,323,520. The rate for this amount is \$1.4209 per thousand dollars of assessed valuation. This is a total increase of \$37,946 over the current levy of \$2,285,574. The increase consists of the following components:

- 1.0% increase over highest levy (since 1985) \$(229,558)
- New construction and improvements \$ 54,423
- Refunds \$ 213,081
- \$ 37,946**

The levy resolution shows a negative dollar increase and an increase of 0% because the amount levied in 2012 is more than the increase from the limit factor, which is the highest regular tax which could have been levied since 1985 increased by one percent.

The 2013 levy is actually increased over 2012 due to new construction and a refund levy.

The total excess levy which will be used to pay the debt service on the Eddon Boat bond is \$250,000. This calculates to a preliminary rate of \$0.1418 per thousand dollars of assessed valuation.

RECOMMENDATION / MOTION

Move to: Pass each resolution in separate motions.

RESOLUTION NO. 915

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR,
WASHINGTON, CERTIFYING THE 2013 REGULAR AD VALOREM TAX
LEVY UPON REAL PROPERTY.**

WHEREAS, the City Council of Gig Harbor has met and considered its budget for the calendar year 2013; and

WHEREAS, the City's actual levy amount from the previous year was \$2,285,574.00; and

WHEREAS, the population of the city is less than 10,000; and now, therefore,

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

An increase in the regular property tax levy is hereby authorized for the levy to be collected in the 2013 tax year.

The dollar amount of the increase over the actual levy amount from the previous year shall be (\$229,557.93) which is a percentage increase of 0.0 % from the previous year. This increase is exclusive of additional revenue resulting from new construction, improvements to property, newly constructed wind turbines, any increase in the value of state assessed property, any annexations that have occurred and refunds made.

PASSED by the City Council this 13th day of November, 2012.

APPROVED:

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____
ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 10/30/12
PASSED BY THE CITY COUNCIL: 11/13/12
RESOLUTION NO. 915

RESOLUTION NO. 916

A RESOLUTION OF THE CITY OF GIG HARBOR, WASHINGTON, LEVYING EXCESS PROPERTY TAXES IN THE AMOUNT OF \$250,000 FOR THE CITY OF GIG HARBOR FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2013.

WHEREAS, at an election held in the City of Gig Harbor on November 2, 2004, the number and proportion of the qualified electors of the City required by law for the adoption thereof voted in favor of a proposition authorizing the issuance of bonds of the City in the aggregate principal amount of \$3,500,000; and

WHEREAS, pursuant to Ordinance No. 1016, the City issued its Unlimited General Obligation Bond, 2005 on September 26, 2005 in the principal amount of \$3,500,000; and

WHEREAS, the City Council of the City of Gig Harbor determined that the City of Gig Harbor requires an excess levy in the amount of two hundred fifty thousand dollars and no cents (\$250,000.00) in order to provide debt service for the 2005 Unlimited Tax General Obligation Bond; and now, therefore,

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

The Property tax excess levy required to raise estimated revenues for the City of Gig Harbor for the ensuing year commencing January 1, 2013, shall be levied upon the value of real and personal property which has been set at an

assessed valuation of \$1,623,822,658. Taxes levied upon this value shall be:

Approximately \$0.1540 per \$1,000 assessed valuation, producing an estimated amount of two hundred fifty thousand dollars and no cents (\$250,000.00) for 2005 Unlimited Tax General Obligation Bond debt service.

PASSED by the City Council this 13th day of November, 2012.

APPROVED:

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____
ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 10/30/12
PASSED BY THE CITY COUNCIL: 11/13/12
RESOLUTION NO. 916



Business of the City Council
City of Gig Harbor, WA

Subject: First reading - 2013 budget ordinance

Proposed Council Action: Adopt ordinance after a second reading

Dept. Origin: Finance

Prepared by: David Rodenbach, Finance Director

For Agenda of: November 13, 2012

Exhibits: Budget Ordinance

Initial & Date

Concurred by Mayor:

CLH 11-8-12

Approved by City Administrator

[Signature]

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

Approved by Finance Director:

[Signature]

Approved by Department Head:

[Signature]

| Expenditure | Amount | Appropriation |
|-----------------------|------------|-----------------------|
| Required \$57,448,762 | Budgeted 0 | Required \$57,448,762 |

INFORMATION / BACKGROUND

The total city budget, which includes all funds, is \$57,448,762. Total budgeted revenues for 2013 are \$30.7 million, budgeted beginning fund balances total \$16.3 million and interfund transfers are \$9.2 million. Total budgeted expenditures for 2013 are \$36.6 million and budgeted ending fund balances total \$8.2 million.

The General Fund accounts for 21 percent of total expenditures, while Special Revenue (Street, Street Capital, Drug Investigation (state and federal), Hotel - Motel, Public Art Capital Projects, Park Development, Civic Center Debt Reserve, Strategic Reserve, Equipment Replacement Reserve, General Government Capital Development, General Government Capital Improvement, Impact Fee Trust, Hospital Benefit Zone Revenue and Lighthouse Maintenance) and Enterprise Funds (Water, Sewer and Storm) are 35 percent and 40 percent respectively of total expenditures. General government debt service funds are three percent of 2013 budgeted expenditures.

FISCAL CONSIDERATION

Total budgeted uses and resources for 2013 are \$57,448,762. This is a \$1,819,213 increase from the 2012 budget.

The increase is largely explained by increases in capital outlays (\$4.9 million) and personnel costs (\$1.1 million); and corresponding decreases in professional services (\$1.6 million) and interfund transfers (\$1.2 million).

The 2013 budget proposes the following staffing changes:

- Hire a Public Works Director
- Hire a Human Resources Analyst
- Hire an Administrative Receptionist
- Convert the temporary Community Development Assistant (created in 2012 to support temporary Senior Engineer) to a permanent position
- Continue the Information Systems Assistant at 1.0 FTE (originally budgeted at 0.75 but increased early in 2012 due to workload demands)
- Hire eight temporary summer workers (six – public works, two – sewer)

RECOMMENDATION / MOTION

Move to: Adopt ordinance after a second reading.

CITY OF GIG HARBOR
ORDINANCE NO.

**AN ORDINANCE ADOPTING THE BUDGET FOR THE CITY OF
GIG HARBOR, WASHINGTON, FOR THE 2013 FISCAL YEAR.**

WHEREAS, the Mayor of the City of Gig Harbor, Washington completed and placed on file with the city clerk a proposed budget and estimate of the amount of the monies required to meet the public expenses, bond retirement and interest, reserve funds and expenses of government of said city for the 2013 fiscal year, and a notice was published that the Gig Harbor City Council would meet on November 13 and November 26, 2012 at 5:30 p.m., in the Council Chambers in the Civic Center for the purpose of making and adopting a budget for 2013 and giving taxpayers an opportunity to be heard on the budget; and

WHEREAS, the City Council did meet at the established time and place and did consider the matter of the 2013 proposed budget; and

WHEREAS, the 2013 proposed budget does not exceed the lawful limit of taxation allowed by law to be levied on the property within the City of Gig Harbor for the purposes set forth in the budget, and the estimated expenditures set forth in the budget being all necessary to carry on the government of Gig Harbor for 2013 and being sufficient to meet the various needs of Gig Harbor during 2013;

NOW, THEREFORE, the City Council of the City of Gig Harbor **DO ORDAIN** as follows:

Section 1. The budget for the City of Gig Harbor, Washington, for the year 2013 is hereby adopted in its final form and content.

Section 2. Estimated resources, including beginning fund balances, for each separate fund of the City of Gig Harbor, and aggregate total for all funds combined, for the year 2013 are set forth in summary form below, and are hereby appropriated for expenditure during the year 2013 as set forth in the following:

2013 BUDGET APPROPRIATIONS

| FUND / DEPARTMENT | AMOUNT |
|---|---------------------|
| 001 GENERAL GOVERNMENT | |
| 01 Non-Departmental | \$3,715,782 |
| 02 Legislative | 59,432 |
| 03 Municipal Court | 376,000 |
| 04 Administrative / Financial / Legal | 1,619,850 |
| 06 Police | 3,130,050 |
| 14,15,16 Planning / Building / Public Works/Parks/Buildings | 2,322,800 |
| 19 Ending Fund Balance | 1,042,010 |
| TOTAL GENERAL FUND - 001 | \$12,265,924 |
| 101 STREET OPERATING | 2,111,310 |
| 102 STREET CAPITAL | 4,632,800 |
| 105 DRUG INVESTIGATION STATE | 8,356 |
| 106 DRUG INVESTIGATION FEDERAL | 30,434 |
| 107 HOTEL / MOTEL FUND | 367,984 |
| 108 PUBLIC ART CAPITAL PROJECTS | 92,155 |
| 109 PARK DEVELOPMENT FUND | 5,364,985 |
| 110 CIVIC CENTER DEBT RESERVE | 1,226,649 |
| 111 STRATEGIC RESERVE | 1,089,377 |
| 112 EQUIPMENT REPLACEMENT RESERVE | 150,339 |
| 208 LTGO BOND REDEMPTION | 1,053,113 |
| 209 2000 NOTE REDEMPTION | 39,526 |
| 210 LID 99-1 GUARANTY | 97,415 |
| 211 UTGO BOND REDEMPTION | 600,976 |
| 301 CAPITAL DEVELOPMENT FUND | 374,972 |
| 305 GENERAL GOVT. CAPITAL IMPROVEMENT | 277,642 |
| 309 IMPACT TRUST FEE | 761,718 |
| 310 HOSPITAL BENEFIT ZONE REVENUE | 3,820,794 |
| 401 WATER OPERATING | 1,494,004 |
| 402 SEWER OPERATING | 4,215,019 |
| 403 SHORECREST RESERVE | 74,673 |
| 407 UTILITY RESERVE | 1,393,425 |
| 408 UTILITY BOND REDEMPTION FUND | 2,100,778 |
| 410 SEWER CAPITAL CONSTRUCTION | 7,246,457 |
| 411 STORM SEWER OPERATING | 1,171,209 |
| 412 STORM SEWER CAPITAL | 1,817,202 |
| 420 WATER CAPITAL ASSETS | 3,567,618 |
| 605 LIGHTHOUSE MAINTENANCE TRUST | \$ 1,908 |
| TOTAL ALL FUNDS | \$57,448,762 |

Section 3. Attachment "A" is adopted as the 2013 personnel salary schedule for all employees except Gig Harbor police sergeants and police officers. For police sergeants and police officers, the 2012 salary schedule currently in effect is approved for 2013.

Section 4. Due to budget constraints, the city does not authorize funding for "top step" bonuses for city employees in 2013.

Section 5. The city clerk is directed to transmit a certified copy of the 2013 budget hereby adopted to the Division of Municipal Corporations in the Office of the State Auditor and to the Association of Washington Cities.

Section 6. This ordinance shall be in force and take effect five (5) days after its publication according to law.

PASSED by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of the council held on this ___th day of November, 2012.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
ANGELA S. BELBECK

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

Attachment A

| POSITION | 2013 RANGE | |
|---|---------------|---------|
| | Minimum | Maximum |
| City Administrator | 9,862 | 12,328 |
| Chief of Police | 8,602 | 10,753 |
| Public Works Director | 8,039 | 10,049 |
| Finance Director | 7,956 | 9,945 |
| Police Lieutenant | 7,023 | 8,778 |
| City Engineer | 6,994 | 8,742 |
| Information Systems Manager | 6,994 | 8,742 |
| Planning Director | 6,994 | 8,742 |
| Building & Fire Safety Director | 6,938 | 8,673 |
| Senior Engineer | 6,542 | 8,177 |
| City Clerk | 6,289 | 7,862 |
| Tourism Marketing Director | 6,276 | 7,845 |
| Public Works Superintendent | 6,196 | 7,745 |
| Wastewater Treatment Plant Supervisor | 6,196 | 7,745 |
| Police Sergeant | 6,437 | 7,366 |
| Senior Planner | 6,031 | 7,538 |
| Court Administrator | 5,916 | 7,394 |
| Associate Engineer | 5,754 | 7,193 |
| Assistant Building Official/Fire Marshall | 5,690 | 7,112 |
| Accountant | 5,559 | 6,949 |
| Field Supervisor | 5,332 | 6,665 |
| Construction Supervisor | 5,332 | 6,665 |
| Senior WWTP Operator | 5,021 | 6,276 |
| Payroll/Benefits Administrator | 4,836 | 6,045 |
| Human Resources Analyst | 4,831 | 6,039 |
| Associate Planner | 4,827 | 6,034 |
| Police Officer | 4,685 | 5,856 |
| Construction Inspector | 4,708 | 5,885 |
| Planning / Building Inspector | 4,708 | 5,885 |
| Wastewater Treatment Plant Operator | 4,492 | 5,615 |
| Engineering Technician | 4,454 | 5,568 |
| Mechanic | 4,396 | 5,494 |
| Information System Assistant | 4,359 | 5,448 |
| Assistant City Clerk | 4,323 | 5,403 |
| Executive Assistant | 4,323 | 5,403 |
| Special Projects Coordinator | 4,323 | 5,403 |
| WWTP Collection System Tech II | 4,201 | 5,252 |
| Maintenance Technician | 3,375 | 5,252 |
| Assistant Planner | 4,188 | 5,235 |
| Permit Coordinator | 4,188 | 5,235 |
| Community Development Assistant | 3,971 | 4,964 |
| Finance Technician | 3,936 | 4,921 |
| Lead Court Clerk | 3,799 | 4,749 |
| Administrative Assistant | 3,491 | 4,363 |
| Police Services Specialist | 3,434 | 4,293 |
| Court Clerk | 3,388 | 4,235 |
| Custodian | 3,375 | 4,218 |
| Administrative Receptionist | 3,373 | 4,216 |
| Community Development Clerk | 3,373 | 4,216 |



Business of the City Council
City of Gig Harbor, WA

**Subject: First Reading of Ordinance
Setting the Minimum for Employee Bonds**

Dept. Origin: Administration

Prepared by: Molly Towslee, City Clerk *MT*

Proposed Council Action:

For Agenda of: November 13, 2012

Consider at first reading and bring back for adoption at second reading.

Exhibits: Ordinance

Initial & Date

Concurred by Mayor: *CLH 10/30/12*
Approved by City Administrator: *12 10/30/12*
Approved as to form by City Atty: _____
Approved by Finance Director: *12 10/12*
Approved by Department Head: _____

| | | |
|----------------|--------------|---------------|
| Expenditure | Amount | Appropriation |
| Required \$300 | Budgeted \$0 | Required \$0 |

INFORMATION / BACKGROUND

The requirement to establish terms for official bonds for the city clerk, treasurer, and the chief of police is set forth in 2.16.010, 2.17.010, and 2.47.040 of the Gig Harbor Municipal Code. In the past, the bonds were thought to be covered under the city's risk management pool. Recently, we were notified that separate bonds are required to satisfy the requirements of RCW 35A.12.080.

In order for the bonding company to issue the required bonds, the actual amount must be spelled out in city code. This ordinance amends those sections listed above to provide the necessary bond amount. We researched what other comparable jurisdictions require and have determined that \$10,000 for each position is a reasonable and affordable amount.

FISCAL CONSIDERATION

The bonds will cost approximately \$100 each for a total of \$300 per year.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: At its second reading, adopt this ordinance amending Sections 2.16.010, 2.17.010, and 2.47.040 to include the penal sum of ten thousand dollars for each of the three employee bonds required.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO EMPLOYEE BONDS; AMENDING SECTIONS 2.16.010, 2.17.010 AND 2.47.040 OF THE GIG HARBOR MUNICIPAL CODE TO SET THE MINIMUM BOND AMOUNT; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, RCW 35A.12.080 requires a code city to establish by ordinance the terms and penalty of official bonds for the city clerk, treasurer and chief of police; and

WHEREAS, the bond requirements for the city clerk, city treasurer/finance director and chief of police are presently set forth in sections 2.16.010, 2.17.010 and 2.47.040 of the Gig Harbor Municipal Code, respectively; and

WHEREAS, in the past the bonds were considered covered under the City's errors and omissions and crime prevention coverage through the City's risk pool, but the City's risk pool has notified the City that separate bonds are required; and

WHEREAS, in order for a bonding company to rate and issue the required bonds, the actual amount of the required bonds must be set forth in City ordinance; and

WHEREAS, the City Council desires to amend the Gig Harbor Municipal Code to provide the necessary bond amounts; Now, therefore,

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

Section 1. Section 2.16.010 – Amended. Section 2.16.010 of the Gig Harbor Municipal Code is amended as follows:

2.16.010 Office created.

The mayor is authorized to appoint a qualified person to the office of city clerk, pursuant to RCW 35A.12.090, and all other applicable statutes and ordinances. The city clerk shall be required to annually furnish an official bond in the penal sum of ten thousand dollars, conditioned on the honest and faithful performance of his/her official duties, pursuant to RCW 35A.12.080.

Section 2. Section 2.17.010 – Amended. Section 2.17.010 of the Gig Harbor Municipal Code is amended as follows:

2.17.010 Office created.

The mayor is authorized to appoint a qualified person to the office of city treasurer/finance director, pursuant to RCW 35A.12.090, and all other applicable statutes and ordinances. The city treasurer/finance director shall be required to annually furnish an official bond in the penal sum of ten thousand dollars, conditioned on the honest and faithful performance of his/her duties, pursuant to RCW 35A.12.080, and all other applicable statutes and ordinances.

Section 3. Section 2.47.040 – Amended. Section 2.47.040 of the Gig Harbor Municipal Code is amended as follows:

2.47.040 Chief of police – Bond.

The chief of police shall annually provide an official bond in the penal sum of ten thousand dollars, conditioned on the honest and faithful performance of his/her official duties. ~~The terms and penalty of official bonds and the surety therefor shall be as prescribed by the city by ordinance and the bond shall be approved by the city administrator.~~ The premiums on such bond shall be paid by the city. Compliance with this provision is an essential part of qualification for office as the chief of police.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

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

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this ____ day of _____, 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: 10/15/12
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:



Business of the City Council
City of Gig Harbor, WA

Subject: First Public Hearing – Amendment to the Development Agreement with Harbor Hill LLC.

Proposed Council Action:
Hold public hearing and review development agreement. Hold second public hearing on November 26, 2012

Dept. Origin: Planning Department

Prepared by: Jennifer Kester *JK*
Senior Planner

For Agenda of: November 13, 2012

Exhibits: Application, Draft Amendment, Approved Agreement

Initial & Date

Concurred by Mayor: CLA 11/5/12
Approved by City Administrator: _____
Approved as to form by City Atty: email 11/5/12
Approved by Finance Director: N/A
Approved by Department Head: ~~D~~ 11/6/12

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

INFORMATION / BACKGROUND

In 2010, the Council approved a development agreement between the City and Harbor Hill LLC which allowed deviations in the development standards for property owned by Harbor Hill LLC in the Gig Harbor North area and allowed 20 years of vesting for the preliminary plat within the area. A copy of the approved agreement is attached.

In September of this year, Harbor Hill LLC applied for an amendment to the development agreement. A copy of the application and draft amendment is attached. The amendment to the development agreement is being proposed in order to:

1. Enlarge parcel M2, just south of Borgen Boulevard, east of the wetland trail system.
2. Allow retirement uses in the enlarged portion of the M2 parcel.
3. Update the phasing plan
4. Allow modification of the approved preliminary plat and preliminary PRD without submitting new plat and PRD applications.
5. Allow development of the M2 parcel to receive site plan and design review approval prior to final plat of the M2 parcel.

The process for review of this amendment is outlined in GHMC 19.08, which allows projects in the planned community development land use designation to deviate from the allowed uses, minimum and maximum densities, maximum gross floor area, or maximum structure height allowed in the underlying zoning district if a majority of the City Council plus one approved a

development agreement. Before approving such amended development agreement the City Council must: 1) vote to initiate consideration of the development agreement; 2) require that the Planning and Building Committee meet and make a recommendation to the Council as a whole; 3) conduct two properly noticed public hearings on the development agreement.

Due to the request to allow retirement uses on the enlarged portion of the M2 parcel, the proposed amendment can be approved only if a majority plus one member of City Council votes for the amendment.

STAFF ANALYSIS

Staff and the City Attorney have reviewed of the amendment and have worked with the applicant and their designated attorneys to finalize the language in the agreement. Staff is supportive of the amendment as it will provide flexibility in the processing of subsequent plat amendments without requiring an amendment to the development agreement first. By processing future plat amendments as Type II permits, appropriate public notice and comments periods will be provided for. The Type II permit process is the same process the City uses for commercial site plans.

Due to the request to allow retirement uses on the enlarged portion of the M2 parcel after the second public hearing on the development agreement scheduled for November 26, 2012, the Council may pass a resolution approving the development agreement with a majority of the City Council plus one voting in favor of the agreement.

BOARD OR COMMITTEE RECOMMENDATION

The Council voted to initiate the amendment on October 8, 2012 and sent it to the Planning and Building Committee of the Council. The Planning and Building Committee met on October 30, 2012 and voted to recommend approval. The ad-hoc committee of the council which reviewed the original met on October 29, 2012. They had no objection to the amendment and encouraged support for the amendment.

RECOMMENDATION / MOTION

Hold public hearing and review development agreement. Hold second public hearing on November 26, 2012

**AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT
AMONG THE CITY OF GIG HARBOR, HARBOR HILL LLC,
AND OPG PROPERTIES LLC FOR THE
HARBOR HILL DEVELOPMENT**

This Amendment No. 1 to Development Agreement is made and entered into this _____ day of _____, 2012, by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), HARBOR HILL LLC, a Washington limited liability company ("Harbor Hill"), and OPG PROPERTIES LLC, a Washington limited liability company ("OPG") (Harbor Hill and OPG are sometimes jointly referred to as "Developer").

RECITALS

A. RCW 36.70B.170 authorizes the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction. Pursuant to Resolution No. 845 adopted by the City Council, the City and Harbor Hill entered into a development agreement dated November 9, 2010 (the "Development Agreement"), which was recorded in the real property records of Pierce County, Washington, under Auditor's File No. 201011160780, concerning the development of the property legally described on Exhibit A to this Amendment (the "Property") and generally located north and south of Borgen Boulevard between Harbor Hill Drive and Peacock Hill Avenue N.W. in the City of Gig Harbor, Pierce County, Washington.

B. By a subsequent Joinder Agreement dated November 22, 2010, and recorded in the real property records of Pierce County, Washington, under Auditor's File No. 201012020196, OPG as the owner of a portion of the Property joined in and agreed to be bound by the Development Agreement. Both Harbor Hill and the City consented to the Joinder Agreement.

C. The City and Developer wish to amend the Development Agreement to permit certain additional uses, to modify the site plan, and to provide for future amendments to the Harbor Hill development plan.

D. This Amendment is made under the authority of the City's police power, contracting authority, and other authority, including the authority granted to the City under RCW 36.70B.170 et seq. to make development agreements, and GHMC Chapter 19.08 as amended. This Amendment establishes development standards for the Property and other provisions that apply to and govern and vest the development, use, and mitigation of the development of the Property. Actual construction of improvements on the Property requires approval of subsequent City permits, which will be issued in accordance with the standards and procedures described in the Development Agreement as amended by this Amendment.

Now, therefore, the parties hereto agree as follows:

AGREEMENT

1. Revised Phasing Plan. The Phasing Plan attached as Exhibit I to this amendment is hereby substituted for Exhibit I to the Development Agreement.

2. Additional Permitted Uses. The following additional uses are permitted within Parcel M-2 of the Property as depicted on the Phasing Plan attached as Exhibit I to this amendment: an “assisted living facility” as defined in GHMC 17.04.438, an “independent living facility” as defined in GHMC 17.04.439, and a “skilled nursing facility” as defined in GHMC 17.04.630.

3. Minor Modifications. The following is hereby substituted for Section 9 of the Development Agreement:

Section 9. Minor Modifications.

(a) Minor modifications to the approved permits or the exhibits attached hereto, including without limitation modifications proposed between preliminary plat and final plat decisions, may be approved in accordance with the provisions of the City’s code, including without limitation GHMC 16.05.006, 17.89.120, and Chapter 19.01, or as provided below in this Section 9, and shall not require an amendment to this Agreement.

(b) Any modification to an approved preliminary plat that changes the number of lots, boundaries, configuration, design, or layout of lots, parcels, tracts, or roadways within the preliminary plat, or changes the conditions of approval of the preliminary plat may be approved by the Director administratively as a Type II decision if the Director finds that the preliminary plat will continue to satisfy the criteria for approval of a preliminary plat under GHMC 16.05.003 after the modification.

(c) Any modification to an approved preliminary PRD that changes the number of lots, boundaries, configuration, design, or layout of lots, parcels, tracts, or roadways within the PRD, or changes the conditions of approval of the preliminary PRD may be approved by the Director administratively as a Type II decision if the Director finds that the PRD will continue to satisfy the criteria for approval of a preliminary PRD under GHMC 17.89.070 after the modification.

4. New Section 13.K. The following new Section 13.K is added to the Development Agreement:

K. Timing of Site Plan and Design Review Approvals for Parcel M-2. Site plan and design review approvals for the parcel identified as M-2 on the Preliminary Plat of Harbor Hill, as it may be amended, may occur prior to final plat approval, but no building permit shall be issued by the City until final plat approval. A site plan or design review approval shall expire if the Preliminary Plat of Harbor Hill expires or is otherwise abandoned or modified in such a way that creates an inconsistency with the approved site plan or design review approval unless such site plan or design review approval is amended concurrently for consistency. Developer acknowledges and accepts the risk of seeking and obtaining site plan and design review approval prior to final plat approval and hereby releases and covenants not to sue the City for any damages that may be suffered as a result of seeking such advance approval. Developer further acknowledges that the grant of site plan or design review approval prior to final plat approval in no way guarantees final plat approval.

5. Revised List of Modified City Development Standards. The List of Modified City Development Standards attached to this Amendment as Exhibit H is hereby substituted for Exhibit H to the Development Agreement.

6. Other Provisions. All other provisions of the Development Agreement shall remain in effect. The Development Agreement, as amended by this Amendment, is hereby confirmed and ratified.

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

HARBOR HILL LLC, a Washington limited liability company

CITY OF GIG HARBOR, a Washington municipal corporation

By: _____
Jon Rose
Its President

By: _____
Charles L. Hunter
Its Mayor

Date: _____

Date: _____

OPG PROPERTIES LLC, a Washington limited liability company

ATTEST:

By: _____
Jon Rose
Its President

City Clerk

Date: _____

APPROVED AS TO FORM:

City Attorney

STATE OF WASHINGTON)
 : ss.
COUNTY OF KITSAP)

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

DATED: _____

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

STATE OF WASHINGTON)
 : ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that JON ROSE is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of OPG Properties LLC be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

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

STATE OF WASHINGTON)
 : ss.
COUNTY OF PIERCE)

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

DATED: _____

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

EXHIBIT A

Legal Description of the Property

RESIDENTIAL AREA

TAX PARCEL NUMBER 4002930010

PARCEL E OF THE HARBOR HILL PHASE 1A PLAT (CITY FILE NO. PL-FPLAT-12-0001, PL-FPRD-12-0001) RECORDED UNDER PIERCE COUNTY AFN 201204255001, SAID PARCEL BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 4002930020

PARCEL M1 OF THE HARBOR HILL PHASE 1A PLAT (CITY FILE NO. PL-FPLAT-12-0001, PL-FPRD-12-0001) RECORDED UNDER PIERCE COUNTY AFN 201204255001, SAID PARCEL BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 4002930030

PARCEL X OF THE HARBOR HILL PHASE 1A PLAT (CITY FILE NO. PL-FPLAT-12-0001, PL-FPRD-12-0001) RECORDED UNDER PIERCE COUNTY AFN 201204255001, SAID PARCEL BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 0222311000

THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN.
EXCEPT ROADS.
SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

TAX PARCEL NUMBER 0222311009

PARCEL "B" OF THE BOUNDARY LINE ADJUSTMENT RECORDED UNDER PIERCE COUNTY AFN 200407275004, SAID PARCEL "B" BEING PORTIONS OF THE WEST HALF OF THE NORTHEAST QUARTER AND OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M.
SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

COMMERCIAL AREA

TAX PARCEL NUMBER 4002470011

THAT PORTION OF LOT 1, BUSINESS PARK AT HARBOR HILL, PER THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NUMBER 200605235007, SAID LOT 1 BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1 LYING 287.61 NORTHERLY OF THE SOUTHEAST CORNER OF SAID LOT 1, AS MEASURED ALONG THE EAST LINE OF SAID LOT 1, THENCE NORTH 77°06'13" WEST 644.52 FEET TO AN ANGLE POINT IN THE WEST LINE OF SAID LOT 1;

THENCE ALONG THE BOUNDARY OF SAID LOT 1 THE FOLLOWING COURSES:

THENCE NORTH 88°22'24" WEST 110.70 FEET;

THENCE NORTH 05°55'53" EAST 181.58 FEET;

THENCE SOUTH 88°22'24" EAST 33.73 FEET;

THENCE NORTH 14°26'00" EAST 232.65 FEET;

THENCE SOUTH 48°15'42" EAST 247.61 FEET;

THENCE NORTH 77°19'55" EAST 95.23 FEET;

THENCE NORTH 37°16'34" EAST 168.29 FEET;

THENCE SOUTH 88°22'24" EAST 177.38 FEET TO A POINT ON A 766.00 FOOT CURVE TO THE RIGHT, THE RADIUS OF WHICH BEARS SOUTH 64°21'11" WEST

THENCE SOUTHERLY ALONG SAID CURVE, AN ARC DISTANCE OF 358.65 FEET, THROUGH A CENTRAL ANGLE OF 26°49'36";

THENCE SOUTH 01°10'47" WEST 189.56 TO THE POINT OF BEGINNING.

TAX PARCEL NUMBER 4002470012

THAT PORTION OF LOT 1, BUSINESS PARK AT HARBOR HILL, PER THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NUMBER 200605235007, SAID LOT 1 BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1 LYING 287.61 NORTHERLY OF THE SOUTHEAST CORNER OF SAID LOT 1, AS MEASURED ALONG THE EAST LINE OF SAID LOT 1;

THENCE ALONG THE BOUNDARY OF SAID LOT 1 THE FOLLOWING COURSES:

THENCE SOUTH 01°10'47" WEST 287.61 FEET;

THENCE NORTH 88°22'24" WEST 631.54 FEET;

THENCE NORTH 01°15'21" EAST 412.28 FEET TO AN ANGLE POINT IN SAID BOUNDARY;

THENCE DEPARTING SAID BOUNDARY SOUTH 77°06'13" EAST 644.52 FEET TO THE POINT OF BEGINNING.

TAX PARCEL NUMBER 4002470030

LOT 3, BUSINESS PARK AT HARBOR HILL, PER THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NUMBER 200605235007, SAID LOT 3 BEING PORTIONS OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 4002470042

THE NORTHERLY 5.3367 ACRES OF THE REVISED LOT 4 OF THE PLAT OF THE BUSINESS PARK AT HARBOR HILL PER BOUNDARY LINE ADJUSTMENT RECORDED IN PIERCE COUNTY, WASHINGTON, AUDITOR'S FILE NUMBER 200710195003 FURTHER DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL ADJACENT TO HARBOR HILL DRIVE, THENCE N 01°10'47" E ALONG THE EASTERLY MARGIN OF HARBOR HILL DRIVE 514.00 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUING N 01°10'47" E ALONG THE EASTERLY MARGIN OF HARBOR HILL DRIVE 428.04 FEET TO THE NORTHERLY BOUNDARY OF THE PARCEL;
THENCE S 88°15'35" E ALONG THE NORTHERN BOUNDARY 585.60 FEET TO THE EASTERN BOUNDARY OF THE PARCEL;
THENCE S 05°02'54" W, 12.02 FEET;
THENCE S 27°57'14" W, 112.58 FEET;
THENCE S 01°33'50" E, 199.54 FEET;
THENCE S 00°23'25" W, 110.52 FEET TO THE SOUTHERN BOUNDARY OF THE PARCEL;
THENCE N 88°49'13" W, 545.12 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

ACCORDING TO REQUEST OF SEGREGATION AS PER CITY OF GIG HARBOR, DATED 02/06/2008.

TAX PARCEL NUMBER 4002470051

PARCEL "B" OF THE BOUNDARY LINE ADJUSTMENT RECORDED UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200710195003, SAID PARCEL "B" BEING PORTIONS OF THE NORTHEAST QUARTER AND OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON.

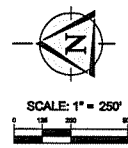
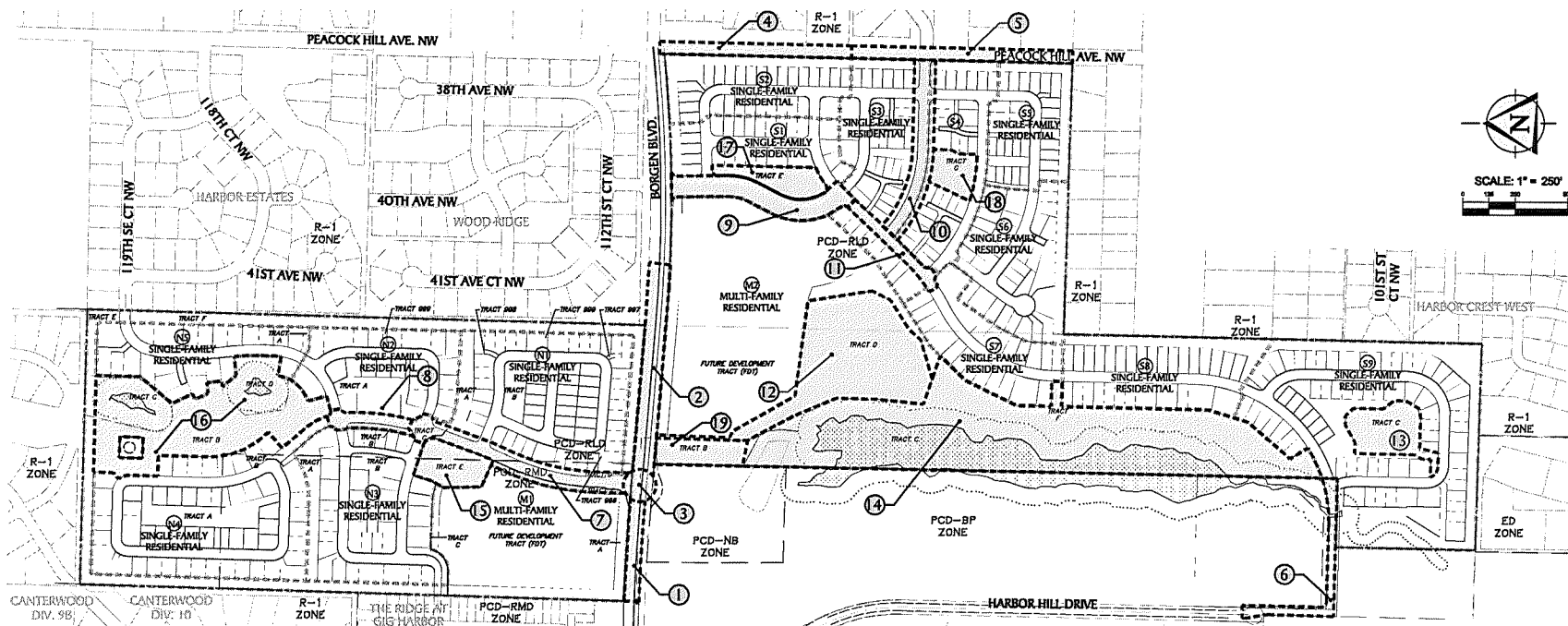
EXHIBIT H

List of Modified City Development Standards

| Item No. | Description | GHMC Section | Agreement Section |
|-----------------|---|---------------------|--------------------------|
| 1 | Increased vesting periods for Project approvals | Various | 6.D |
| 2 | Simplification of process for review and approval of certain preliminary plat and preliminary PRD revisions | 16.05 17.89 | 9.A, 9.B, 9C |
| 3 | Allows modified timing of Site Plan and Design Review Approvals for the M-2 Parcel. | Various | 13.K |
| 4 | Reduction of Harbor Hill Business Park open space requirements from 20 percent to 15 percent of lot area based on dedication of Lot 3 for public park | 17.54.030.C | 13.H.iii |
| 5 | Director approval of certain revisions to Phasing Plan | 19.01.003 | 13.A |
| 6 | Allows independent living facility, assisted living facility, and skilled nursing facility in RLD zone within modified parcel M-2. | 17.14.020 | |
| 7 | No setbacks under GHMC 17.54.030.B required along certain boundaries of Lot 3 (future public park) of Harbor Hill Business Park | 17.54.030.B | |
| 8 | Allowing clustering of residential density | Title 17 | 17 |
| 9 | Allocations of capacity reservations | Chapter 19.10 | 15 |

W 1/2, SE 1/4 OF SEC. 30 AND E 1/2 OF SEC. 31, TWP. 22N, RGE. 2E, W.M.

HARBOR HILL



INFRASTRUCTURE SEQUENCE

| INFRASTRUCTURE | DEVELOPMENT PHASE | | | | | | | | | | | | | | | | | | |
|--|-------------------|-----|----|-----------|----|----|----|----|----|-----------|----|----|----|----|----|----|---|---|---|
| | FDT | | | SFR NORTH | | | | | | SFR SOUTH | | | | | | | | | |
| | M1 | M2 | N1 | N2 | N3 | N4 | N5 | S1 | S2 | S3 | S4 | S5 | S6 | S7 | S8 | S9 | | | |
| Dwelling Units | 170 | 100 | 63 | 28 | 46 | 57 | 25 | 28 | 29 | 45 | 33 | 30 | 38 | 21 | 33 | 79 | | | |
| 1. Borgen Blvd Frontage - West | X | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| 2. Borgen Blvd Frontage - East | - | - | X | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| 3. Roundabout on Borgen | X | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| 4. Peacock Hill Ave Frontage - North | - | - | - | - | - | - | - | - | - | X | - | - | - | - | - | - | - | - | - |
| 5. Peacock Hill Ave Frontage - South | - | - | - | - | - | - | - | - | - | - | X | - | - | - | - | - | - | - | - |
| 6. Harbor Hill Dr Off-Site | - | - | - | - | - | - | - | - | - | - | X | - | - | - | - | - | - | - | - |
| 7. North Parkway south section | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| 8. North Parkway north section | - | - | - | - | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| 9. South Parkway north section | - | - | X | - | - | - | - | X | X | X | X | X | X | X | X | X | X | X | X |
| 10. South Parkway south section | - | - | - | - | - | - | - | - | - | X | X | X | X | X | X | X | X | X | X |
| 11. South Parcel Collector stub | - | - | - | - | - | - | - | - | - | - | X | X | X | X | X | X | X | X | X |
| 12. Detention North (M1- Tract D) | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| 13. Detention South (S9- Tract C) | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| 14. South Wetland Loop Trail (M2- Tracts C, F) | - | X | - | - | - | - | - | X | X | X | X | X | X | X | X | X | X | X | X |
| 15. North Central park (N1- Tract E) | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| 16. North Wetland Park | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| 17. South Connector Park (S1- Tract E) | - | - | - | - | - | - | - | X | X | X | X | X | X | X | X | X | X | X | X |
| 18. South Central Park (S4- Tract G) | - | - | - | - | - | - | - | - | - | - | X | X | X | X | X | X | X | X | X |
| 19. Gateway Park (M2- Tract B) | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |

NOTES:
 1. "X" means that infrastructure must be completed prior to or concurrent with development phase.
 2. "1" means "Last to be Done". The order of infrastructure improvement may be triggered by a number of the indicated Phases coming on-line ahead of the primary Phase requiring the improvement. This will be determined in consultation with the City during the pre-application conference for the permit application.
 3. Development of some Phases may depend on completion of other Phases for Road and/or Connections.
 4. Numbering of phases does not necessarily indicate sequence of development (ie. M1 and M2 could develop before N1).
 5. Parkway trail improvement includes existing open space trails.
 6. During final engineering design, alternate design solutions may be brought forward. These may be approved if, and only if, staff find that the alternate design solution is functionally equivalent to the preliminary design shown on the Preliminary Plan/PSD plan. For storming, temporary storm drainage detention could be provided. If provided, detention flow direction on mitigation to what was proposed in the Preliminary Plan/PSD as long as there was a means to divert flows to the permanent pond when the pumping required to be controlled as previously depicted.

EXHIBIT I



INFRASTRUCTURE SEQUENCE PLAN
 OLYMPIC PROPERTY GROUP, LLC
HARBOR HILL
 PLANNED RESIDENTIAL DEVELOPMENT
 WASHINGTON
 BIG HARBOR

DATE: 12/22/2008
 TIME: 10:00 AM
 SCALE: 1" = 250'
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]



DATE: 12/22/2008
 TIME: 10:00 AM
 SCALE: 1" = 250'
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]



19245 Tenth Ave NE 4423 Point Fosdick Drive NW, Suite 302
Poulsbo, WA 98370 Gig Harbor, Washington 98335
P 253-851-7009
F 253-851-7164
www.harbor-hill.com
www.orm.com

September 19, 2012

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

RECEIVED
CITY OF GIG HARBOR
SEP 20 2012
COMMUNITY
DEVELOPMENT

Re: Harbor Hill Residential – Amended Development Agreement

Dear Jennifer:

We are submitting the proposed amendment to the existing Harbor Hill development agreement, consistent with the discussions we have had with the City regarding modifications to the approved Harbor Hill Preliminary Plat and PRD.

The purpose of the proposed development agreement is to modify the current agreement to:

- Allow additional uses on the proposed enlarged Parcel M-2.
- Approve an updated version of the Phasing Plan
- Modify the definition of “Minor Modifications” allowing them to be approved as a Type II application.
- Allow for Site Plan Approval, Design Review Approval, and SEPA determination on the proposed Parcel M-2 prior to a final plat approval segregating Parcel M-2 from its parent parcels.

We understand that, pending staff and City Attorney review, this will be on the October 8th City Council meeting where we would expect that the Council would refer the draft agreement to the Planning and Building Committee. We appreciate your assistance and efforts to get us onto the City Council agendas on a timely basis. If you have any questions or concerns, please do not hesitate to contact me, or Bill Lynn at 253-620-6416.

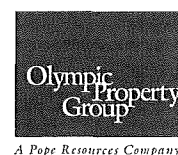
Sincerely,

John Chadwell
General Manager - Harbor Hill

Cc: Bill Lynn, Gordon Thomas Honeywell

A subsidiary of Olympic Property Group, a Pope Resources company.

Excellence in Northwest Master Planned Communities:
Port Gamble; Port Ludlow; Broadmoor, Seattle; West Hills, Bremerton;
Arborwood, Kingston; Harbor Hill, Gig Harbor.



| CITY OF GIG HARBOR GENERAL APPLICATION | | CITY USE ONLY | |
|--|--|---|--|
| <input type="checkbox"/> Conditional Use Permit <input type="checkbox"/> Major Site Plan Review <input type="checkbox"/> Variance <input type="checkbox"/> Rezone <input type="checkbox"/> Performance Based Height Exception | <input type="checkbox"/> Alternative Landscape Plan <input type="checkbox"/> Binding Site Plan <input type="checkbox"/> Land Clearing <input type="checkbox"/> Planned Unit Development | Case Number: <u>PL-DEV-12-0001</u> Date Received: <u>9/19/12</u> By: <u>XZ</u> Receipt: <u>00167706</u> By: _____ | |
| Name of project/proposal: <u>Amendment to Development Agreement</u> | | | |
| Applicant: <u>Harbor Hill LLC</u> <small>(Name)</small> <u>19245 Tenth Ave NE</u> <small>Street Address</small> <u>Poulsbo, WA 98370</u> <small>City & State</small> | | Property Location: Address: _____ Section: <u>30, 31</u> Township: <u>22 N</u> Range: <u>2 E</u> Assessor's Tax Parcel Number: <u>See Attached</u> | |
| Owner: <u>OPG Properties LLC</u> <small>(Name)</small> <u>19245 Tenth Ave NE</u> <small>Street Address</small> <u>Poulsbo, WA 98370</u> <small>City & State</small> | | Full Legal Description (attach separate sheet if too long) <u>See Attached</u> | |
| I(We): <u>John Chadwell, General Mgr - Harbor Hill</u> <small>(Name)</small> <u>John Chadwell</u> <small>Signature</small> | | Utilities: 1. Water Supply (Name of Utility if applicable) a. Existing: <u>City of Gig Harbor</u> b. Proposed: _____ 2. Sewage Disposal: (Name of Utility if applicable) a. Existing: <u>City of Gig Harbor</u> b. Proposed: _____ 3. Access: (name of road or street from which access is or will be gained.) <u>Bergen Blvd.</u> | |
| Date: <u>9-18-12</u> <small>Date</small> | | | |
| I do hereby affirm and certify, under penalty of perjury, that I am one (or more) of the owners or owner under contract of the herein described property and that the foregoing statements and answers are in all respects true and correct on my information and belief as to those matters, I believe it to be true. | | | |
| Property Information: | | | |
| Existing Zoning Designation: _____ | | Wetlands on site? _____ | |
| Existing land use: Describe (or illustrate separately) existing land use, including location of all existing structures and setbacks (in feet) from property lines. _____ | | | |
| Fee Deposits: <input type="checkbox"/> "I acknowledge that I have applied for a permit which requires a deposit for future services to be rendered, as required by section F of the City's adopted Fee Schedule. I understand that, as the applicant, I (we) shall bear all of the costs of these services and will be billed the actual costs in excess of the deposit. If the actual costs are below the deposit, I will be refunded the difference." _____ (initials) | | | |
| Consolidated Permit Processing: <input type="checkbox"/> "As the applicant, I (we) elect to have all planning permits submitted concurrently and associated with our project processed collectively under the highest numbered permit procedure per GHMC 19.01.002(B)" _____ (Initials) | | | |

RECEIVED BY
SEP 19 2012
CITY OF GIG HARBOR

After Recording, Return To:

City Clerk
3510 Grandview Street
Gig Harbor, WA 98335

JOINDER AGREEMENT

Grantor: OPG Properties, LLC, a Washington limited liability company
Harbor Hill LLC, a Washington limited liability company

Grantee: City of Gig Harbor, Washington

Abbreviated Legal Description:

Portions of SE quarter of Section 30, NE quarter of Section 31,
SE quarter of Section 31, NW quarter of Section 31, and SW quarter of
Section 31, all in Township 22 North, Range 2 East, W.M., Pierce County,
Washington.

Assessor's Property Tax Parcel Account Numbers:

OPG: 0222308002, 0222311000, 0222311009
HH: 4002470011, 4002470012, 4002470030, 4002470042, 4002470051

Reference Numbers of Related Documents:

201011241249 (Harbor Hill Development Agreement)

JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this "Joinder Agreement") dated and effective as of this 22 day of November, 2010, is made by OPG Properties, LLC, a Washington limited liability company ("OPG"), and Harbor Hill LLC, a Washington limited liability company ("Harbor Hill") (collectively, "Developer"), in reference to that certain "Development Agreement by and Between the City of Gig Harbor and Harbor Hill LLC" dated November 8th, 2010 (the "Development Agreement"), between Harbor Hill as the "Developer" or "Harbor Hill" and the City of Gig Harbor as the "City," relating to the real property located in the City of Gig Harbor, Pierce County, Washington, legally described on Exhibit A attached hereto (the "Property"), which was recorded in the real property records of Pierce County, Washington, under Auditor's File No. 201011241249 Capitalized terms not otherwise defined in this Joinder Agreement shall have the meanings given them in the Development Agreement.

Harbor Hill is a wholly-owned subsidiary of OPG. Harbor Hill owns the Commercial Area of the Property and OPG owns the Residential Area of the Property, as such terms are defined in the Development Agreement. Due to a drafting error, OPG was not identified in the Development Agreement as the developer and owner of a portion of the Property. OPG desires to join in the Development Agreement as a party and as an additional Developer, to be bound under the Development Agreement to the same extent as Harbor Hill.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OPG and Harbor Hill hereby agree as follows:

- 1. Joinder.** OPG affirms, agrees to, confirms, consents to, and ratifies the Development Agreement. OPG shall be a party to the Development Agreement to the same extent that Harbor Hill is a party to the Development Agreement. All references in the Development Agreement to "Developer" and "Harbor Hill" shall mean both OPG and Harbor Hill.
- 2. Joint and Several Liability.** OPG and Harbor Hill shall be jointly and severally liable to the City for all obligations of the Developer under the Development Agreement.
- 3. Miscellaneous.** This Joinder Agreement shall be effective as of the date on which it is made, but the obligations of OPG under the Development Agreement shall relate back to the date on which the Development Agreement was made. This Joinder Agreement is made for the sole purpose of adding OPG as an additional Developer under the Development Agreement and shall not change any term or condition of the

Development Agreement nor limit any right of or impose any new obligation on the City of Gig Harbor.

EXECUTED AND DELIVERED as of the date first set forth above.

OPG PROPERTIES LLC, a Washington limited liability company

By: *Jon Rose*
Jon Rose
Its: President
Date: 11-16-2010

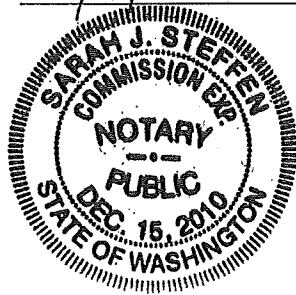
HARBOR HILL LLC, a Washington limited liability company

By: *Jon Rose*
Jon Rose
Its: President
Date: 11-16-2010

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that JON ROSE is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of OPG PROPERTIES LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 11/16/10

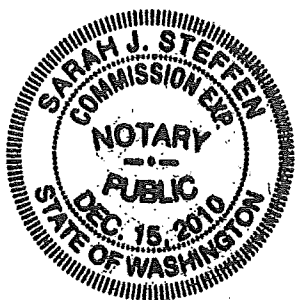


Sarah Steffen
Printed: Sarah J. STEFFEN
NOTARY PUBLIC in and for Washington
Residing at: Poulsbo, Kitsap County
My appointment expires: 12/15/2010

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that JON ROSE is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of HARBOR HILL LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 11/16/2010



Sarah J. Steffen
Printed: SARAH J. STEFFEN
NOTARY PUBLIC in and for Washington
Residing at: Youlsbo, Kitsap County
My appointment expires: 12/15/2010

CONSENT OF CITY OF GIG HARBOR

The City of Gig Harbor hereby consents to the foregoing Joinder Agreement and the joinder of OPG Properties LLC as an additional Developer under the development agreement described therein, provided, however, that this consent shall not change any term or condition of the Development Agreement nor limit any right of or impose any new obligation on the City of Gig Harbor.

CITY OF GIG HARBOR, a Washington
municipal corporation

By: Charles L. Hunter
CHARLES L. HUNTER
Its: Mayor

Date: NOV 23, 2010

ATTEST:

Molly M Towsee
City Clerk

APPROVED AS TO FORM:

Angela Bellum
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

DATED: NOV 23 2010



Molly M Towsee
Printed: Molly Towsee
NOTARY PUBLIC in and for Washington
Residing at: Gig Harbor
My appointment expires: 12/2/11

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

RESIDENTIAL AREA

Owned by OPG Properties LLC

TAX PARCEL NUMBER 0222308002

LOT 2 OF THE CITY OF GIG HARBOR SHORT PLAT PL-SP-07-005, RECORDED UNDER PIERCE COUNTY AFN 200902135006, SAID LOT 2 BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 0222311000

THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN.
EXCEPT ROADS.
SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

TAX PARCEL NUMBER 0222311009

PARCEL "B" OF THE BOUNDARY LINE ADJUSTMENT RECORDED UNDER PIERCE COUNTY AFN 200407275004, SAID PARCEL "B" BEING PORTIONS OF THE WEST HALF OF THE NORTHEAST QUARTER AND OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M.
SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

COMMERCIAL AREA

Owned by Harbor Hill LLC

TAX PARCEL NUMBER 4002470011

.THAT PORTION OF LOT 1, BUSINESS PARK AT HARBOR HILL, PER THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NUMBER 200605235007, SAID LOT 1 BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1 LYING 287.61 NORTHERLY OF THE SOUTHEAST CORNER OF SAID LOT 1, AS MEASURED ALONG THE EAST LINE OF SAID LOT 1, THENCE NORTH 77°06'13" WEST 644.52 FEET TO AN ANGLE POINT IN THE WEST LINE OF SAID LOT 1;
THENCE ALONG THE BOUNDARY OF SAID LOT 1 THE FOLLOWING COURSES:
THENCE NORTH 88°22'24" WEST 110.70 FEET;

THENCE NORTH 05°55'53" EAST 181.58 FEET;
THENCE SOUTH 88°22'24" EAST 33.73 FEET;
THENCE NORTH 14°26'00" EAST 232.65 FEET;
THENCE SOUTH 48°15'42" EAST 247.61 FEET;
THENCE NORTH 77°19'55" EAST 95.23 FEET;
THENCE NORTH 37°16'34" EAST 168.29 FEET;
THENCE SOUTH 88°22'24" EAST 177.38 FEET TO A POINT ON A 766.00 FOOT CURVE TO
THE RIGHT, THE RADIUS OF WHICH BEARS SOUTH 64°21'11" WEST
THENCE SOUTHERLY ALONG SAID CURVE, AN ARC DISTANCE OF 358.65 FEET, THROUGH
A CENTRAL ANGLE OF 26°49'36";
THENCE SOUTH 01°10'47" WEST 189.56 TO THE POINT OF BEGINNING.

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2 EAST, W.M. PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

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TAX PARCEL NUMBER 4002470030

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NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 4002470042

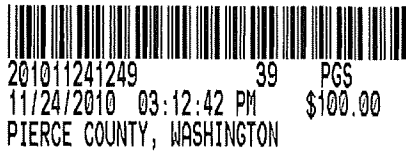
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PARK AT HARBOR HILL PER BOUNDARY LINE ADJUSTMENT RECORDED IN PIERCE
COUNTY, WASHINGTON, AUDITOR'S FILE NUMBER 200710195003 FURTHER DESCRIBED
AS FOLLOWS:
COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL ADJACENT TO HARBOR
HILL DRIVE, THENCE N 01°10'47" E ALONG THE EASTERLY MARGIN OF HARBOR HILL
DRIVE 514.00 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUING N 01°10'47" E ALONG THE EASTERLY MARGIN OF HARBOR HILL
DRIVE 428.04 FEET TO THE NORTHERLY BOUNDARY OF THE PARCEL;

THENCE S 88°15'35" E ALONG THE NORTHERN BOUNDARY 585.60 FEET TO THE EASTERN BOUNDARY OF THE PARCEL;
THENCE S 05°02'54" W, 12.02 FEET;
THENCE S 27°57'14" W, 112.58 FEET;
THENCE S 01°33'50" E, 199.54 FEET;
THENCE S 00°23'25" W, 110.52 FEET TO THE SOUTHERN BOUNDARY OF THE PARCEL;
THENCE N 88°49'13" W, 545.12 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

ACCORDING TO REQUEST OF SEGREGATION AS PER CITY OF GIG HARBOR, DATED 02/06/2008.

TAX PARCEL NUMBER 4002470051

PARCEL "B" OF THE BOUNDARY LINE ADJUSTMENT RECORDED UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200710195003, SAID PARCEL "B" BEING PORTIONS OF THE NORTHEAST QUARTER AND OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON.



Return Address:
City Clerk
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Please print legibly or type information.

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| Document Title(s) (Or transaction contained therein): 1. Harbor Hill Development Agreement 2. 3. |
| Grantor(s) (Last name first, then first name and initials): 1. CITY OF GIG HARBOR 2. 3. |
| Grantee(s) (Last name first, then first name and initials): 1. HARBOR HILL LLC 2. 3. |
| Legal Description (Abbreviated: i.e., lot, block, plat; or section, township, range): LOT 2 OF THE CITY OF GIG HARBOR SHORT PLAT PL-SP-07-005... Additional Legal Description on Page <u>25, 26, 27</u> of Document |
| Reference Number(s) (Of documents assigned or released): Files No. 201011160780; 200902135006; 200605235007; 9704040094; 200308140667 and 200308140668 |
| Additional Reference numbers on Pages <u>3,4,6</u> of Document. Assessor's Property Tax Parcel/Account Number 0222308002; 0222311000; 0222311009; 4002470011; 4002470012; 4002470030; 4002470042; 4002470051 |
| The Auditor/Recorder will rely on the information provided on this cover sheet. The staff will not read the Document to verify the accuracy or completeness of the indexing information provided |

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11/16/2010 02:11:31 PM \$99.00
PIERCE COUNTY, WASHINGTON

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City of Gig Harbor
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DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND HARBOR HILL LLC,
FOR THE
HARBOR HILL DEVELOPMENT

THIS DEVELOPMENT AGREEMENT is made and entered into this 7th day of November, 2010, by and between the CITY OF GIG HARBOR, a Washington municipal corporation, hereinafter the "City," and HARBOR HILL LLC, a Washington limited liability company, hereinafter "Harbor Hill" or "Developer."

RECITALS

A. Introduction

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

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

This Development Agreement relates to the development known as the Harbor Hill property, legally described on Exhibit A attached hereto (the "Property"), and generally located north and south of Borgen Boulevard between Harbor Hill Drive and Peacock Hill Avenue N.W. in the City of Gig Harbor, Pierce County, Washington.

B. Harbor Hill Property Description

Harbor Hill is the successor to OPG Properties LLC (f/k/a Olympic Property Group LLC), a Washington limited liability company, and Pope Resources, a Delaware limited partnership, as the developer and owner of the Property. The Property is located within the incorporated limits of the City.¹ The Property is graphically depicted on the drawing attached hereto as Exhibit B (the "Property Map").

The Property comprises two areas, as shown on the Property Map: (1) the Residential Area, and (2) the Commercial Area.

¹ The Property description does not include those land areas previously conveyed by Harbor Hill to third parties, including Costco Wholesale Corporation, Northwest Capital Investors LLC, YMCA of Tacoma/Pierce County (Lot 2 of Harbor Hill Business Park), International Church of the Foursquare Gospel (Lot 4A of Harbor Hill Business Park), and the City, nor does it include Lot 6 (a/k/a the "Village Center") of Harbor Hill Business Park.

C. Comprehensive Plan Designation and Zoning

The Property is designated on the City's official comprehensive plan map as shown on the drawing attached hereto as Exhibit C and is zoned on the City's official zoning map as shown on the drawing attached hereto as Exhibit D. Neither Exhibit C nor Exhibit D is intended to modify the City's maps, and in the event of any inconsistency between Exhibit C and the City's comprehensive plan map or between Exhibit D and the City's official zoning map, the City's maps shall control.

D. Water, Sewer, and Transportation Facility Capacity

Harbor Hill has reserved with the City, for the benefit of the Property and Lots 2, 4A, and 6 of Harbor Hill Business Park, sewer and water service capacity for 824 ERU's within the Residential Area, sewer and water capacity for 422 ERU's within the Commercial Area and Lots 2, 4A, and 6 of Harbor Hill Business Park, and transportation capacity for 2,013 peak hour vehicle trips within the Property and Lots 2, 4A, and 6 of Harbor Hill Business Park, as evidenced by capacity reservation certificates issued by the City to the Developer (the "Capacity Reservation Certificates"). In addition, the City has prepared a water service, sewer service, and transportation facility capacity evaluation in connection with the development of the Property.

E. Existing Development Within the Property

The Property is undeveloped except for certain utility and transportation infrastructure improvements constructed or installed by Harbor Hill or its affiliates.

F. Pre-Annexation Agreement

The Property was subject to that certain "Preannexation Agreement for Gig Harbor North" dated September 26, 1996 (the "Pre-annexation Agreement"), among Pope Resources, a Delaware limited partnership (an affiliate of and predecessor to Harbor Hill), Tucci & Sons, Inc., a Washington corporation, and the City, which was recorded in the real property records of Pierce County, Washington, under Auditor's File No. 9704040094, Book 325, page 1622. To the actual current knowledge of the parties hereto, all obligations of Pope Resources, OPG Properties LLC, and Harbor Hill arising under the Pre-Annexation Agreement have been fully satisfied.

G. PRD Submittal

On December 2, 2008, Harbor Hill filed with the City a complete application for approval of a planned residential development and preliminary plat within the Residential Area (File Nos. PL-PPLAT-08-0001 and PL-PRD-08-0001) (collectively, the "PRD Application").

H. Prior Development Agreements

The Property is not currently subject to any development agreement. The following real property presently or formerly owned by Harbor Hill or its affiliate OPG Properties LLC (d/b/a Olympic Property Group and f/k/a Olympic Property Group LLC) has been subject to the following two (2) development agreements:

1. "Development Agreement" dated July 23, 2003, between Olympic Property Group LLC (now known as OPG Properties LLC), a Washington limited liability company, and the City, relating to the Village Center, which was recorded in the real property records of Pierce County, Washington, under Auditor's File Nos. 200308140667 and 200308140668. This development agreement has expired.

2. "Development Agreement by and between the City of Gig Harbor and Harbor Hill LLC, for the Costco Shopping Center Residual Parcels" dated November 13, 2006, between Harbor Hill and the City, relating to the real property commonly known as Residual Parcels A, B, and C the Costco Shopping Center. Harbor Hill's interest under this development agreement has been assigned to a third party.

To the actual current knowledge of the parties hereto, OPG Properties LLC and Harbor Hill are not in default of any obligations under the development agreements described above.

I. Existing Environmental Documents

Harbor Hill, OPG Property Group LLC, Pope Resources, the City, and others have investigated the environmental condition of the Property and the environmental impacts that may be caused by the development of the Property and have prepared certain environmental reports and studies, which are listed on Exhibit E attached hereto (the "Environmental Documents"). The Environmental Documents include draft and final environmental impact statements relating to the adoption of the City's comprehensive plan and zoning code and to the making of the Pre-annexation Agreement.

J. City Environmental Review

The City has reviewed the probable adverse environmental impacts of the making of this Agreement, as required by the State Environmental Policy Act, RCW Chapter 43.21C ("SEPA"), by reviewing the Environmental Documents and by making a threshold Determination of Nonsignificance dated October 13, 2010, which has not been appealed or modified, and a copy of which is attached hereto as Exhibit E (the "Threshold Determination"). The parties acknowledge that additional environmental review under SEPA will be required by the City prior to making any other land use or subdivision decisions relating to the Project.

K. City Authority

This Agreement is made under the authority of the City's police power, contracting authority, and other authority, including the authority granted to the City under RCW 36.70B.170 et seq. to make development agreements, and GHMC Chapter 19.08 as amended. This Agreement establishes development standards for the Property and other provisions that apply to and govern and vest the development, use and mitigation of the development of the Property for the term specified in this Agreement. Actual construction of the Project requires issuance of subsequent City permits, which will be issued in accordance with the standards and procedures described in this Agreement.

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. The Project. The Project is the development and use of the Property as described in this Agreement. Upon completion of construction, the Project will comprise the facilities and uses described on Exhibit G attached hereto and incorporated herein by this reference.

Section 2. The Property. The Property consists of approximately 235 acres and is legally described in Exhibit A attached hereto and incorporated herein by this reference.

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

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

B. "Certificate of Occupancy" means either a temporary or final certificate of occupancy issued after inspections by the City, authorizing a person in possession of property to dwell or otherwise use a specified building or dwelling unit.

C. "City Engineer" means the City's Engineer and his or her designee.

D. "Civil Permit" means any ministerial, nondiscretionary City permit approved by the City Engineer and authorizing clearing and grading, landscaping improvements, the construction of roads, bridges, storm water facilities, or utility facilities, or other construction work, such as those issued under the authority of GHMC Chapters 12.06 and 12.08, except any building permit. "Civil Permit" does not include any landscaping improvements required by GHMC Titles 16, 17, or 18 and approved by the Director.

E. "Commercial Area" means the portion of the Property designated "Commercial Area" on the Property Map, also known as Lots 1A, 1B, 3, 4B, and 5 of Harbor Hill Business Park, which comprises areas for commercial development and appurtenant streets, parks, storm water management areas, and other appurtenant areas. The Commercial Area does not include Lots 2 (YMCA), 4A (International Church of the Foursquare Gospel), and 6 (a/k/a Village Center) of Harbor Hill Business Park.

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

G. "Development Standards" include, but are not limited to, all of the standards listed in RCW 36.70B.170(3), as established or modified by this Agreement. The Development Standards applicable to the Project are described in Section 8 below.

H. "Director" means the City's Planning Director and his or her designee.

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

J. "ERU" means equivalent residential unit as defined in the most current version of the City of Gig Harbor Wastewater and Water Utility Comprehensive Plan.

K. "Existing Land Use Regulations" means the ordinances adopted by the City Council of Gig Harbor in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, Design Guidelines, Public Works Standards, SEPA Regulations, Concurrency Ordinance for water, wastewater and transportation facilities, park regulations, and all other ordinances, codes, rules and regulations of the City establishing subdivision and land use standards, as modified or varied by the City to the extent authorized under the Existing Land Use Regulations for planned residential developments, planned unit developments, and otherwise, provided, however, that Existing Land Use Regulations does not include building codes, clearing and grading codes, storm water management codes and storm water management and site development manuals, regulations governing taxes and impact fees, and regulations defining the term "ERU."

L. "Finished Residential Lot" means a developable legal lot, tract, or parcel within the Residential Area, which has been cleared and rough graded and is preliminarily compacted and ready for construction by Homebuilder, with all utility lines stubbed to the property line, functional, connected to a main utility line, and

ready for use, and all transportation improvements constructed or bonded in accordance with the approved civil engineered drawings and this Agreement.

M. "Harbor Hill Business Park" means the Plat of Harbor Hill Business Park, City of Gig Harbor Final Subdivision No. SUB 06-1208, recorded in the real property records of Pierce County, Washington, under Auditor's File No. 200605235007, as amended, subject to subsequent tax parcel segregations, including without limitation the tax parcel segregations of Lot 1 (creating Lots 1A and 1B) and Lot 4 (creating Lots 4A and 4B).

N. "Homebuilder" means any person who holds a contractual right to purchase Finished Residential Lots within the Property and to construct and install model homes within such lots either before or after completing such purchase. Notwithstanding the foregoing, a Homebuilder shall not be a party to this Agreement, shall not be a successor or assign of the Developer, and shall have no rights regarding the amendment or termination of this Agreement, unless the Developer shall assign such rights to such Homebuilder in an instrument recorded in the real property records of Pierce County, Washington.

O. "Landowner" is any person who has acquired any portion of the Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. Notwithstanding the foregoing, a Landowner shall not be a party to or beneficiary of this Agreement, shall not be a successor or assign of the Developer, and shall have no rights regarding the enforcement, interpretation, amendment, or termination of this Agreement, unless the Developer shall assign such rights to such Landowner in an instrument recorded in the real property records of Pierce County, Washington.

P. "Residential Area" means the portion of the Property designated "Residential Area" on the Property Map, which comprises areas for single-family and multi-family development and appurtenant streets, parks, storm water management areas, and other appurtenant areas.

Q. "Village Center" means Lot 6 of Harbor Hill Business Park, upon which the Developer intends to establish a retail commercial village center.

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

- Exhibit A – Legal Description of the Property
- Exhibit B – Property Map
- Exhibit C – Comprehensive Plan Map
- Exhibit D – Zoning Map
- Exhibit E –List of Environmental Documents
- Exhibit F – SEPA Threshold Determination

Exhibit G – Project Description
Exhibit H – List of Modified City Development Standards
Exhibit I – Phasing Plan

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

Section 6. Term of Agreement; Vesting Periods.

A. This Agreement shall commence upon the Effective Date of the Adopting Resolution approving this Agreement and shall continue in force for a period of 20 years unless terminated as provided herein. Following the termination of this Agreement, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

B. The Development Standards designated in this Agreement shall remain unchanged and apply in full force and effect for the term of this Agreement (the "Development Period").

C. During the Development Period, Harbor Hill shall have the right to obtain approvals and permits, including without limitation final plat and final planned residential development approvals of development phases within the Residential Area, and develop the Property in accordance with the Development Standards.

D. Within the Residential Area, the following time periods otherwise applicable to City approvals and permits shall be extended for the term of the Development Period: (1) the duration of preliminary and final binding site plan approval, preliminary and final plat approval, PRD approval, and other land use approvals and permits, (2) deadlines for filing final binding site plans, final plats, and other applications and designs, and (3) deadlines for commencing and completing the development of an approved final binding site plan, final plat, or other project. This subsection shall not apply to any Civil Permit or building permit. Notwithstanding the foregoing, the City reserves the right during the Development Period to modify the Development Standards to the extent required by a serious threat to public health and safety.

E. Within the Commercial Area, any City land use approval or permit relating to Lots 1A and 1B, including without limitation any design approval, site plan approval, or binding site plan approval, shall not expire or terminate until the date that is ten (10) years after the issuance of such approval or permit. This subsection shall not apply to any Civil Permit or building permit. Notwithstanding the foregoing, the City reserves the right during the Development Period to modify the Development Standards to the extent required by a serious threat to public health and safety.

F. Within both the Commercial Area and Residential Area, any Civil Permit shall not expire or terminate until the date that is two (2) years after the issuance of such approval or permit. This subsection shall not apply to any building permit. Notwithstanding the foregoing, the City reserves the right during the Development Period to modify the Development Standards to the extent required by a serious threat to public health and safety.

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

Section 8. Permitted Uses and Development Standards. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines, and other Development Standards for development of the Property shall be (a) the Project description set forth on Exhibit G attached hereto and incorporated herein by this reference, (b) the Existing Land Use Regulations, (c) the building codes and clearing and grading codes under which the review of the Project is vested under RCW 19.27.095, RCW 58.17.033, and other applicable laws, (d) the storm water management code and storm water management and site development manual in effect on December 2, 2008, (e) the permits and approvals identified herein, (f) the Development Standards expressly set forth in this Agreement, and (g) the Development Standards expressly set forth in all other exhibits incorporated herein. The parties have used reasonable efforts to identify on Exhibit H attached hereto the City development standards that are modified by this Agreement, but Exhibit H is not intended to govern to the extent that it either omits any modified development standard or conflicts with any other provision of this Agreement.

Section 9. Minor Modifications. Minor modifications from the approved permits or the exhibits attached hereto, including without limitation modifications proposed between preliminary plat and final plat decisions, may be approved in accordance with the provisions of the City's code, including without limitation GHMC 16.05.006, 17.89.120, and Chapter 19.01, and shall not require an amendment to this Agreement.

Section 10. Further Discretionary Actions. Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional

permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 11. Financing of Public Facilities.

A. The City may pursue the use of a local improvement district and other similar project-related public financing mechanism for financing the construction, improvement, or acquisition of public infrastructure, facilities, lands, and improvements to serve the Property, whether located within or outside the Property. Developer acknowledges and agrees that it shall pay its pro-rata share of the costs of public improvements to be financed thereby.

B. For reimbursement of expenses incurred by Developer associated with the Project, the Developer may apply for a latecomer reimbursement agreement in accordance with the state law and local ordinances. Nothing in this Agreement prevents all or any portion of the Property from being included in a benefit assessment area under a latecomer reimbursement agreement if requirements under applicable state law and local ordinances are met.

Section 12. Existing Land Use Fees, Impact Fees, and General Facility Charges.

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

B. Except as provided in subsection C below, all impact fees and general facility charges shall be paid as set forth in the approved permit or approval, or as addressed in Chapter 19.12 of the Gig Harbor Municipal Code. The parties agree that payment of any impact fee or general facility charge relating to the development of the Property shall be required at the later of (i) the time the City issues a building permit for the construction of the building to which the impact fee or facility charge relates, or (ii) the time required by the City in its regulations.

C. In consideration of the Developer's dedication to the City of Lot 3 of Harbor Hill Business Park, park impact fees otherwise payable to the City under Chapter 19.12 of the Gig Harbor Municipal Code shall be waived by the City as to each of the 824 dwelling units within the Residential Area. If the Developer builds fewer than 824 dwelling units within the Residential Area, the City shall have no obligation to reimburse or otherwise compensate the Developer to the extent that the Developer's dedication of Lot 3 to the City may have exceeded the Developer's legal obligation to mitigate park impacts. In the event Lot 3 of Harbor Hill Business Park is

not accepted by the City as set forth in Section 13.H.ii below, then this Section 12.C shall be null and void.

Section 13. Phasing of Development.

A. Generally; Phasing Plan. The Project may be completed in phases, as set forth on Harbor Hill's phasing plan, which is attached hereto as Exhibit I (the "Phasing Plan") and is hereby approved by the City. The Phasing Plan is subject to compliance with the requirements of SEPA regarding phased environmental review. Harbor Hill shall develop only complete phases, not portions of any phase. Harbor Hill is authorized to propose revisions to the Phasing Plan from time to time. Revisions that would increase the number of phases by more than 25 percent, modify any Development Standard, or terminate the Phasing Plan require City Council approval in the form of an amendment to this Agreement. The Director is authorized to approve all other revisions to the Phasing Plan, without an amendment to this Agreement, if the revised Phasing Plan is consistent with other provisions of this Agreement and the Development Standards, and if it makes adequate provision for reallocating among the phases the Project conditions, mitigation measures, and other requirements of the City to the satisfaction of the Director. The Developer may construct or install greater infrastructure improvements than are described in the Phasing Plan in its discretion, as where greater infrastructure improvements may give the Developer an economy of scale.

B. Allocation of Conditions and Mitigation Measures Among Phases. With respect to any Project conditions, mitigation measures, and other requirements that are not incorporated within the Phasing Plan, the City and Harbor Hill shall discuss and use reasonable efforts to negotiate the conditions, mitigation measures, and other requirements applicable to each phase, if the Phasing Plan is changed as to any phase for which the City has granted preliminary but not final plat approval, subject, however, to the authority of the City to exercise its legal authority to allocate such conditions, mitigation measures, and other requirements among the phases. The parties acknowledge that, because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents and other occupants of the Project.

C. Transportation Improvements. Transportation improvements required as a condition of City approval of any Project permit shall be completed prior to the date on which the City approves the final plat of the phase for which the transportation improvements are required, but if no plat is required, then the improvements shall be completed prior to issuance of a Certificate of Occupancy for any building authorized under the Project permit.

D. Potable Water and Fire Flow Facilities.

i. Off-site potable water and fire flow facilities required as a condition of approval of any Project permit shall be completed prior to the date on which the City approves the final plat of the phase for which the facilities are required, but if no plat is required, then the facilities shall be completed prior to issuance of a Certificate of Occupancy for any building authorized under the Project permit, provided, however, that off-site fire flow facilities shall be completed before the City issues a building permit for any combustible structure.

ii. On-site potable water and fire flow facilities required as a condition of approval of any Project permit shall be completed before the City issues a Certificate of Occupancy for any building for which the facilities are required, provided, however, that on-site fire flow facilities shall be completed before the City issues a building permit for any combustible structure.

E. Sewer Facilities.

i. Off-site sewer facilities required as a condition of approval of any Project permit shall be completed prior to the date on which the City approves the final plat of the phase for which the facilities are required, but if no plat is required, then the facilities shall be completed prior to issuance of a Certificate of Occupancy for any building authorized under the Project permit.

ii. On-site sewer facilities required as a condition of approval of any Project permit shall be completed before the City issues a Certificate of Occupancy for any building for which the facilities are required.

F. Storm Water Improvements. Storm water improvements required as a condition of City approval of any Project permit shall be completed prior to the date on which the City approves the final plat of the phase for which the storm water improvements are required, but if no plat is required, then the improvements shall be completed prior to issuance of a Certificate of Occupancy for any building authorized under the Project permit.

G. Utilities. Utility facilities, other than sewer, storm sewer and water facilities, required as a condition of approval of any Project permit, shall be completed before the City issues a Certificate of Occupancy for any building for which the facilities are required.

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H. Parks and Open Space.

i. Parks and open space facilities required as a condition of approval of any Project permit shall be completed or bonded prior to the date on which the City approves the final plat of the phase for which the facilities are required, but if no plat is required, then the facilities shall be completed prior to issuance of a Certificate of Occupancy for any building authorized under the Project permit.

ii. The parties intend that Lot 3 of Harbor Hill Business Park will be developed by the City as a public park and owned by the City in perpetuity. Within ninety (90) days after the later of the Effective Date and the date on which the City has issued a final appealable decision approving the PRD Application and either all appeal periods relating to such decision have expired without the commencement of any appeals or all commenced appeals have been dismissed with prejudice, the Developer shall deliver to the City a Phase I environmental site assessment relating to Lot 3 (the "Phase I"), dated not more than sixty (60) days before the date of delivery, prepared by a qualified consultant at Developer's sole expense. Unless the Phase I discloses a recognized environmental condition ("REC") affecting Lot 3, the City shall approve the Phase I and the environmental condition of Lot 3 within thirty (30) days after the City's receipt of the Phase I. Within ninety (90) days after the City delivers to the Developer written notice that the City approves the environmental condition of Lot 3, as disclosed in the Phase I, the Developer shall (a) dedicate Lot 3 to the City by a quit claim deed that reserves the future use of Lot 3 to public park, roadway, and appurtenant uses only, and (b) pay the City the sum of US\$50,000, which the City shall use only for the preparation of designs and plans for public park facilities within Lot 3. If the City delivers to the Developer written notice that the City does not approve the environmental condition of Lot 3, as disclosed in the Phase I, then the parties shall have one hundred eighty (180) days to reach an agreement to resolve the environmental issues, such as an agreement to undergo Phase 2 analysis and implement a remediation plan. In the event the parties cannot reach agreement to resolve the environmental issues to the City's satisfaction within one hundred eighty (180) days, the waiver of park impact fees under Section 12.C shall be null and void, the Developer shall pay applicable park impact fees in accordance with City regulations, and the Developer shall have no obligation either to dedicate Lot 3 to the City or to pay the City the sum of US\$50,000 as described above. The Developer shall have no other obligations to the City relating to Lot 3 except those obligations described in this subparagraph.

iii. The City hereby agrees that, in consideration of the Developer's dedication to the City of Lot 3 of Harbor Hill Business Park, the City's requirement under GHMC 17.54.030.C that Lots 1A, 1B, 4B, and 5 of Harbor Hill Business Park establish or preserve 20 percent or more of their respective lot areas as open space, with either retained natural vegetation or new landscaping, shall be modified as follows as to each such lot: a minimum of 15 percent (instead of 20 percent) of the

site, excluding setbacks, shall remain in open space, with either retained natural vegetation or new landscaping.

J. Bonds. Notwithstanding the foregoing, in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, final planned residential development, or final binding site plan, the Director or City Council may accept a bond, approved as to form by the City Attorney, in an amount and with surety and conditions satisfactory to it, or other secure method, providing for and securing to the City the actual construction and installation of such improvements within a period specified by the City and expressed in the bond.

Section 14. Dedication of Public Lands.

A. All conveyances of public lands from the Developer to the City shall be by statutory warranty deed subject to all matters of record and matters that a visual inspection and ALTA/ACSM survey would disclose, provided, however, that no conveyance shall be subject to any deed of trust, mortgage, or other monetary lien.

B. The Developer will dedicate to the City the tract described as Item No. 14 (South Wetland/Loop Trail) on the Phasing Plan, as public open space, upon the occupancy of four hundred (400) dwelling units within the Residential Area. The Developer will dedicate to the City the tract described as Item No. 19 (Gateway Park) on the Phasing Plan, as a public park, upon the issuance of a Certificate of Occupancy for any building constructed within Phase M2 as described on the Phasing Plan. The completion of the foregoing conveyances shall fully satisfy the Developer's obligations to establish public parks and open space and to mitigate Project impacts to parks and open space in connection with the development of the Project, provided, however, that such dedications shall not fully satisfy the requirements of GHMC 17.89.110 relating to the establishment of private open space that is owned and maintained by a property owner's association. At the time of the Developer's dedication of the tract described as Item No. 19 (Gateway Park) on the Phasing Plan, the tract will be improved at the Developer's expense with certain facilities and improvements, as described in the PRD Application, including without limitation the following facilities and improvements: landscape improvements including a seating/pedestrian gathering area and a crushed rock walking path through the grass meadow, providing pedestrian connectivity between the Borgen Boulevard sidewalk and the wetland area trails in Tract C.

C. i. The Developer agrees to construct a road, to the standard described in the City's site plan approval relating to Lots 1A and 1B of Harbor Hill Business Park (File No. PL-SPR-08-0009), within the City-approved right-of-way within Lots 1A and 1B of Harbor Hill Business Park, before the City issues a Certificate of Occupancy for any building within either Lot 1A or 1B of Harbor Hill Business Park, regardless whether the Developer already has dedicated the City-approved right-of-way to the City under the following subparagraph.

ii. The Developer agrees to dedicate to the City the City-approved right-of-way within Lots 1A and 1B of Harbor Hill Business Park (with or without the construction of a road within the right-of-way), and the City agrees to accept such dedication from the Developer, within sixty (60) days after first to occur of the following events: (a) completion of construction and dedication to the City of the roadway located within the McCormick Creek project between Burnham Drive and the City-approved right-of-way within Lots 1A and 1B of Harbor Hill Business Park, or (b) the Developer's completion of construction, and the City's approval of its final construction inspection, of a roadway within the City-approved right-of-way within Lots 1A and 1B of Harbor Hill Business Park.

D. The Developer may, at its option from time to time, request the elimination of bike lanes within one or more new public streets within the Residential Area, in exchange for wider public sidewalks along such streets. The City may grant or deny such requests in its discretion.

Section 15. Capacity Reservations.

A. There are 2,013 peak hour vehicle trips reserved by the Developer for the Project and Lots 2 (YMCA), 4A (International Church of the Foursquare Gospel), and 6 (a/k/a Village Center) of Harbor Hill Business Park under the existing Capacity Reservation Certificates. Upon the Effective Date, (1) 641 peak hour vehicle trips shall be reallocated from Harbor Hill Business Park to the Residential Area, and (2) 60 peak hour vehicle trips shall be reserved for Lot 3 (future public park) of Harbor Hill Business Park. The parties acknowledge that 256 peak hour vehicle trips of the 1,312 peak hour vehicle trip balance have been allocated to Lots 1A and 1B of Harbor Hill Business Park in prior land use decisions of the City, and 137 peak hour vehicle trips of the 1,312 peak hour vehicle trip balance have been allocated to Lot 2 (YMCA) of Harbor Hill Business Park in prior land use decisions of the City. The balance, 919 peak hour vehicle trips, shall be reserved for Lots 4A, 4B, 5, and 6 of Harbor Hill Business Park until they are assigned or reallocated either in an amendment to this Agreement, or in a separate agreement between the City and the Developer, or as may otherwise be authorized by law. In addition to other methods of assigning and allocating vehicle trips authorized by this Agreement, the Developer may, as part of a development permit application, designate the amount of remaining capacity to be allocated to portions of the Property, such as lots, blocks, parcels, or tracts included in the application, and remaining capacity may be reassigned or allocated within the boundaries of the original reservation certificate by application to the Director.

B. The Developer covenants to the City that it will either pay City sewer general facility charges and purchase City sewer facility connection rights or partially relinquish its reserved rights under its sewer Capacity Reservation Certificates as to such portions of the Residential Area as the Developer may choose in its discretion,

as to a total of 275 sewer ERU's (in any combination of paid fees or relinquished rights), within ninety days after the seventh (7th) anniversary of the Effective Date. Within the Residential Area, the Developer shall pay City sewer general facility charges and purchase City sewer facility connection rights (and not relinquish its reserved rights) as to all ERU's for which the Developer has either obtained a building permit or final plat, final planned residential development, or final binding site plan approval.

C. The Developer covenants to the City that it will either pay City sewer general facility charges and purchase City sewer facility connection rights or partially relinquish its reserved rights under its sewer Capacity Reservation Certificates as to such portions of the Residential Area as the Developer may choose in its discretion, as to a total of 552 sewer ERU's (including the sewer ERU's purchased or relinquished under Section 15.B above) (in any combination of paid fees or relinquished rights), within ninety days after the fourteenth (14th) anniversary of the Effective Date. Within the Residential Area, the Developer shall pay City sewer general facility charges and purchase City sewer facility connection rights (and not relinquish its reserved rights) as to all ERU's for which the Developer has either obtained a building permit or final plat, final planned residential development, or final binding site plan approval.

D. If the Developer partially relinquishes its reserved capacity under its sewer Capacity Reservation Certificates as described above, and if the Developer holds any preliminary plat, preliminary planned residential development, or preliminary binding site plan approval (a "Preliminary Approval") for development within the Residential Area in excess of its remaining reserved capacity, then either the Developer shall file with the City an application to amend its Preliminary Approvals to reduce the number of proposed ERU's to the number of reserved sewer ERU's or less within one hundred twenty (120) days after the date of such relinquishment or the Developer shall not submit to the City and the City shall not approve any application for final approval of any plat, PRD, or binding site plan within the Residential Area until such time as the Developer files an application to amend its Preliminary Approvals to reduce the number of proposed ERU's to the number of reserved sewer ERU's or less. In no event shall any Preliminary Approval confer upon the Developer a vested right to obtain final plat approval as to any ERU for which the Developer does not hold a valid sewer Capacity Reservation Certificate at the time of final plat approval.

Section 16. Setbacks. Setbacks otherwise required under GHMC 17.54.030.B shall not be required from either the north or west boundaries of Lot 3 of Harbor Hill Business Park.

Section 17. Residential Density. Each phase of the residential development of the Project may contain areas within which residential density is clustered, potentially exceeding residential density limits as to such areas, but such variations

shall be permitted as long as they are offset by corresponding reductions in existing or future residential density in other portions of the Residential Area, so that the aggregate residential density within the Residential Area shall at all times comply with the Existing Land Use Regulations.

Section 18. Model Homes.

A. The parties acknowledge that the most efficient and economic development of the Residential Area depends upon numerous factors, such as market orientation and demand, interest rates, competition, and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Residential Area to allow the Developer or Homebuilder to construct model homes within the Residential Area prior to approval and recording of a final plat. Therefore, the parties agree that the Developer and any Homebuilder shall be entitled to construct model homes within the Residential Area in accordance with the following terms and conditions;

B. The Developer and any Homebuilder may submit building permit applications for up to eight (8) model homes within eight (8) lots per phase, as such phases are described on the Phasing Plan and as such lots are depicted on an approved preliminary plat, prior to recording of the final plat. The City shall review and approve or deny the applications regardless whether the final plat is recorded. Prior to issuance of building permits for the model homes, the following requirements must be satisfied:

i. Retention/detention facilities that serve the model home lots shall be constructed in accordance with the engineered drawings approved by the City of Gig Harbor.

ii. Construction of road improvements necessary to provide safe public access to the model homes from existing public roadways shall be completed. The City Engineer shall have sole discretion to determine the definition of safe public access. The road improvements shall consist of subgrade, curb and gutter, sidewalk and first lift of asphalt in the final roadway alignment, from the existing public roadways to the furthest proposed model home. These improvements shall be in accordance with the engineered drawings approved by the City.

iii. Water and sewer facilities shall be installed to each lot proposed for model homes.

iv. All proposed streets serving the model homes shall be adequately marked with street signs.

v. All impact fees and utility general facility charges for model homes shall be paid prior to the issuance of building permits for the model homes.

vi. Fire protection features, including access, hydrants, and fire flow, must be provided in accordance with GHMC Chapter 15.16 and the approved civil plans prior to any combustible construction on any lot within the development. Such fire protection features may be installed in a phased manner provided that they are in place and approved as prescribed by code for each individual parcel within the plat prior to issuance of a building permit for said parcel.

vii. Traffic mitigation fees for all model homes shall be paid as required by law or as agreed by the City and the Developer as to the Residential Area.

C. In addition to the foregoing requirements, each residential building permit application for a model home shall include the following submittals:

i. Building plot plans showing the locations of the proposed model homes with distances indicated from the proposed final plat lot lines.

ii. Overall site plan showing the temporary improvements specific to the model homes such as the location of signage, flags, banners, fencing, landscaping, and impervious surfaces such as parking areas and sidewalks.

D. A final and complete Certificate of Occupancy shall not be granted for any of the model homes until the final plat has been recorded. However, the applicant may request final inspection and temporary occupancy for model homes prior to final plat recording, provided:

i. The Developer and Homebuilder have complied with applicable state law with regard to any agreements to transfer, sell, or lease property within the preliminary plat prior to final plat recording.

ii. All Building and Fire Safety requirements and Public Works Standards have been met to the satisfaction of the City's Building and Fire Safety Director and City Engineer.

iii. Driveway approaches for each model home requesting occupancy have been installed.

iv. Repairs to the roadway improvements have been completed as necessary due to damage as a result of model home construction.

v. Completion of miscellaneous utility work as necessary to minimize potential for damage to vehicles or tripping hazards.

vi. Completion of miscellaneous work to provide access for maintenance or operation of underground utilities.

E. Prior to final plat approval, either the Developer or Homebuilder shall submit two (2) copies of a plot plan delineating the as-built location of the model home on the lot. The corners of the lot shall be set by a registered professional land surveyor prior to commencement of construction.

F. The model homes and all associated improvements, including any parking lot, shall be removed within six (6) months after the last to occur of the following events:

i. Preliminary plat approval has expired and no extension has been granted, and

ii. The portion of the Residential Area within which the model home is located has been denied final plat approval and either all appeal periods have been exhausted without the commencement of an appeal or all appeals have been dismissed or otherwise resolved.

Section 19. Default.

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

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or if a cure is not being diligently pursued, the other party may, at its option, institute legal proceedings and pursue any remedy available under the law. In addition, the City may file an action to enforce the Gig Harbor Municipal Code, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code, for violations of this Development Agreement and the Code.

Section 20. Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement.

Section 21. Termination. This Agreement shall terminate upon the expiration of the term identified in Section 6 or when the Property has been fully developed, whichever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form

satisfactory to the City Attorney. Upon the City's issuance of a final and complete Certificate of Occupancy for any building within any portion of the Property, the description of the Property subject to this Agreement shall be deemed amended to exclude such portion, and any successor owner of such portion shall be released from all liabilities, obligations, and other covenants arising under this Agreement, and shall have no rights under this Agreement; provided, however, that the foregoing shall not release the Developer from any liability or obligation arising under this Agreement.

Section 22. Effect of Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

Section 23. Effect of Termination on Developer Rights. Upon any termination of this Agreement as to the Developer of the Property or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

Section 24. Assignment and Assumption; No Third Party Beneficiaries.

A. Harbor Hill shall have the right to assign all or any portion of its rights, liabilities, and obligations under this Agreement, subject to the conditions of Section 24.B.

B. Harbor Hill shall be released of all liabilities and obligations under this Agreement as to any portion of the Property upon its assignment of all such liabilities and obligations to any successor developer and owner of such portion of the Property if the following conditions are met: (1) Harbor Hill provides 30 days advance written notice of the assignment to the City; (2) the assignee assumes in writing all liabilities and obligations of Harbor Hill under this Agreement as to such portion of the Property, and (3) one of the following exists: (a) Harbor Hill retains a fifty percent (50%) or more equitable interest in the assignee and is the managing entity or actively involved in development of the Project; (b) the assignee is a wholly-owned subsidiary of Harbor Hill, OPG Properties LLC, or Pope Resources; (c) the assignee has a financial net worth that equals or exceeds at least twice the amount of outstanding financial obligations, at the time of the assignment, allocable to the portion of the Property to which the assignment relates as determined by the

Director; (d) substantially all of the on-site and off-site mitigation has been completed or adequate security therefor, as determined by the Director, has been provided; or (e) the City otherwise consents, in its sole discretion. If the conditions for release are met under this subsection, then from and after the date of such assignment, Harbor Hill shall have no further liability or obligation under this Agreement as to the portion of the Property to which the assignment relates (except to the extent Harbor Hill has an equitable interest in assignee) and the assignee shall exercise the rights and perform the obligations of Harbor Hill under this Agreement as to such portion.

C. This Agreement is made and entered into for the sole benefit and protection of Harbor Hill, the City, and their respective successors and assigns, and no other person shall have any right of action based upon any provision of this Agreement, except as expressly provided otherwise in this Agreement. There are no third party beneficiaries of this Agreement.

Section 25. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties, their respective successors and assigns.

Section 26. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Property during the term of this Agreement, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property after termination of this Agreement.

Section 27. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the following addresses:

If to the Developer:
Harbor Hill LLC
Attn: President
19245 Tenth Avenue N.E.
Poulsbo, WA 98370

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

Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such

notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 28. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff, legal and consultant costs not otherwise included within application fees. Such payment of all fees shall be made, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer. In the event Developer fails to pay the fees within the 30-day period, the City may declare the Developer in default and terminate this Agreement after 30 days written notice if the default is not timely cured.

Section 29. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 30. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 31. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 32. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the Effective Date, such invalidity shall not affect the validity of the remainder of this Agreement.

(Remainder of page intentionally left blank.)

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

HARBOR HILL LLC

By: [Signature]
Its: President
Date: 11/4/10

CITY OF GIG HARBOR

By: [Signature]
Its: Mayor
Date: 11/9/10

ATTEST:

[Signature]
City Clerk

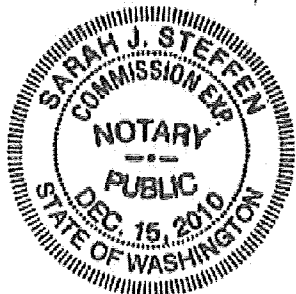
APPROVED AS TO FORM:

[Signature]
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF Kitsap)

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

DATED: 11/4/2010



[Signature]
Printed: SARAH J. STEFFEN
NOTARY PUBLIC in and for Washington
Residing at: Poulsbo, Kitsap County
My appointment expires: 12/15/2010

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

DATED: Nov 9 2010

Molly M Towstee

Printed: Molly Towstee
NOTARY PUBLIC in and for Washington
Residing at: Gig Harbor
My appointment expires: 12/2/11

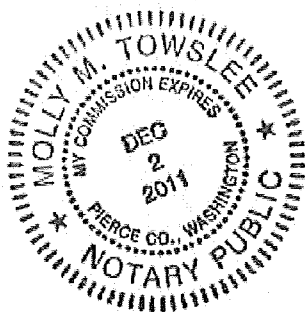


EXHIBIT A

Legal Description of the Property

RESIDENTIAL AREA

TAX PARCEL NUMBER 0222308002

LOT 2 OF THE CITY OF GIG HARBOR SHORT PLAT PL-SP-07-005, RECORDED UNDER PIERCE COUNTY AFN 200902135006, SAID LOT 2 BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY WASHINGTON.

TAX PARCEL NUMBER 0222311000

THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN.
EXCEPT ROADS.
SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

TAX PARCEL NUMBER 0222311009

PARCEL "B" OF THE BOUNDARY LINE ADJUSTMENT RECORDED UNDER PIERCE COUNTY AFN 200407275004, SAID PARCEL "B" BEING PORTIONS OF THE WEST HALF OF THE NORTHEAST QUARTER AND OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M.
SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

COMMERCIAL AREA

TAX PARCEL NUMBER 4002470011

THAT PORTION OF LOT 1, BUSINESS PARK AT HARBOR HILL, PER THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NUMBER 200605235007, SAID LOT 1 BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1 LYING 287.61 NORTHERLY OF THE SOUTHEAST CORNER OF SAID LOT 1, AS MEASURED ALONG THE EAST LINE OF SAID LOT 1, THENCE NORTH 77°06'13" WEST 644.52 FEET TO AN ANGLE POINT IN THE WEST LINE OF SAID LOT 1;
THENCE ALONG THE BOUNDARY OF SAID LOT 1 THE FOLLOWING COURSES:
THENCE NORTH 88°22'24" WEST 110.70 FEET;
THENCE NORTH 05°55'53" EAST 181.58 FEET;
THENCE SOUTH 88°22'24" EAST 33.73 FEET;
THENCE NORTH 14°26'00" EAST 232.65 FEET;
THENCE SOUTH 48°15'42" EAST 247.61 FEET;

THENCE NORTH 77°19'55" EAST 95.23 FEET;
THENCE NORTH 37°16'34" EAST 168.29 FEET;
THENCE SOUTH 88°22'24" EAST 177.38 FEET TO A POINT ON A 766.00 FOOT CURVE TO THE RIGHT, THE RADIUS OF WHICH BEARS SOUTH 64°21'11" WEST
THENCE SOUTHERLY ALONG SAID CURVE, AN ARC DISTANCE OF 358.65 FEET, THROUGH A CENTRAL ANGLE OF 26°49'36";
THENCE SOUTH 01°10'47" WEST 189.56 TO THE POINT OF BEGINNING.

TAX PARCEL NUMBER 4002470012

THAT PORTION OF LOT 1, BUSINESS PARK AT HARBOR HILL, PER THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NUMBER 200605235007, SAID LOT 1 BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1 LYING 287.61 NORTHERLY OF THE SOUTHEAST CORNER OF SAID LOT 1, AS MEASURED ALONG THE EAST LINE OF SAID LOT 1;
THENCE ALONG THE BOUNDARY OF SAID LOT 1 THE FOLLOWING COURSES:
THENCE SOUTH 01°10'47" WEST 287.61 FEET;
THENCE NORTH 88°22'24" WEST 631.54 FEET;
THENCE NORTH 01°15'21" EAST 412.28 FEET TO AN ANGLE POINT IN SAID BOUNDARY;
THENCE DEPARTING SAID BOUNDARY SOUTH 77°06'13" EAST 644.52 FEET TO THE POINT OF BEGINNING.

TAX PARCEL NUMBER 4002470030

LOT 3, BUSINESS PARK AT HARBOR HILL, PER THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NUMBER 200605235007, SAID LOT 3 BEING PORTIONS OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 4002470042

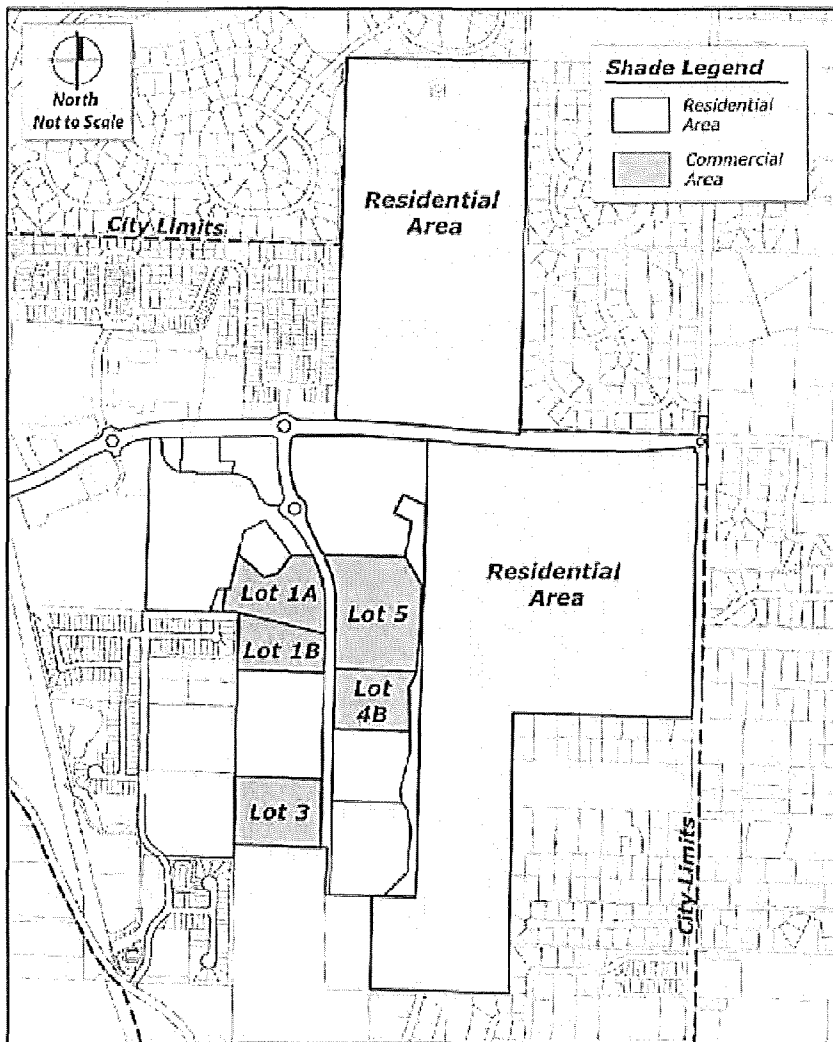
THE NORTHERLY 5.3367 ACRES OF THE REVISED LOT 4 OF THE PLAT OF THE BUSINESS PARK AT HARBOR HILL PER BOUNDARY LINE ADJUSTMENT RECORDED IN PIERCE COUNTY, WASHINGTON, AUDITOR'S FILE NUMBER 200710195003 FURTHER DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL ADJACENT TO HARBOR HILL DRIVE, THENCE N 01°10'47" E ALONG THE EASTERLY MARGIN OF HARBOR HILL DRIVE 514.00 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUING N 01°10'47" E ALONG THE EASTERLY MARGIN OF HARBOR HILL DRIVE 428.04 FEET TO THE NORTHERLY BOUNDARY OF THE PARCEL;
THENCE S 88°15'35" E ALONG THE NORTHERN BOUNDARY 585.60 FEET TO THE EASTERN BOUNDARY OF THE PARCEL;
THENCE S 05°02'54" W, 12.02 FEET;
THENCE S 27°57'14" W, 112.58 FEET;
THENCE S 01°33'50" E, 199.54 FEET;
THENCE S 00°23'25" W, 110.52 FEET TO THE SOUTHERN BOUNDARY OF THE PARCEL;
THENCE N 88°49'13" W, 545.12 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

ACCORDING TO REQUEST OF SEGREGATION AS PER CITY OF GIG HARBOR, DATED
02/06/2008.

TAX PARCEL NUMBER 4002470051

PARCEL "B" OF THE BOUNDARY LINE ADJUSTMENT RECORDED UNDER PIERCE COUNTY
AUDITOR'S FILE NUMBER 200710195003, SAID PARCEL "B" BEING PORTIONS OF THE
NORTHEAST QUARTER AND OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22
NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON.

EXHIBIT B
Property Map



28

EXHIBIT C

Comprehensive Plan Map Designations of Property

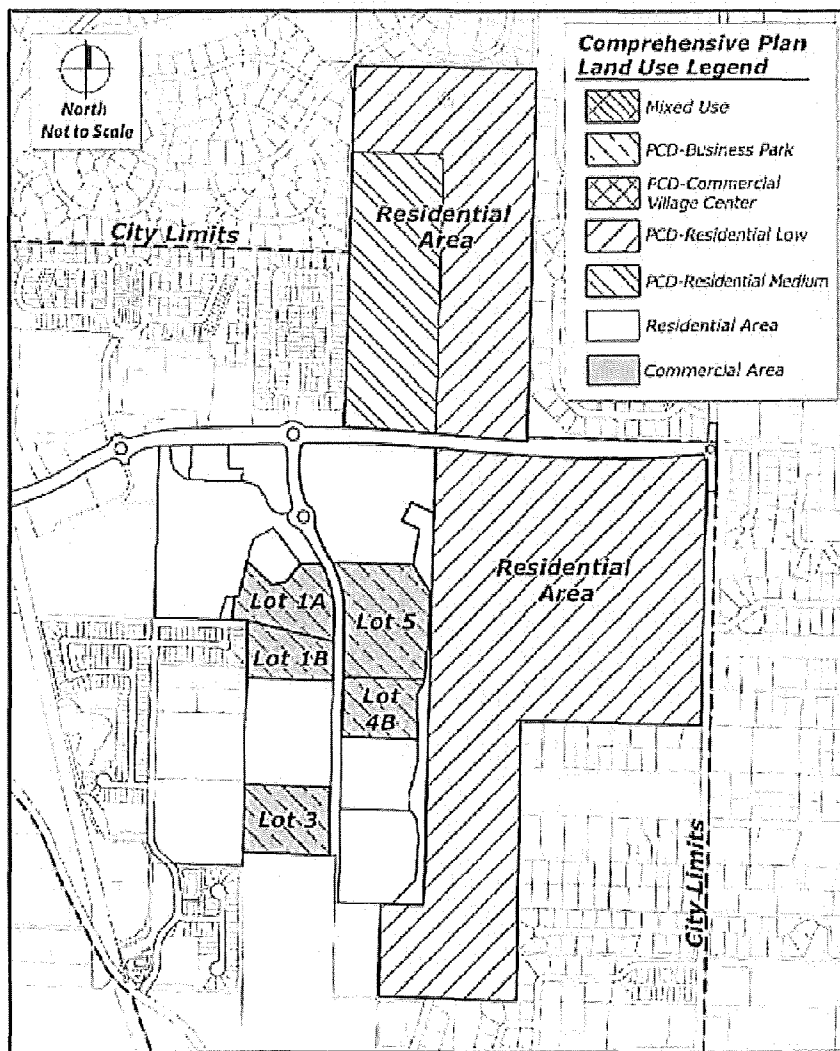


EXHIBIT D

Zoning Map Designations of Property

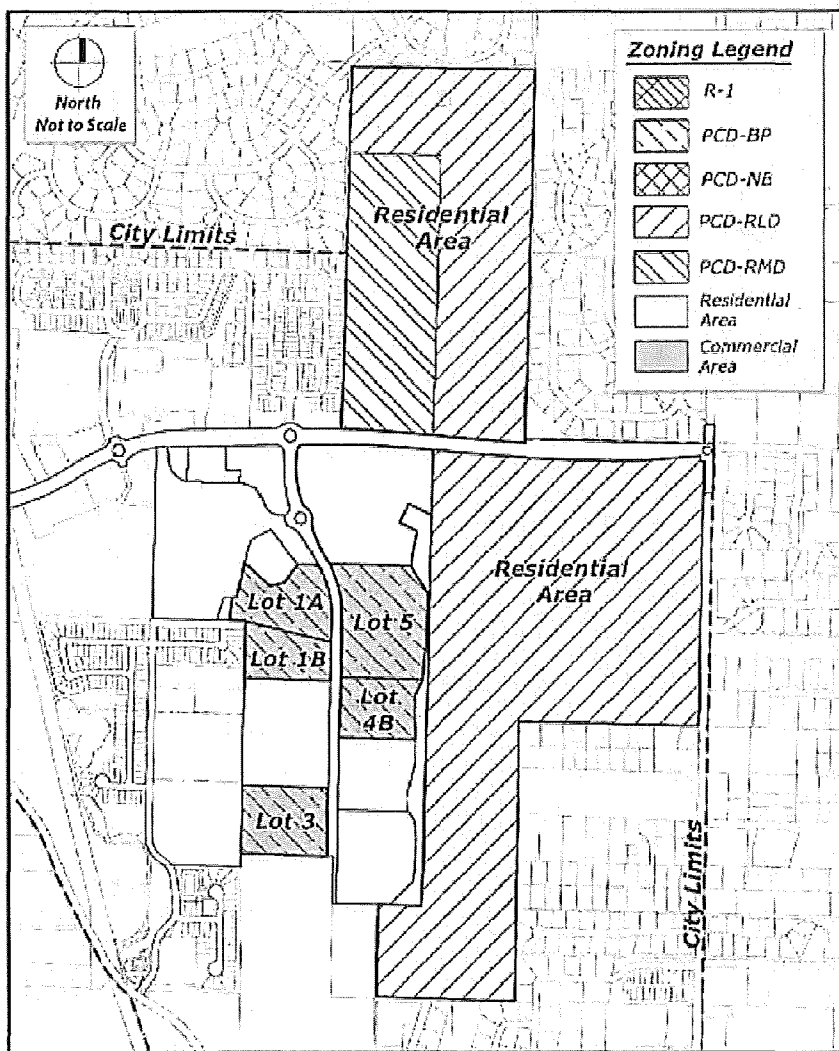


EXHIBIT E

List of Environmental Documents

1. **Harbor Hill Preliminary Drainage Report**, December 2, 2008, REVISED May 27, 2009 – Triad Associates.
2. **Preliminary Plat/PRD Site Plans**, December 2, 2008, REVISED Aug 16, 2010 – Triad Associates
 - a. Grading Plans
 - b. Storm Drainage
 - c. Road and Utilities
 - d. Landscape and Irrigation
 - e. Tree Retention
 - f. Circulation
3. **Harbor Hill Planned Residential Development Plat Project Description**, December 2, 2008, REVISED Aug 16, 2010 – Triad Associates
4. **Wetland Analysis Report**, - May 21, 2007 – Wiltermood Associates, Inc.
5. **Harbor Hill Wetland Mitigation Plan**, - November 21, 2008 – Wiltermood Associates Inc.
6. **Harbor Hill Development - Traffic Impact Analysis**, November 2008, with SUPPLEMENT dated May 27, 2009 – The Transpo Group.
7. **Report Geotechnical Engineering Services Harbor Hill Residential Property**, October 27, 2008 – GeoEngineers.
8. **SEPA Environmental Checklist** dated December 2, 2008, and revised May 27, 2009, and August 16, 2010, relating to the Harbor Hill PRD Application.
9. **SEPA Environmental Checklist** dated October 10, 2010, relating to Harbor Hill Development Agreement.
10. **Gig Harbor North Annexation Plan Draft Environmental Impact Statement** dated October 7, 1992
11. **Gig Harbor North Annexation Plan Final Environmental Impact Statement** dated February 24, 1993

EXHIBIT F

SEPA Threshold Determination



COMMUNITY DEVELOPMENT DEPARTMENT

**Determination of Nonsignificance (DNS)
W.A.C. 197-11-970**

Environmental Review Application No.: SEPA 10-0021

Parcel Number: Pierce County Parcel Numbers: 0222304009,
0222311009, 0222311000, 4002470011, 4002470012,
4002470030, 4002470042, 4002470051, 4002470060

Action: Development Agreement

Proposal: The proposal is a nonproject, legislative action to execute a development agreement between the City of Gig Harbor and Harbor Hill LLC.

The development agreement is associated with a preliminary plat and preliminary planned residential development application (PL-PPLAT-08-0001 and PL-PRD-08-0001) for an 824 dwelling units plat/PRD on 200 acres. The development agreement is also associated with lots 1A, 1B, 3, 4B, 5 and 6 of the Harbor Hill Business Park which received final plat approval in 2006. In general, the development agreement would: grant 20-year vesting of the Harbor Hill residential plat; grant 10-year vesting of the Harbor Hill Business Park Lot 1A/1B site plan; waive park impact fees and reduce nonresidential open space requirements in consideration for the dedication of a 7 acre public park; transfer reserved peak PM traffic trips from the Harbor Hill Business Park to the Harbor Hill Residential Plat in consideration of the construction and dedication of a public road through Lot 1A/1B; allow for model homes prior to final plat approval; require the payment of sewer connection fees in a timely manner or lose reserved sewer capacity; allow the residential project to not meet the minimum residential density and open space requirements on a phase by phase basis, as long as the development in aggregate does meet the required density and open space requirements.

Location: 251 acres both north and south of Borgen Boulevard, east of Costco and The Ridge at Gig Harbor, including some of the Harbor Hill Business Park and all of the proposed Harbor Hill

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residential plat.

Proponent: Harbor Hill LLC
John Chadwell, Senior Project Manager
19245 Tenth Avenue NE
Poulsbo, WA 98370

Lead Agency: City of Gig Harbor

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

[x] This DNS is issued under WAC 197-11-340(2); Comments must be submitted by October 27, 2010.

Phased SEPA Review: The Harbor Hill Residential Plat is undergoing phased SEPA review as allowed by WAC 197-11-060(5). This non-project SEPA threshold determination relates to the proposed development agreement and the development regulations modified within the development agreement. Project SEPA review for the residential plat will occur later in 2010 as part of the preliminary plat review process.

Appeal:

Any interested person may appeal the adequacy of this SEPA Threshold Determination to the Gig Harbor City Council pursuant to the procedures set forth under Chapter 18.04 of the Gig Harbor Municipal Code if a written request for appeal is received within 7 days after the end of the comment period, or November 3, 2010, whichever is later. The written appeal must be submitted with a filing fee of two hundred seventy five dollars (\$275.00).

Contact: Jennifer Kester, Senior Planner; Phone: (253) 851-6170

Responsible Official: Tom Dclan
Position Title: Planning Director Phone: (253) 851-6170

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

Signature  Date: October 13, 2010

EXHIBIT G

Project Description

1. Residential Area

The Residential Area shall comprise the uses and facilities described in that certain "Harbor Hill Planned Residential Development Project Description" October 4, 2010, prepared by Triad Associates, a copy of which is maintained in the files of the Planning Director of the City of Gig Harbor under File Nos. PL-PPLAT-08-0001, PL-PRD-08-0001, PL-REZ-08-0001, PL-DRB 08-0105, PL-SEPA-08-0034.

2. Commercial Area

The Commercial Area shall comprise office uses, retail uses, other commercial uses, institutions, parks and open space, transportation facilities, utility facilities, and storm water facilities.

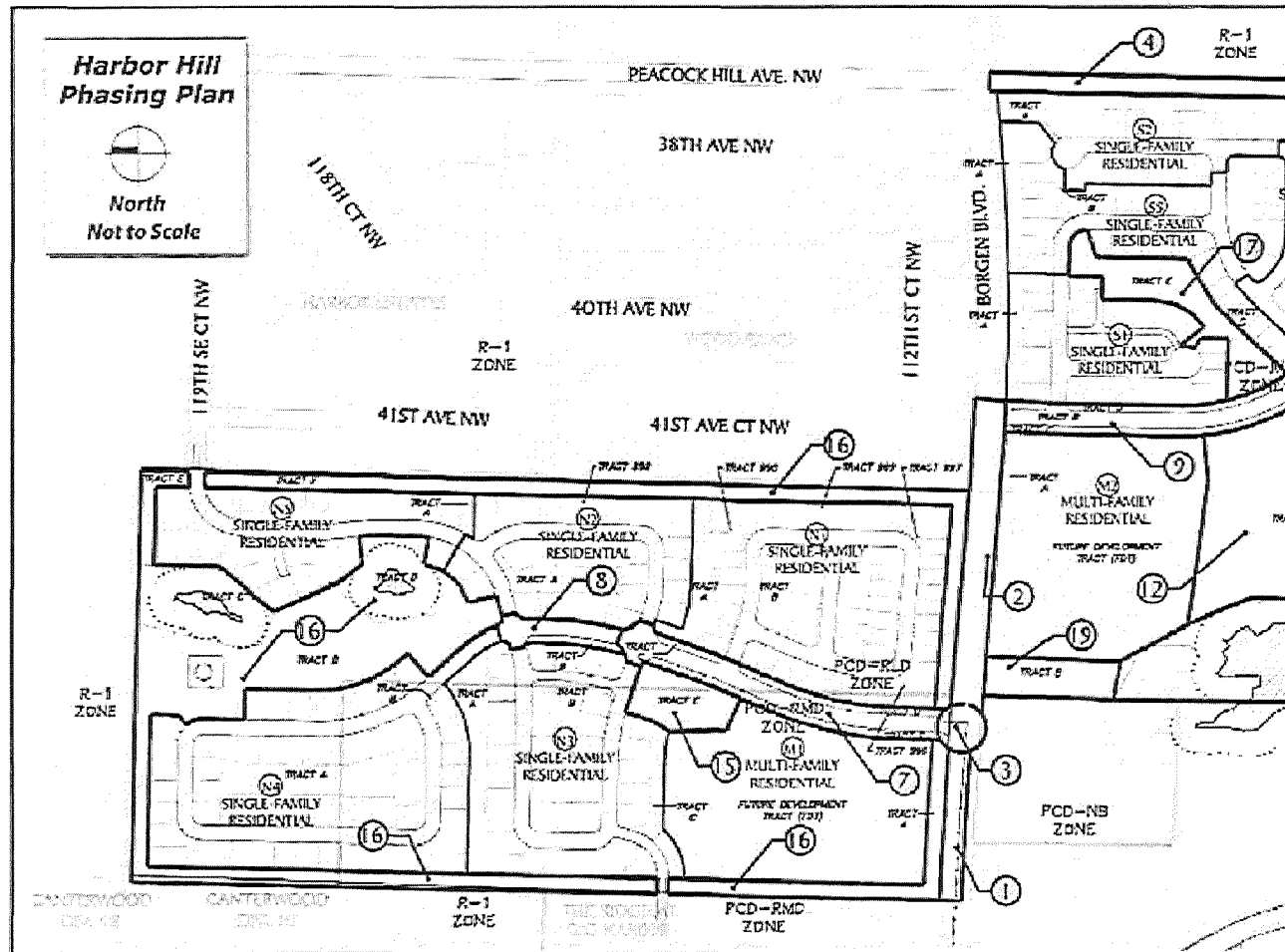
EXHIBIT H

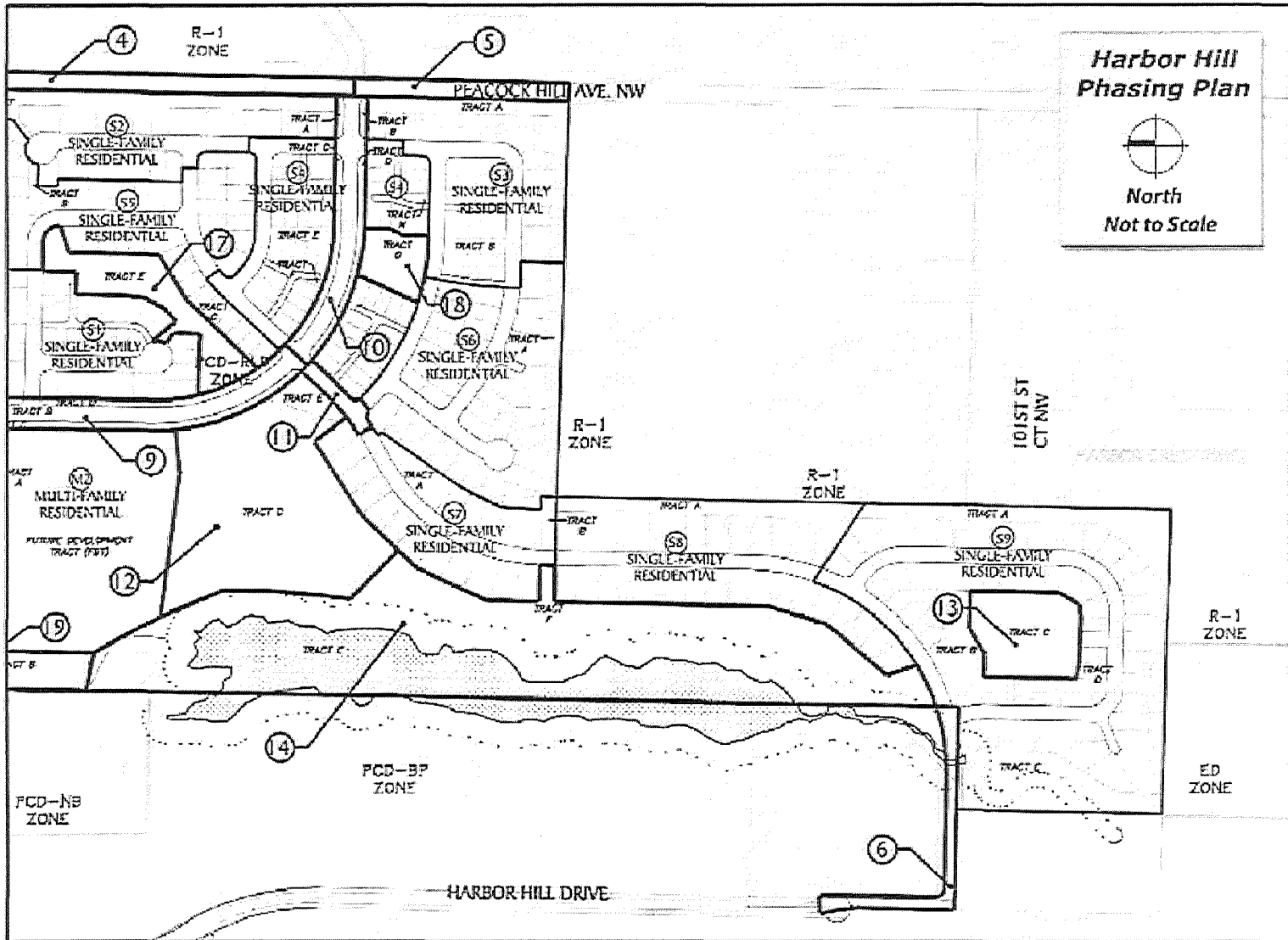
List of Modified City Development Standards

| Item No. | Description | GHMC Section | Agreement Section |
|-----------------|---|---------------------|--------------------------|
| 1 | Increased vesting periods for Project approvals | Various | 6.D |
| 2 | Reduction of Harbor Hill Business Park open space requirements from 20 percent to 15 percent of lot area based on dedication of Lot 3 for public park | 17.54.030.C | 13.H.iii |
| 3 | Director approval of certain revisions to Phasing Plan | 19.01.003 | 13.A |
| 4 | No setbacks under GHMC 17.54.030.B required along certain boundaries of Lot 3 (future public park) of Harbor Hill Business Park | 17.54.030.B | 16 |
| 5 | Allowing clustering of residential density | Title 17 | 17 |
| 6 | Allocations of capacity reservations | Chapter 19.10 | 15 |

EXHIBIT I

Phasing Plan





71

DWT 15265037v16 0046183-005201

| INFRASTRUCTURE | | DEVELOPMENT PHASE | | | | | | | | | | | | | | | |
|-------------------|---|---|-----|-----------|----|----|----|----|-----------|----|----|----|----|----|----|----|----|
| | | FDT | | SFR NORTH | | | | | SFR SOUTH | | | | | | | | |
| | | M1 | M2 | N1 | N2 | N3 | N4 | N5 | S1 | S2 | S3 | S4 | S5 | S6 | S7 | S8 | S9 |
| Dwelling Units | | 170 | 100 | 63 | 28 | 38 | 57 | 25 | 38 | 26 | 32 | 50 | 45 | 40 | 17 | 29 | 66 |
| ROADS | 1. Borgen Blvd Frontage – West | X | -- | -- | -- | -- | -- | -- | | | | | | | | | |
| | 2. Borgen Blvd Frontage - East | | -- | X | | | | | -- | -- | -- | -- | -- | -- | -- | | |
| | 3. Roundabout on Borgen | X | | X | -- | -- | -- | -- | | | | | | | | | |
| | 4. Peacock Hill Ave Frontage – North | | | | | | | | | X | -- | -- | | | | | |
| | 5. Peacock Hill Ave Frontage - South | | | | | | | | | -- | X | -- | | | | | |
| | 6. Harbor Hill Dr Off-Site | | | | | | | | | | | | | | | X | X |
| | 7. North Parkway south section | X | | X | X | X | X | X | | | | | | | | | |
| | 8. North Parkway north section | | | | -- | -- | X | X | | | | | | | | | |
| | 9. South Parkway north section | | X | | | | | | X | -- | -- | -- | X | X | X | | |
| | 10. South Parkway south section | | | | | | | | -- | X | X | X | -- | -- | -- | | |
| | 11. South Parcel Collector stub | | | | | | | | | | | X | | X | X | | |
| STORM PONDS | 12. Detention North (M1- Tract D) | X | X | X | X | X | X | X | X | X | X | X | X | X | | | |
| | 13. Detention South (S9- Tract C) | | | | | | | | | | | | | | X | X | X |
| OPEN SPACE/ PARKS | 14. South Wetland /Loop Trail (M2- Tracts C, F) | | X | | | | | | X | X | X | X | X | X | X | X | X |
| | 15. North Central park (N1- Tract E) | X | | X | X | X | X | X | | | | | | | | | |
| | 16. North Wetland Park & Perimeter Open Space (M1- Tracts A, B, C, D, E, F) | X | | X | X | X | X | X | | | | | | | | | |
| | 17. South Connector Park (S1- Tract E) | | | | | | | | X | | | | X | | | | |
| | 18. South Central Park (S4- Tract G) | | | | | | | | | | X | X | | X | | | |
| | 19. Gateway Park (M2- Tract B) | | X | | | | | | | | | | | | | | |
| Notes | | <ol style="list-style-type: none"> 1. "X" means that infrastructure must be completed prior to or concurrent with development phase. 2. "--" means <u>Concurrent Install</u>. The noted infrastructure improvement may be triggered by a number of the indicated Parcels coming online ahead of the primary Parcel requiring the improvement. This will be determined in consultation with the City during the pre-application conference for the given parcel application. 3. Development of some phases may depend on completion of other phases for road and utility connections. 4. Numbering of phases does not necessarily indicate sequence of development (ex: N3 and N4 could develop before N2). 5. Parkway road improvement includes abutting open space tracts. 6. During final engineering design, alternate design solutions may be brought forward. These may be approved if, and only if, staff find that the alternate design solution is functionally equivalent to the preliminary design shown in the Preliminary Plan/KB plans. For example, temporary storm drainage detention could be proposed if it provided equivalent flow detention mitigation to what was prepared in the Preliminary Plan/PRD as long as there was a means to direct flows to the permanent pond when the phasing required it to be converted to permanent detention. | | | | | | | | | | | | | | | |