

# **Gig Harbor City Council Meeting**



**March 22, 1999**



**AGENDA FOR GIG HARBOR CITY COUNCIL MEETING**  
**March 22, 1999 - 7:00 p.m.**

**CALL TO ORDER:**

**PUBLIC HEARING:**

Forming a Local Improvement District for Construction of the East-West Road.

**PUBLIC HEARING:**

Concurrency Ordinance; Parks and Transportation Impact Fees Ordinance; and Definitions for Concurrency and Impact Fees Ordinance.

**CONSENT AGENDA:**

*These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.*

1. Approval of the Minutes of the March 8, 1999, City Council Meeting.
2. Correspondence / Proclamations:
3. Approval of Payment of Bills for March 22, 1999:  
Checks #22135 through #22249 in the amount of \$144,484.06.
4. Liquor License Renewals:  
Maritime Mart  
Gig Harbor Texaco
- Fratern Order of Eagles  
Tides Tavern

**OLD BUSINESS:**

1. Concurrency Ordinance.
2. Parks and Transportation Impact Fees Ordinance.
3. Definitions for Concurrency and Impact Fees Ordinance.

**NEW BUSINESS:**

1. Ordinance Forming a Local Improvement District for Construction of the East-West Road - First Reading.
2. Communications Maintenance Contract.
3. Engineering Study - Consultant Services Contracts.
4. WWTP Process Control System - Consultant Services Contract.
5. Wells 5 and 6 - Consultant Services Contract.
6. Rosedale Street Right-of-Way Dedication.

**PUBLIC COMMENT/DISCUSSION:**

**COUNCIL COMMENTS:**

**STAFF REPORTS:**

**EXECUTIVE SESSION:** For the purpose of discussing property acquisition as per RCW 42.30.110 (b) and personnel as per RCW 42.30.110 (g).

**ADJOURN:**



**DRAFT**

**REGULAR GIG HARBOR CITY COUNCIL MEETING OF MARCH 8, 1999**

**PRESENT:** Councilmembers Ekberg, Young, Platt, Owel, Dick, Picinich, Markovich and Mayor Wilbert.

**CALL TO ORDER:** 7:06 p.m.

**PUBLIC HEARING:** Concurrency Ordinance; Transportation and Parks Impact Fees Ordinance; and Definitions Ordinance.

Mayor Wilbert opened the Public Hearing on these ordinances and asked that people signed up to speak limit their comments to three minutes.

Scott Wagner – 6507 27<sup>th</sup> Ave. NW. Mr. Wagner said that after reviewing the proposed ordinances, and discussing them with City Councilmembers and staff, it appears that no one seemed to have a clear understanding of the ordinances and of the long-term effects they may have. He continued to say that he supports the parks impact fees, and that his concerns are mainly directed to the transportation impact fee and the concurrency ordinances as written. He said that unless the Council were to include the expertise and insight of the citizens who would be most affected, they will never gain the support necessary to make these ordinances successful. He said that along with his letter, he submitted a petition signed by 20 citizens supporting the formation of a task force to study these ordinances.

James Tallman – 13021 Pt. Richmond Drive. Mr. Tallman passed out his letter explaining that his main issue of concern is that the ordinances are unfair to some and beneficial to others depending on where their property is located. He used his property on the east side of Highway 16, Wollochet Drive, as an example. He said that there are several issues that he would like to see clarified before the ordinances are passed, such as exemptions and credits, identifying zones, the amount of discretion administering the ordinances, and the appeal process. He requested that a committee be formed to study the ordinances.

John Rose – Olympic Property Group, Pope Resources – PO Box 1780, Poulsbo, Washington 98370. Mr. Rose explained that three minutes wasn't enough time to enumerate all the issues in the packet of information he distributed. He added that they recognize the need for the three ordinances and support their eventual adoption, but asked that Council take time to address all the concerns that had been raised. He highlighted several of the issues in his packet, including the impact of the concurrency ordinance; paying all the impact fees up front; recognition of development agreements; and reservation of capacity when prior arrangements have been made. He asked if Council would consider incorporating the language in Exhibit '3' of his packet that would formally recognize prior agreements and commitments into which the city has entered.

Rick Gagliano – 8607 58<sup>th</sup> Ave NW. Mr. Gagliano said he hoped that Councilmembers had received the letter he submitted last Friday. He gave an overview of some of his concerns. He talked about the costs currently paid in order to develop within the city. One concern he mentioned related to timing and suggested that the ordinances be adopted with an effective date that would not affect the 1999 construction season. He also talked about the lack of definition for different types of development and the burden that would be placed upon the Public Works Department by having to administer the impact fee determinations. He added that the City of Gig Harbor is the only jurisdiction he currently deals with that does not utilize a development coordinator. This makes submitting a proposal more difficult.

James Morton – 3402 Cabrini Lane NW. Mr. Morton explained that his personal interest is the undeveloped property where the theater is located. He said that Regal Theaters has expressed an interest in expanding onto his property, but that the proposed fees would discourage this expansion. He added that the fees are prohibitive for retail development and talked about the previous contributions he has made towards traffic signals and sewer in that area.

Dale Pinney – First Western Development, 120 West Dayton Suite D-9, Tacoma. Mr. Pinney said that the fees for commercial development seemed high. He added that he had done an informal survey of other jurisdictions in Western Washington and gave examples. He also agreed with the other comments that the concurrency ordinance does not address prior agreements, or define how credits are allocated. He then asked for explanation of the discrepancy in costs between seemingly similar uses. He requested that Council step back and take a closer look at the fairness of the ordinances and that they consider cutting the fees that may prevent all future commercial growth.

Steve Luengen – 8913 No. Harborview Dr. Mr. Luengen explained that he is a business owner in the Harbor. He said that that the city will be legislating the type of projects being built through pure economics. He gave examples of different fees that would be charged on property he owns with different projects. He added that the town needs the businesses to maintain a vital community.

Walt Smith – 11302 Burnham Drive. Mr. Smith said that the concurrency ordinance and the impact fees would send the economic community into a tailspin that would have a devastating effect on the economics of not only the city but also the surrounding area. He said he has seen a lot of confusion surrounding these two ordinances and recommended workshops to allow adequate time to fully understand them.

Dave Morris – 6018 106<sup>th</sup> Ave. NW. Mr. Morris said he generally agreed with the comments that had been made previously. He explained that his concerns pertain to how these ordinances affect property located within the urban growth area. He also asked about exemptions. He said that the Growth Management Act encourages growth in close proximity to services, but this concurrency ordinance seems to run contrary and discourages growth in appropriate areas. He added concern that there seems to be a great deal of discretion in the hands of the Public Works Director.

Paul Cyr – 4102 55<sup>th</sup> St. Ct. NW. Mr. Cyr asked Council to form a group to look at this issue. He said that according to the AWC analysis of statewide fees, the parks impact fee for the City of Gig Harbor exceeds that for the City of Redmond. He added that the \$1,500 fee for single family and per unit for multi-family is exorbitant. He continued to say that no other jurisdiction utilizes a formula as intricate as the one proposed, and recommended a flat fee for square footage for all uses to avoid discriminating against commercial development. He said that SEPA has served growth management and development well in the past. He recommended forestalling action until a broad-based committee could bring back a more reasonable ordinance.

Bob Camp – 3608 East Bay Drive NW. Mr. Camp said he was speaking on behalf of the Master Builders Association. He talked about the proposed parks fee and how it will affect both new and existing construction, and the timing of collection of the fees. He also said that the \$1,500 park impact fee is too much and asked that it be lowered. He added that Gig Harbor will receive a lion's share of the park impact fee collected by Pierce County from other areas. He asked that Council make it a fair fee.

Chris Dewald – 8620 Warren Dr. NW. Mr. Dewald read the letter he passed out to Council outlining his concerns regarding the pending ordinances. He highlighted the following: the 3-year reservation period; credit for previous improvements; forming a committee to study the impacts of the ordinances; establishing zones; and the legality of the revisions made to the ordinance.

Tiffany Spear – 3925 So. Orchard, Tacoma. Ms. Spear said that she was representing Master Builders Association. She thanked staff for meeting with them and the Chamber of Commerce to go over the ordinances. She said that she seconded many of the comments and asked that action on the ordinances be postponed until further discussion, and completion of the update to the city's comprehensive plans. She added concerns that both SEPA fees and impact fees could be imposed on one project, and referred to RCW 82.02.100 and 43.21(c).065. She discussed the lack of set administration fees and the ties between the concurrency and impact fees and brought up concerns about affordable housing.

Scott Miller – 6602 Cromwell Beach Drive. Mr. Miller discussed his concern about his 20 acres on the new east-west road. He gave approximate figures on how much it would cost to participate in an LID for construction of the road, water improvements, and possibly sewer improvements. He said that he is donating land for the new road, and now faces possible impact fees on top of all the other costs. He said that all these fees could increase the lot value by 25% in that area. He then voiced concerns with the reservation terms and asked that credit be given for other agreements and contributions.

Torrey Lystra – 12903 Pt. Richmond Drive. Mr. Lystra thanked Council and asked that the city move forward on impact fees, which would be a great benefit to the community. He added that he and others are looking forward to the fees being utilized for more parks and amenities in the communities. He said that the fees are in line with other jurisdictions and asked that the transportation portion not be reduced too much.

Helen Nupp – 9229 66<sup>th</sup> Ave NW. Ms. Nupp said that the impact fees and concurrency ordinances are overdue and need to be adopted quickly. She added that the taxpayers need relief and a sharing of development impacts. She said that another bridge will bring a rush of commercial development and added that impact fees would allow better transportation amenities. She said that the rates should remain high to maintain the quality of life we all enjoy.

Marie Sullivan – 3706 135<sup>th</sup> St. NW. Ms. Sullivan, Executive Director of the Chamber of Commerce, thanked Council for allowing the Chamber to facilitate dialogue between staff and the business community. She said that the Chamber understands the complexity of the ordinances and asked for more time to consider the impacts that they may have. She added that the Chamber would like to work with the city in an expeditious way to create a workable and acceptable set of ordinances.

Don Huber – 8310 Warren Drive. Mr. Huber gave examples of how the impact fees will directly affect the price of goods and services in the city. He said that businesses currently struggle to survive. He said that this smacks of what happened with the sign code. He added that Council has been misdirected and misguided because they don't have the time to analyze this issue. He said that he had been developing for 30 years and that these ordinances will kill this town. He said he wanted to make Council angry with the people who put them in this position.

Stan Zolinsky – 3701 So. Lawrence, Tacoma. Mr. Zolinsky said that he represents Mountain Construction. He explained that his company wishes to meet the design guidelines, but the rate structure discourages them from doing so. He said that the increased costs would take away from money spent for design amenities, or that developers would build elsewhere, affecting jobs and sales tax base for the city.

Marty Paul – 6204 24<sup>th</sup> Avenue. Mr. Paul agreed with Mr. Huber's comments and explained that as an economist, he could understand the future impacts of these ordinances. He said that the elected officials and volunteers who proposed these ordinances were underqualified to understand the impact to the potential growth of the community. He added that the citizens who debated that they might get tax relief should take an economy course. He again urged Council not to make short-sited, underqualified allocations.

Dave Seiwerath – 3621 12<sup>th</sup> Avenue. Mr. Seiwerath said that the inflation on building permits in the last four years has been 70%. He said he had been a commercial developer for years, and added that huge impact fees the community gets hurt because you don't get the architectural quality due to budget constraints. He stressed that he is against impact fees. He said that after the annexation of the westside, the city now has \$300,000 to \$400,000 dollars a year more than they had before annexation, and suggested that taxes should be cut.

Ken Braaten 0 3913 38<sup>th</sup> Ave. Mr. Braaten explained that he built the hotel on Kimball Drive. He said that people who stay at the hotel complain of a lack of activities in Gig Harbor in the evening and go to Tacoma for entertainment. He said that the higher impact fees would limit growth and hurt the existing businesses. He added that he wouldn't have been able to get the extra money to



build his project if impact fees had been in place at the time on construction. He added that the higher fees will limit the small developer.

Mike Paul – (did not give address) – Mr. Paul, a local builder, said that he tries to build affordable housing here in Gig Harbor, and that the impact fees would eliminate that. He said that the higher housing costs will force the next generation to move to Tacoma to be able to afford to live.

John Hogan – 5312 Pacific Highway East, Fife. Mr. Hogan spoke on behalf of retailers. He said that retailers use 75% less water and sewer than a single family residence, but impact fees on commercial are higher. He added that in Gig Harbor, the property tax for retail is 3 times the tax than the average home in Gig Harbor, and the statement from the last meeting that the retailers are not paying their fair share is erroneous. He added that the retail sales tax supports school children.

*Mayor Wilbert asked for a recess at 8:40 p.m. The meeting resumed at 8:51 p.m.*

Mayor Wilbert introduced Mark Hoppen, City Administrator, who gave a brief overview of a comparison of transportation fees from other jurisdictions. The comparison included the downtown Redmond area, Olympia, Enumclaw, Tumwater and Mt. Vernon. He explained that the comparison was calculated with the proposed fee reduced 60-75% from the fees proposed by the consultant, and resulted in fees that are comparable to the other jurisdictions. He added that another change in the comparison was that he utilized the lowest rate in the category for retail / office space and applied that rate to the entire category, which resulted in a rate schedule that looks much like other comparable jurisdictions. He then compared the potential points of collection for fees. He added that a recent parks study showed that 63% of the survey participants strongly favored collection of a growth impact fee related to parks, and would approve up to \$150 a year in bonding for parks-related improvements.

Carol Morris, City Attorney, responded to issues that arose during the public hearing. She addressed such issues as consideration for payments for system improvements; postponing action until after the 1999 construction season; the perceived burden on the Public Works Department; granting exemptions; the decisions left to staff discretion; duplication of fees due to SEPA; reservation of capacity; and the legality of changes to the ordinances. Ms. Morris and staff members answered Council's questions.

The public hearing was closed at 9:29 p.m.

#### **CONSENT AGENDA:**

*These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.*

1. Approval of the Minutes of the February 22, 1999, City Council meeting.
2. Correspondence / Proclamations:
3. Approval of Payment of Bills for March 8, 1999:  
Checks #22057 through #22134 in the amount of \$89,868.51.
4. Approval of Payroll for the month of February:

- Check #17797 through #17937 in the amount of \$273,127.84.
5. Liquor License Application Withdrawn:  
Maritime Chandlery
  6. Special Occasion Liquor License – Gig Harbor Navy League Council.

**MOTION:** Move to approve the consent agenda as presented.  
Young/Ekberg - unanimously approved. Councilmember Markovich abstained.

**OLD BUSINESS:**

1. Second Reading of Ordinance – Concurrency. Mark Hoppen explained that Council had heard continued input from the public, read the memos and letters that had been submitted and added that it was at their discretion to act upon the ordinances.

Councilmembers agreed that they would like further time for consideration and to allow input, and were not prepared to take any action at this time. Ms. Morris was requested to prepare a resolution outlining the administration fees to bring back for consideration. A suggestion was made to schedule worksessions that are topic-specific. Mr. Hoppen was requested to come back with a summary of how other jurisdictions handle pre-payment of fees for reservation of capacity.

**MOTION:** Move to set up a series of public workshops that are topic specific after the March 22<sup>nd</sup> meeting.  
Ekberg/Picinich – unanimously approved.

2. Second Reading of Ordinance – Transportation and Parks Impact Fees. Discussed under the previous agenda item.
3. Second Reading of Ordinance – Definitions. Discussed previously.

**NEW BUSINESS:**

1. Correction to Resolution to Form a Local Improvement District – East/West Road. Dave Rodenbach explained that this resolution corrects the legal description for the LID boundaries to exclude State, City and Tacoma Public Utility rights-of-way.

2.

**MOTION:** Move adoption of Resolution No. 529.  
Markovich/Ekberg – unanimously approved.

3. Resolution – Findings, Facts and Conclusions – SDP 97-09; Ancich/Tarabochia. Ray Gilmore presented this resolution affirming the decision of the Gig Harbor Hearing Examiner. He added that he would correct the typographical error.

**MOTION:** Move to adopt Resolution No. 530 as amended.

Dick/Owel - five voted in favor. Councilmembers Picinich and Markovich abstained.

4. Renewal of Contract – Pierce County Department of Emergency Management. Mark Hoppen explained that this was a renewal of an agreement with an increase to \$.62 per capita for emergency services.

**MOTION:** Move to approve the renewal of the contract as presented.  
Picinich/Owel – six voted in favor. Councilmember Dick abstained as an employee of Pierce County.

**PUBLIC COMMENT/DISCUSSION:**

Marie Sullivan – Chamber of Commerce. Ms. Sullivan again thanked Council for their time and invited anyone interested in joining Mr. Hoppen, Mr. Hill, and Mr. Rodenbach from noon until three at Keller Williams to address concerns on the proposed ordinances. She continued to explain that much of her background was in public involvement for Hanford, and offered her technical services during the workshops. She recommended that Council consider bringing in an outside facilitator during these workshops.

**COUNCIL COMMENTS:**

Mayor Wilbert gave a brief overview of documents she had recently received and gave a report on Salmon Recovery efforts in the State. Mr. Hoppen added that the Gig Harbor area was included in both Pierce and Kitsap County's jurisdictions.

**STAFF REPORTS:** None scheduled.

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

**MOTION:** Move to adjourn to Executive Session at 9:59 p.m. for approximately 15 minutes.  
Picinich/Young – unanimously approved.

**MOTION:** Move to return to regular session at  
Owel/Young - unanimously approved.

**ADJOURN:**

**MOTION:** Move to adjourn at 10:14 p.m.  
Owel/Platt – unanimously approved.

Cassette recorder utilized

Tape 518 Side B 300 - end.  
Tape 519 Both Sides.  
Tape 520 Both Sides.  
Tape 521 Side A 000 - 352.

---

Mayor

---

City Clerk

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR  
(BY ZIP CODE) FOR EXPIRATION DATE OF 19990531

MAR 10 1999

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGE CITY OF GIG HARBOR
1 HAGEN & NELSEN ENTERPRISES, IN	MARITIME MART (CHEVRON) 7102 STINSON GIG HARBOR WA 98325 0000	078669	GROCERY STORE - BEER/WINE
2 FRATERNAL ORDER OF EAGLES GIG HARBOR AERIE NO. 2809	FRATERNAL ORDER OF EAGLES GIG HARBOR 2809 BURNHAM DR NW GIG HARBOR WA 98335 0000	360395	PRIVATE CLUB - SPIRITS/BEER/WINE NON-CLUB EVENT
3 GRANITE SERVICE, INC.	GIG HARBOR TEXACO 7101 PIONEER WAY GIG HARBOR WA 98335 0000	365485	GROCERY STORE - BEER/WINE
4 DYLAN ENTERPRISES INC.	TIDES TAVERN 2925 HARBORVIEW DR GIG HARBOR WA 98335 0000	356387	TAVERN - BEER/WINE OFF PREMISES



STATE OF WASHINGTON  
WASHINGTON STATE LIQUOR CONTROL BOARD  
1025 E Union • PO Box 43098 • Olympia WA 98504-3098 • (360) 664-0012

## Notice to Local Authorities Regarding Procedure for Objecting to Liquor License Renewal

The attached list of liquor licensed premises in your jurisdiction will expire in approximately 60 days. The procedure for objecting to a license renewal is as follows:

- Fax or mail a letter detailing the reason(s) for your objection. **This letter must be received at least 15 days before the liquor license expires.**
- When your objection is received, our licensing staff will prepare a report for review by the Board. This report will include your letter of objection, a report from the Liquor Control Agent who covers the licensed premises, and a record of any past liquor violations. The Board will then decide to either renew the liquor license, or to proceed with non-renewal.
- If the Board decides not to renew a license, we will notify the licensee in writing, stating the reason for this decision. The non-renewal of a liquor license may be contested under the provisions of the Administrative Procedure Act (as provided by RCW 66.08.150 and Chapter 35.05 RCW). Accordingly, the licensee may request a hearing before an administrative law judge. If a hearing is requested, you will be notified and required to present evidence at the hearing to support your recommendation. The Administrative Law Judge will consider the evidence, and issue an Initial Order for the Board's review. The Board has final authority to renew the liquor license, and will subsequently enter a Final Order announcing its decision.
- If the Board decides to renew the license over your objection, you may also request a hearing, following the aforementioned procedure.
- You or the licensee may appeal the Final Order of the Board to the superior court for judicial review (under Chapter 34.05 RCW).
- During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the liquor license until a final decision is made.

Please call me if you have any questions on this process. Thank you.

Sincerely,

*Chuck Dalrymple*  
Chuck Dalrymple  
Manager, Licenses and Permits  
Licensing and Regulation  
(360) 753-6259  
Fax (360) 753-2710

Attachment



*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR** *MH*  
**SUBJECT: CONCURRENCY ORDINANCE**  
**DATE: MARCH 15, 1999**

### **INFORMATION/BACKGROUND**

The Growth Management Act requires that the City adopt and enforce ordinances "which prohibit development approval if the development causes the level of service on a transportation facility to decline below the standards adopted in the Transportation Element of the City's Comprehensive Plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development." (RCW 36.70A.070(6)). Moreover, "concurrent with development," for the purposes of the statute means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

This proposed ordinance implements the state statute by implementing the concurrency provisions of the Transportation Element of the City's Comprehensive Plan. The state requires that at a minimum the city adopt a concurrency regulation for transportation.

### **POLICY CONSIDERATIONS**

This ordinance is necessary to remain grant-eligible for road projects. A concurrency ordinance is not being suggested for parks, but residential developments are slated to be subject to parks impact fees. Parks need not be identified in the concurrency ordinance in order to implement a parks impact fee.

### **FISCAL CONSIDERATIONS**

The reduction of the originally proposed number of accounts for tracking the various reservation accounts throughout the developmental process to two accounts, the "available capacity account" and the "reserved capacity account" has made it possible to implement this ordinance with existing staff.

The capacity commitment fee is an option to reserve capacity for a given period of time: one, two, or three years. Once the transportation impact fee is paid within the duration of the commitment period, then the commitment fee would be credited against the total impact fee payment.

### **RECOMMENDATION**

Staff recommends that this ordinance be adopted as soon as possible after the second reading.

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DEVELOPMENT AND TRANSPORTATION IMPACTS, IMPLEMENTING THE CONCURRENCY PROVISIONS OF THE TRANSPORTATION ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, AS REQUIRED BY RCW 36.70A.070(6), DESCRIBING THE PROCEDURE FOR THE CITY PUBLIC WORKS DIRECTOR'S EVALUATION OF CONCURRENCY OF THE CITY'S ROAD FACILITIES WITH PROPOSED DEVELOPMENT IN LIGHT OF ADOPTED LEVELS OF SERVICE, DESCRIBING THE PROCEDURE FOR ISSUANCE OF CAPACITY RESERVATION CERTIFICATES, ESTABLISHING THE PROCESS FOR DENIALS, CONCURRENCY RESOLUTIONS AND APPEALS, ESTABLISHING CAPACITY ACCOUNTS, REQUIRING SEMI-ANNUAL REPORTING AND MONITORING OF ROAD CAPACITY AS PART OF THE ANNUAL UPDATE OF THE CITY'S SIX-YEAR TRANSPORTATION PLAN, AMENDMENTS TO THE TRANSPORTATION ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, AND ADOPTING A NEW CHAPTER 19.10 TO THE GIG HARBOR MUNICIPAL CODE.**

---

WHEREAS, the Growth Management Act requires that the City adopt and enforce ordinances "which prohibit development approval if the development causes the level of service on a transportation facility to decline below the standards adopted in the Transportation Element of the City's Comprehensive Plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development" (RCW 36.70A.070(6)); and

WHEREAS, "concurrent with development," for the purposes of the above statute, means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years (RCW 36.70A.070(6)); Now, Therefore,

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



Section 1. A new chapter 19.10 is hereby added to the Gig Harbor Municipal Code,

which shall read as follows:

## CHAPTER 19.10 CONCURRENCY MANAGEMENT

### I. OVERVIEW AND EXEMPTIONS

19.10.001. Purpose. The purpose of this Chapter is to implement the concurrency provisions of the Transportation Element of the City's Comprehensive Plan, in accordance with RCW 36.70A.070(6)(e), consistent with WAC 365-195-510 and 365-195-835. No development permit shall be issued except in accordance with this Chapter, which shall be cited as the Concurrency Management Ordinance.

19.10.002. Authority. The Director of Public Works, or his/her designee, shall be responsible for implementing and enforcing the Concurrency Management Ordinance.

19.10.003. Exempt Development.

A. **Development Permit issued prior to Effective Date of this Chapter.** All construction or change in use initiated pursuant to a development permit issued prior to the effective date of this Chapter shall be exempt from the requirements of this Chapter, PROVIDED, however, that no development permit shall be extended except in conformance with this Chapter. If the City determines that a previously issued development permit has lapsed or expired, pursuant to the applicable development regulations, then no subsequent development permit shall be issued except in accordance with this Chapter.

B. **De Minimis Development.** After the effective date of this Chapter, no development activity (as defined in the definition section of this Chapter) shall be exempt from the requirements of this Chapter unless specifically exempted below in subsection C.

C. **Exempt Permits.** The following types of permits are exempt from the Capacity Reservation Certificate (CRC) process because they do not create additional long-term and/or impacts on road facilities :

Administrative interpretations	Plumbing permit
Sign permit	Electrical permit
Street vacation	Mechanical permit
Demolition permit	Excavation permit
Street Use Permit	Sewer connection permit
Interior alterations	Driveway or street
with no change of use	access permit
Excavation/clearing permits	
Grading permits	Hydrant use permit

Right of Way Permit  
Single family remodeling  
with no change of use  
Single family building permit

19.10.004. Capacity Evaluation Required for Change of Use. Except for development exempt under GHMC 19.10.003, any development activity, as defined in the definition section of this Chapter, shall require a capacity evaluation in accordance with this Chapter.

A. **Increased Impact on Road Facilities.** If a change of use will have a greater impact on road facilities than the previous use as determined by the Director based on review of information submitted by the Developer, and such supplemental information as available, a CRC shall be required for the net increase only, provided that the Developer shall provide reasonably sufficient evidence that the previous use has been actively maintained on the site during the five (5) year period prior to the date of application for the capacity evaluation.

B. **Decreased Impact on Road Facilities.** If a change of use will have an equal or lesser impact on road facilities than the previous use as determined by the Director based on review of information submitted by the Developer, etc., a CRC will not be required.

C. **No Capacity Credit.** If no use existed on the site for the five (5) year period prior to the date of application, no capacity credit shall be issued pursuant to this section.

D. **Demolition or Termination of Use.** In the case of a demolition or termination of an existing use or structure, the capacity evaluation for future redevelopment shall be based upon the net increase of the impact for the new or proposed land use as compared to the land use existing prior to demolition, provided that such credit is utilized through a CRC, within five (5) years of the date of the issuance of the demolition permit.

19.10.005 All Capacity Determinations Exempt from Project Permit Processing. The determinations made by the Director pursuant to the authority in this Chapter shall be exempt from project permit processing procedures, as described in GHMC Title 19, except that the appeal procedures of GHMC Title 19 shall apply pursuant to Part VIII of this chapter. The City's processing of capacity determinations and resolving capacity disputes involves a different review procedure due to the necessity to perform continual monitoring of facility and service needs, to ensure continual funding of facility improvements, and to develop annual updates to the transportation of the comprehensive plan.

## II. LEVEL OF SERVICE STANDARDS

19.10.006. Introduction. The concept of concurrency is based on the maintenance of specified levels of service with respect to road facilities. Concurrency describes the situation in which road facilities are available when the impacts of development occur, or within six (6) years from the time of development. (See, WAC 365-195-210, definition of "available public facilities.") The City has designated levels of service for road facilities in its transportation comprehensive plan:

A. to conform to RCW 47.80.030 for transportation facilities subject to regional transportation plans;

B. to reflect realistic expectations consistent with the achievement of growth aims;

C. for road facilities according to WAC 365-195-325; and

D. to prohibit development if concurrency for road facilities is not achieved (RCW 36.70A.070), and if sufficient public and/or private funding cannot be found, land use assumptions in the City's Comprehensive Plan will be reassessed to ensure that level of service standards will be met, or level of service standards will be adjusted.

19.10.007. Level of Service Standards. Level of Service (LOS) is the established minimum capacity of road facilities that must be provided per unit of demand or other appropriate measure of need, as mandated by Chapter 36.70A RCW. LOS standards shall be used to determine if road services are adequate to support a development's impact. The City's established LOS for roads within the city limits shall be as shown in the Transportation Element of the City's Comprehensive Plan.

19.10.008. Effect of LOS Standards. The Director shall use the LOS standards set forth in the Transportation Element of the City's Comprehensive Plan to make concurrency evaluations as part of the review of any application for a CRC issued pursuant to this Chapter.

### III. CAPACITY EVALUATIONS

19.10.009. Capacity Evaluations Required Prior to Issuance of CRC.

A. **When the Requirements of this Chapter Apply.** A capacity evaluation shall be required either in conjunction with or prior to the City's consideration of any development permit depending on the time that the applications are filed, unless specifically exempted by this Chapter. The Director shall utilize the standards and requirements set forth in Part V to conduct a capacity evaluation, prior to issuance of a CRC. In addition to the standards set forth in Part V, and specifically in GHMC 19.10.012, the Director may also utilize the standards set forth in state law or the Washington Administrative Code, or such other rules regarding concurrency which may be established from time to time by administrative rule. In cases where LOS standards do not apply, the Director shall have the authority to utilize other factors in preparing capacity evaluations to include, but not be limited to, independent LOS analysis.

B. **Capacity Reservation Certificates.** A CRC will not be issued except after a capacity evaluation performed pursuant to this Part V, indicating that capacity is available in all applicable road facilities.

19.10.0091. Capacity Evaluations Required for Rezone Applications or Comprehensive Plan Amendments Requesting an Increase in Extent or Density of Development. A capacity evaluation shall be required as part of any application for a comprehensive plan amendment or

zoning map amendment (rezone) which, if approved, would increase the intensity or density of permitted development. As part of that capacity evaluation, the Director shall determine whether capacity is available to serve both the extent and density of development which would result from the zoning/comprehensive plan amendment. The capacity evaluation shall be submitted as part of the staff report and shall be considered by the City in determining the appropriateness of the comprehensive plan or zoning amendment.

#### IV. SUBMISSION AND ACCEPTANCE OF APPLICATION

19.10.010. Application for Capacity Evaluation. (1) An application for a CRC and the application for the underlying development permit, shall be accompanied by the requisite fee, as determined by City Council Resolution. The CRC application may be submitted prior to the development permit application if the developer wishes to assess available capacity before proceeding with the development permit. An applicant for a CRC shall submit the following information to the Director, on a form provided by the Director:

- A. Date of submittal.
- B. Developer's name, address and telephone number.
- C. Legal description of property prepared by a licensed surveyor/engineer and assessor's parcel number.
- D. Proposed use(s) by land use category, square feet and number of units.
- E. Phasing information by proposed uses, square feet and number of units, if applicable.
- F. Existing use of property.
- G. Acreage of property.
- H. Proposed site design information, if applicable.
- I. Whether sewer and potable water capacity has been previously reserved.
- J. Traffic report prepared by a professional traffic engineer;
- K. Written consent of the property owner, if different from the developer;
- L. Proposed allocation of capacity by legal description, if applicable.

(2) Even if the traffic report is based on an estimation of impact, the applicant will still be bound by its estimation of impact, and any upward deviation from the estimated traffic impact shall require at least one of the following: a finding that the additional concurrency sought by the developer through a revised application is available to be reserved by the project; mitigation of the additional impact under SEPA; revocation of the CRC.

#### 19.10.011. Submission and acceptance of an application for a CRC.

A. **Determination of Completeness.** Within 28 days after receiving an application for a CRC, the City shall mail or personally deliver to the applicant a determination which states either: (1) that the application is complete; or (2) that the application is incomplete and what is necessary to make the application complete.

B. **Additional Information.** An application for a CRC is complete for purposes of this section when it meets the submission requirements in GHMC 19.10.010. The Determination of

Completeness shall be made when the application is sufficiently complete for review even though additional information may be required or project modifications may be undertaken subsequently. The Director's Determination of Completeness shall not preclude the Director's ability to request additional information or studies whenever new information is required, or substantial changes are made to the proposed project.

**C. Incomplete Applications.**

1. Whenever the applicant receives a determination from the City that an application is not complete, the applicant shall have 90 days to submit the necessary information. Within 14 days after an applicant has submitted the requested additional information, the Director shall make a Determination of Completeness and notify the applicant in the manner provided in subsection A of this section.
2. If the applicant does not submit the additional information requested within the 90-day period, the Director shall make findings and issue a decision that the application has lapsed for lack of information necessary to complete the review, and the applicant may request a refund of the application fee remaining after the City's Determination of Completeness.

**D. Director's Failure to Provide Determination of Completeness.** An application for a CRC shall be deemed complete under this section if the Director does not provide a written determination to the applicant that the application is incomplete as provided in subsection (A) of this section.

**E. Date of Acceptance of Application.** An application for a CRC shall not be officially accepted until complete. When an application is determined complete, the Director shall accept it and note the date of acceptance.

**V. PROCEDURE FOR DETERMINING CAPACITY**

19.10.012. Method of Capacity Evaluation for Road Facilities.

**A.** In performing the concurrency evaluation for road facilities, and to prepare the CRC, the Director shall determine whether a proposed development can be accommodated within the existing or planned capacity of road facilities. This may involve one or more of the following:

1. a determination of anticipated total capacity at the time the impacts of development occur;
2. calculation of how much of that capacity will be used by existing developments and other planned developments at the time the impacts of development occur;

3. calculation of the available capacity for the proposed development;
4. calculation of the impact on the capacity of the proposed development, minus the effects of any mitigation provided by the applicant; and
5. comparison of available capacity with project impacts.

B. The Director shall determine if the capacity on the City's road facilities, less the capacity which is reserved can be provided while meeting the level of service performance standards set forth in the City's Comprehensive Plan, and, if so, shall provide the applicant with a CRC.

C. In order to determine concurrency for the purposes of issuance of a CRC, the Director shall make the determination described in Subsections (1)(a) through (e) above. The Director may deem the development concurrent with road facilities, with the condition that the necessary facilities shall be available when the impacts of the development occur or shall be guaranteed to be available through a financial commitment in an enforceable development agreement.

D. If the Director determines that the proposed development will cause the LOS of a road facility to decline below the standards adopted in the Transportation Element of the City's Comprehensive Plan, and improvements or strategies to accommodate the impacts of development are not planned to be made concurrent with development, a CRC and the underlying development permit, if such an application has been made, shall be denied, pursuant to GHMC Section 19.10.018 and any other provisions of Title 19 that may be applicable to denial of the underlying development permit. Applicants may then appeal pursuant to Part VIII of this chapter.

## **VI. PRELIMINARY CAPACITY RESERVATION CERTIFICATES (PCRCs)**

19.10.013. Purpose of Preliminary Capacity Reservation Certificate. A PCRC is a determination by the Director that: (1) the proposed development activity or development phase will be concurrent with the applicable road facilities at the time the PCRC is issued; and (2) the Director has reserved road facility capacity for this application for a period of one hundred twenty (120) days, or until the City makes a final decision on the underlying permit or approval, whichever is later, as long as applicant submits a completed application within 120 days of receiving the PCRC. In no event shall a developer reserve a greater amount of capacity than that necessary to serve the maximum amount of development permitted on the site under its current zoning classification.

19.10.014. Procedure for Preliminary Capacity Reservation Certificates. Within ninety (90) days after receipt of an application for a CRC, the Director shall process the application, in accordance with this Chapter, and issue the CRC or a Denial Letter. Preliminary CRCs shall expire within 120 days of issuance, unless applicant submits a completed application within the 120-day period. If a timely application is submitted, then the Preliminary CRC stays in effect until decision made on the underlying application. If an application is submitted before a PCRC issues then the Director may issue a Final CRC or a Denial Letter at the same time as the SEPA threshold determination, if applicable, and otherwise, at the time a final decision issues on the underlying development permit.

19.10.015. Reservation Period. In order to continue to reserve capacity until issuance of the Certificate of Occupancy for the development activity, the developer must obtain a Final CRC.

19.10.016. Use of Reserved Capacity. When a valid development permit is issued for a project possessing a PCRC, the PCRC shall be converted to a Final CRC, which shall continue to reserve the capacity unless the development permit lapses or expires without the issuance of a Certificate of Occupancy.

19.10.017. Transfer of Reserved Capacity. Reserved capacity shall not be sold or transferred to property not included in the legal description provided by the developer in the application for a CRC. However, if the developer submits a development permit application for a project possessing a PCRC, the developer may, as part of such application, designate the amount of capacity allocated to portions of the property, such as lots, blocks, parcels, or tracts included in the application. Capacity may be reassigned or allocated within the boundaries of the original reservation certificate by application to the Director. At no time may capacity or any certificate be sold or transferred to another party or entity to real property not described in the original application.

19.10.018. Denial Letter. If the Director determines that one or more road facilities are not concurrent, the Director shall issue a denial letter, which shall advise the developer that capacity is not available. If the developer is not the property owner, the Denial Letter shall also be sent to the property owner. At a minimum, the Denial Letter shall identify the application and include the following information: (1) the level of the deficiency on the road facilities, if known; and (2) the options available to the applicant of submitting a development application without a PCRC, or obtaining a PCRC by agreeing to construct the necessary facilities at the applicant's own cost. The developer shall have one hundred twenty (120) calendar days from the issuance of a Denial Letter to submit a development application and, if necessary, appeal both the Denial Letter and the development permit denial pursuant to Part VIII of this chapter.

## **VII. FINAL CAPACITY RESERVATION CERTIFICATE (FCRC)**

19.10.020. Purpose. The purpose of the Final CRC process is to allow property owners and developers the assurance that capacity is reserved for a particular project for a limited amount of time while development occurs, and to provide a higher degree of certainty during the construction financing process.

19.10.021. Reservation Time Period. The Final CRC shall allow the applicant to reserve road facility capacity for one, two or three years. A specific quantity of capacity must be requested for each individual year of the reservation time frame. Capacity shall be reserved based on the standards and criteria for Capacity Evaluations identified in this Chapter. The Final CRC will allow the applicant to utilize the capacity only during the period of time specified on the Certificate.

19.10.022. Expiration and Extensions of Time.

A. **Expiration.** If a Certificate of Occupancy has not been requested during the time frame set forth in the Final CRC, the Director shall convert the reserved capacity to available

capacity for the use of other developments. Requesting a Certificate of Occupancy before expiration of the Final CRC shall only convert the reserved capacity to used capacity if the building inspector finds that the project actually conforms with applicable codes.

**B. Extensions.** The developer may request one extension of not more than twelve (12) months up to thirty days before the expiration date of the Final CRC. Any extension shall be contingent upon payment of an additional reservation fee as set forth in GHMC 19.10.023. The Director shall determine whether an extension is warranted, based on the following criteria:

1. Size of the development and the amount of capacity requested. A limit may be imposed on the amount of capacity that may be extended;
2. Phasing;
3. Location of the project;
4. Capacity available within the service area;
5. Reasons for requesting the reservation time period extension; and
6. Whether the developer exercised good faith in attempting to complete the project and acquire a certificate of occupancy.

Any unused capacity for a specific yearly time frame may be carried forward into the next yearly time frame within the time constraints of the Final CRC. No unused capacity may be carried forward beyond the duration of the certificate or any subsequent extension.

19.10.023. Final Capacity Reservation Fees.

**A. Time for Payment.** Prior to issuance of a Final CRC, or any renewal thereof, the developer shall be required to pay the reservation fee as a condition of capacity reservation. A reservation fee equivalent to thirty-three percent (33%) of the transportation impact fees for the development activity shall be required to reserve capacity for up to one (1) year; sixty-six percent (66%) shall be required to reserve capacity for two (2) years and one hundred percent (100%) shall be required to reserve capacity for up to three (3) years.

The developer shall pay any remaining impact fees at the time of and as condition of, receiving a building permit. The developer shall be required to pay all impact fees pursuant to the impact fee schedule in effect at the time the building permit is issued.

**B. Refund of Reservation Fee.** Reservation fees shall be refundable, subject to a charge for the City's administrative costs and as set forth in this paragraph. The City shall refund ninety percent (90%) of the reservation fee if the capacity was reserved for 12 months or less. The City shall refund eighty percent (80%) of the reservation fee for a two year reservation period; and seventy percent (70%) for a three year reservation period.



## VIII. APPEALS OF CONCURRENCY DETERMINATION

19.10.030. Concurrency Determination to be Appealed with Underlying Permit. Any appeal of a concurrency determination shall be brought concurrently with an appeal of the underlying development permit. The appeal procedure shall correspond with the procedure mandated for the underlying permit by Title 19 GHMC. There will be no appeal of a concurrency determination unless and until the applicant submits an application for the underlying development permit and the City has made a final decision to approve or deny the permit.

19.10.031. Notice of Concurrency Determination. Notice of the concurrency determination shall be given to the public together with, and in the same manner as, that provided for the underlying development permit's SEPA threshold determination, unless the project is exempt from SEPA, in which case notice shall be given in the same manner without any accompanying threshold determination.

19.10.032. Time limit to bring appeal. The time limit to appeal the concurrency determination shall be the same time limit provided by Title 19 to appeal the SEPA threshold determination on the underlying development permit. In the event that no threshold determination is required, the appeal shall be brought within 15 days after issuance of a final decision on the underlying development permit. [How are we going to get the appeal in an open record hearing?]

## IX. CONCURRENCY ADMINISTRATION

19.10.040. Purpose and Procedure. The purpose of this Part is to describe the process for administering the Concurrency Ordinance. Capacity accounts will be established, to allow capacity to be transferred to various categories in the application process. Capacity refers to the ability or availability of road facilities to accommodate users, expressed in an appropriate unit of measure, such as LOS for road facilities. Available capacity represents a specific amount of capacity that may be reserved by or committed to future users of road facilities.

19.10.041. Capacity Classifications. There are hereby established two capacity accounts, to be utilized by the Director in the implementation of this Chapter. These accounts are:

- A. the **Available Capacity account**; and
- B. the **Reserved Capacity account**;

Capacity is withdrawn from the available capacity account and deposited into a reserved capacity account when a PCRC is issued; and remains in the reserved capacity account when a Final CRC is issued. Once the proposed development is constructed and an occupancy permit is issued, the capacity is considered "used." Each capacity account of available or reserved capacity will experience withdrawals on a regular basis. Only the Director may transfer capacity between accounts. [NOTE: Shouldn't these accounts reflect the amount of capacity in each traffic analysis zone? Do the separate accounts need to be set forth in the ordinance?]

19.10.042. Annual Reporting and Monitoring. The Director is responsible for completion of an Annual Capacity Availability Report. This report shall evaluate reserved capacity and permitted development activity for the previous twelve month period, and determine existing conditions with regard to available capacity for road facilities. The evaluation shall report on capacity used for the previous period and capacity available for the Six-Year Capital Facilities Element of the City's Comprehensive Plan and the Six-year Transportation Plan, for road facilities, based upon LOS standards. Forecasts shall be based on the most recently updated schedule of capital improvements, growth projections, public road facility inventories, and revenue projections and shall, at a minimum, include:

- A. A summary of development activity;
- B. The status of each Capacity Account;
- C. The Six-year Transportation Plan;
- D. Actual capacity of selected street segments and intersections, and current LOS; and
- E. Recommendations on amendments to CIP and annual budget, to LOS standards, or other amendments to the transportation element of or to the Comprehensive Plan.

The findings of the Annual Capacity Availability Report shall be considered by the Council in preparing the annual update to the Capital Improvement Element, any proposed amendments to the CIP and Six-year TIP, and shall be used in the review of development permits and capacity evaluations during the next period.

Based upon the analysis included in the Annual Capacity Availability Report, the Director shall recommend to the City Council each year, any necessary amendments to the CIP, TIP and Comprehensive Plan. The Director shall also report on the status of all capacity accounts when public hearings for Comprehensive Plan amendments are heard.

19.10.043. Road LOS Monitoring and Modeling.

A. The City shall monitor Level of Service standards through an annual update of the Six Year Transportation Plan which will add data reflecting development permits issued and trip allocations reserved. The City's Traffic Demand Model will be recalibrated annually based on traffic count information, obtained from at a minimum, the City's Public Works Department.

B. On January 1 of each year, a new trip allocation shall be assigned for each Traffic Analysis Zone, based on the results from the Traffic Demand Model used by the City, to ensure that the City is achieving the adopted LOS standards described in this Chapter and the transportation element of the Comprehensive Plan.

C. Amendments to the Trip Allocation Program that exceed the 100% annual trip allocation for any given year shall require an amendment to the Comprehensive Plan. Monitoring and modeling shall be required and must include anticipated capital improvements, growth projections, and all reserved and available capacity.

Section 2. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

APPROVED:

\_\_\_\_\_  
MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY ADMINISTRATOR, MARK HOPPEN

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY \_\_\_\_\_

FILED WITH THE CITY CLERK: 2/4/99  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO. \_\_\_\_\_

**SUMMARY OF ORDINANCE NO. \_\_\_\_\_**

of the City of Gig Harbor, Washington

---

On the \_\_\_ day of \_\_\_\_\_, 199\_, the City Council of the City of Gig Harbor, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DEVELOPMENT AND TRANSPORTATION IMPACTS, IMPLEMENTING THE CONCURRENCY PROVISIONS OF THE TRANSPORTATION ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, AS REQUIRED BY RCW 36.70A.070(6), DESCRIBING THE PROCEDURE FOR THE CITY PUBLIC WORKS DIRECTOR'S EVALUATION OF CONCURRENCY OF THE CITY'S ROAD FACILITIES WITH PROPOSED DEVELOPMENT IN LIGHT OF ADOPTED LEVELS OF SERVICE, DESCRIBING THE PROCEDURE FOR ISSUANCE OF CAPACITY RESERVATION CERTIFICATES, ESTABLISHING THE PROCESS FOR DENIALS, CONCURRENCY RESOLUTIONS AND APPEALS, ESTABLISHING CAPACITY ACCOUNTS, REQUIRING SEMI-ANNUAL REPORTING AND MONITORING OF ROAD CAPACITY, AS PART OF THE ANNUAL UPDATE OF THE CITY'S SIX-YEAR TRANSPORTATION PLAN, AMENDMENTS TO THE TRANSPORTATION ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, AND ADOPTING A NEW CHAPTER 19.10 TO THE GIG HARBOR MUNICIPAL CODE.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

---

CITY ADMINISTRATOR, MARK HOPPEN



*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR** *MH*  
**SUBJECT: PARKS AND TRANSPORTATION IMPACT FEES ORDINANCE**  
**DATE: MARCH 15, 1999**

### **INFORMATION/BACKGROUND**

In order to ensure that adequate transportation and parks facilities can be provided at established levels of service to serve new growth and development, this ordinance is presented to establish transportation and park impact fees as statutorily enabled by the Growth Management Act and the State Environmental Policy Act. This ordinance is consistent with city comprehensive plans for transportation and parks, and creates the means to ensure that new development bears a proportionate share of the capital costs of off-site parks and transportation facilities. Also, this ordinance ensures that the city will pay its fair share of these capital costs, and provides for the equitable collection of these fees.

### **POLICY CONSIDERATIONS**

**Staff has completed a comparison study of the proposed fee schedule (attached) and recommends that Council consider a uniform reduction of the rate schedule from 60%-75% in order to conform more closely to those rates charged in the comparison jurisdictions.** Such a reduction means that a greater share of the cost of new capacity will be born by existing taxpayers than was initially proposed by the city's consultants.

**Also, staff has included an indication of the conceivable points of impact fee collection.** Staff strongly recommends that Council select a time of collection that ensures collection of all impact fees.

This packet contains a portion of the recent parks study that is valid plus-or-minus 10%. The data reflect on citizen attitudes toward a parks impact fee (and on citizen willingness to pay for a certain amount of bonded indebtedness for park amenities).

### **FISCAL CONSIDERATIONS**

Payment of impact fees are proposed to be made prior to the recording of a final plat or short plat and in all other cases, prior to the issuance of a building permit. A developer may elect to postpone payment of the impact fees for each lot within a subdivision until the issuance of a building permit for each lot.

### **RECOMMENDATION**

Staff recommends that this ordinance be adopted as soon as possible after the second reading.

### Transportation Impact Fee Analysis

ITE Code	ITE Land Use Category	25% of Impact Fee Per Unit @		# of units	Gig Harbor		Gig Harbor	Redmond	Redmond	Olympia	Enumclaw	Turnwater	Mount Vernon
		\$ 432.89	Per Trip		Initially Proposed	40% Impact fee	25% Impact fee	(downtown)	(average)				
110	Light Industrial	\$ 0.50	per square foot	50,000	\$ 100,430.22	\$ 40,172.09	\$ 25,107.56	\$ 118,000.00	\$ 83,357.14	\$ 80,500.00	\$ 28,500.00	\$ 18,904.00	
140	Manufacturing	0.38	per square foot	100,000	153,675.55	61,470.22	38,418.89	238,000.00	186,714.29	161,000.00	57,000.00	21,128.00	
151	Mini-warehouse	0.13	per square foot	50,000	26,839.11	10,735.64	6,709.78	89,000.00	69,428.57		28,500.00	7,228.00	
210	Single Family House	517.35	per dwelling unit	1	2,068.21	827.68	517.30	1,671.00	1,314.27	1,135.00	3,581.00	978.58	2,442.00
220	Apartment	322.50	per dwelling unit	4	5,160.04	2,064.01	1,290.01	4,218.28	3,357.22	2,542.00	9,700.00	2,490.88	6,448.00
230	Condominium	282.46	per dwelling unit	4	4,519.36	1,807.74	1,129.84	4,218.28	3,357.22	2,542.00	9,700.00	2,258.48	6,448.00
240	Mobile Home	297.61	per dwelling unit	1	1,190.44	476.18	297.61			629.00	3,581.00		2,442.00
250	Retirement Community	112.55	per dwelling unit	20	9,004.09	3,601.64	2,251.02	7,413.20	5,766.51	5,040.00	3,581.00		1,612.00
310	Hotel	390.68	per room	65	101,577.38	40,630.95	25,394.34	84,817.85	65,972.96	57,590.00	\$1.13 per sq. foot	13,010.40	
320	Motel	309.52	per room	65	80,474.04	32,189.62	20,118.51	84,817.85	65,972.96	57,590.00	\$1.13 per sq. foot	13,010.40	
420	Marina	97.40	per berth	50	19,480.00	7,792.00	4,870.00			6,500.00		7,228.00	
430	Golf Course	198.05	per acre	75	59,414.00	23,765.60	14,853.60					\$1,779.20 per hole	
444	Movie Theater	2.43	per square foot	50,000	486,567.11	194,626.84	121,641.78	\$17,588.59 per screen	\$13,598.59 per screen	\$11,953 per screen	28,500.00	\$44.48 per seat	
492	Racquet Club	0.91	per square foot	70,000	254,638.67	101,815.47	63,634.67	\$89 per member	\$78 per member	95,900.00	39,900.00	28,022.40	
560	Church	0.37	per square foot	70,000	103,027.56	41,211.02	25,756.89	88,200.00	68,000.00	60,200.00	39,900.00	21,795.20	
610	Hospital	0.54	per square foot	65,000	139,282.00	55,712.80	34,820.50	122,850.00	100,471.43	87,750.00	37,050.00		
620	Nursing Home	87.68	per bed	50	17,532.00	7,012.80	4,383.00	11,262.50	8,880.83	7,650.00	\$1.13 per sq. foot	12,788.00	
710	Office	0.96	per square foot	100,000	383,106.86	153,242.67	95,776.67	382,000.00	296,142.86	246,000.00	57,000.00	60,048.00	124,000.00
720	Medical Office	2.09	per square foot	10,000	83,580.84	33,436.34	20,897.71	69,400.00	54,014.29	47,200.00	5,700.00	12,454.40	
820	Retail	1.92	per square foot	200,000	1,536,755.55	614,702.22	384,188.89	546,000.00	424,857.14	370,000.00	226,000.00	155,680.00	148,800.00
832	Restaurant, sit-down	4.16	per square foot	10,000	166,402.49	66,561.00	41,600.62	98,500.00	76,171.43	66,800.00	11,300.00	6,894.40	
833	Fast Food, No Drive-up	11.28	per square foot	5,000	225,843.33	90,257.33	56,410.83	88,350.00	67,242.86	58,650.00	5,850.00	9,285.20	
844	Service Station	2,106.00	per pump	8	67,392.14	26,956.88	16,848.04	39,040.00	30,368.09	26,520.00	\$1.13 per sq. foot	878.56	
850	Supermarket	3.88	per square foot	100,000	1,544,547.55	617,819.02	386,136.89	770,000.00	603,686.67	523,000.00	113,000.00	52,264.00	
851	Convenience Market - 24 Hr	8.54	per square foot	10,000	341,679.20	136,671.68	85,419.80	148,600.00	112,742.86	100,900.00	11,300.00	8,228.80	
860	Wholesale Warehousing	0.11	per square foot	50,000	21,211.56	8,484.62	5,302.89				28,500.00	13,344.00	
911	Bank/Savings Walk-in	2.67	per square foot	20,000	213,673.95	85,469.58	53,418.49			133,800.00	22,600.00	18,459.20	
912	Bank/Savings Drive-in	6.72	per square foot	20,000	537,301.68	214,820.67	134,325.42	478,800.00	372,514.29	252,200.00	22,600.00	34,694.40	

## Timing

### Conceivable Points of Impact Fee Collection

- After Preliminary Plat and prior to Final Plat.
- At Building Permit Application.
- ½ fee at application.  
½ fee at permit issuance.
- At Final Plat or Short Plat.  
Prior to issuance of a building permit.  
Subdivisions at building permit issuance per lot.
- At building permit issuance per lot.
- At closing.
- At the point of occupancy.

yes	no	don't know
17%	83%	20%

The existing inventory of city park and recreational facilities provided within city neighborhood areas is estimated to be worth about \$1,200 per person or \$3,000 for an average single family house - meaning this amount must be paid by someone to compensate for the impact generated on parks by each new person or house added to the inventory if the city is to maintain the same standards for park, recreation and open space facilities. Given this fact, how would you rate the following methods for dealing with the impact on parks of further development on a scale of 1 to 5 where 1 is the worst idea and 5 is the best idea?

poor		/		excellent		
1	2	3	4	5		
58%	18%	16%	3%	3%	74.	Lower standards - for the number of present and future park facilities?
10%	4%	7%	16%	63%	75.	Collect a growth impact fee - from new housing projects to pay for park improvements within residential neighborhoods?
10%	9%	39%	25%	16%	76.	Use city tax revenues - to acquire and develop park facilities to offset population impacts?

77: If a residential development growth impact fee were to be collected for new housing projects, what amount of this cost would you recommend be charged for every new single family house to be developed in the city?

100%=\$3,000	75%=\$2,250	50%=\$1,500	25%=\$750	10%=\$300	0%=\$0
30%	9%	28%	13%	8%	9%

#### General obligation bonds

Growth impact fees can not be used to pay for the expansion or improvement of currently needed park and recreation facilities to better serve existing residents. Growth fees can only be collected to pay for the development of additional facilities that will provide for additional population growth. Projects that improve or develop the existing park and recreation system that benefit existing residents must be financed by other methods, including the possible use of voter approved bonds.

78: If a park and recreation bond were to be put on the ballot, how much, if anything, would your household be willing to pay per year for additional neighborhood park and recreation improvements that would benefit existing city residents?

\$150.13 amount per year

#### Joint venture opportunities

Besides Gig Harbor - the school district, athletic leagues, and a variety of other public and private agencies own and operate park and recreational facilities within the city's recreational service area. On a scale of 1 to 5 where 1 is the poorest idea and 5 is the best idea, how would you rate joint venture projects with the following agencies?

poor		/		excellent		
1	2	3	4	5		
6%	7%	20%	17%	46%	Development	79: With school district - for the development of playgrounds and athletic fields at school sites?

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO TRANSPORTATION AND PARK IMPACT FEES, AUTHORIZING THE IMPOSITION OF IMPACT FEES ON NEW DEVELOPMENT TO PROVIDE FUNDING FOR THE DEVELOPMENT'S PROPORTIONATE SHARE OF OFF-SITE OR SYSTEM IMPROVEMENTS REASONABLY RELATED TO THE NEW DEVELOPMENT; DESCRIBING THE METHOD FOR THE CALCULATION OF THE FEES; REFUNDS OF THE FEE, AND PROVIDING FOR AN ADMINISTRATIVE APPEAL OF THE FEE; ADDING A NEW CHAPTER 19.12 TO THE GIG HARBOR MUNICIPAL CODE.**

---

WHEREAS, the City Council of the City of Gig Harbor intends that adequate parks and transportation facilities be provided to serve new growth and development, and

WHEREAS, in order that new parks and transportation facilities are available when needed, the Council has determined that the cost of the parks and transportation facilities must be shared by the public and the private sectors, and the proportionate share of the expense of new parks and transportation facilities necessitated by new development shall be borne by developers through the City's imposition of impact fees, and

WHEREAS, such impact fees shall be calculated, imposed and collected by the City pursuant to procedures and criteria set forth in this ordinance, NOW, THEREFORE,

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

Section 1. Short Title. This ordinance shall be known and may be cited as the "Gig Harbor Impact Fee Ordinance" and shall comprise a new Chapter 19.12 in Title 19 of the Gig Harbor Municipal Code.



Section 2. Authority and Purpose.

A. This ordinance is enacted pursuant to the City's police powers, the Growth Management Act as codified in Chapter 82.02 of the Revised Code of Washington (RCW), Chapter 58.17 RCW relating to platting and subdivisions, and the State Environmental Policy Act (SEPA) Chapter 42.21C RCW.

B. The purpose of this ordinance is to:

1. Develop a program consistent with the Gig Harbor Parks Open Space and Recreation Plan, 6-Year Road Plan and the City's Comprehensive Plan (parks and transportation elements), and Capital Improvement Plan, for joint public and private financing of park and transportation facility improvements necessitated in whole or in part by development in the City;

2. To ensure adequate levels of service within the City;

3. Create a mechanism to charge and collect fees to ensure that all new development bears its proportionate share of the capital costs of off-site parks and transportation facilities reasonably related to new development, in order to maintain adopted levels of park service and maintain adopted levels of service on the City's transportation facilities;

4. Ensure that the City pays its fair share of the capital cost of parks and transportation facilities necessitated by public use of the parks and roadway system; and

5. Ensure fair collection and administration of such impact fees.

C. The provisions of this ordinance shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety and welfare.

Section 3. Applicability.

A. The requirements of this ordinance apply to all development as defined in Ordinance No. \_\_, Chapter 19.14 of the Gig Harbor Municipal Code.

B. Mitigation of impacts on parks and transportation facilities located in jurisdictions outside the City will be required when:

1. The other affected jurisdiction has reviewed the development's impact under its adopted impact fee/mitigation regulations and has recommended to the City that there be a requirement to mitigate the impact; and

2. There is an interlocal agreement between the City and the affected jurisdiction specifically addressing impact identification and mitigation.

Section 4. Geographic Scope. The boundaries within which impact fees shall be charged and collected are coextensive with the corporate City limits, and shall include all unincorporated areas annexed to the City on and after the effective date of this ordinance. After the adoption of interlocal agreements with other local and regional governments, the geographic boundaries may be expanded consistent therewith.

Section 5. Definitions. For the purposes of this ordinance, the terms used in this ordinance shall have the meanings as set forth in chapter 19.14, unless the context clearly indicates otherwise.

Section 6. Imposition of Impact Fees.

A. The Approving Authority is hereby authorized to impose impact fees on new Development.

B. Impact fees may be required pursuant to the Impact Fee Schedule adopted through to the process described in Section 1.3 of this ordinance, or mitigation may be provided

through: 1) the purchase, installation and/or improvement of park and transportation facilities pursuant to Section 9(C) dedication of land pursuant to Section 9(C) of this ordinance.

C. Impact Fees:

1. Shall only be imposed for park and transportation facilities that are reasonably related to the impacts of new Development;
2. Shall not exceed a proportionate share of the costs of park and transportation facilities that are reasonably related to new Development;
3. Shall be used for park and transportation facilities that will reasonably benefit the new Development;
4. Shall not be used to correct existing deficiencies;
5. Shall not be imposed to mitigate the same off-site park and transportation facility impacts that are being mitigated pursuant to any other law;
6. Shall not be collected for improvements to state/county park and transportation facilities unless the state/county requests such improvements and an agreement to collect such fees has been executed between the state/county and the City;
7. Shall not be collected for improvements to park and transportation facilities in other municipalities unless the affected municipality requests such improvement and an interlocal agreement has been executed between the City and the affected municipality for collection of such fees;
8. Shall not be collected for any Development approved prior to the date of adoption of this ordinance unless changes or modifications in the Development requiring City approval are subsequently proposed which result in greater direct impacts on park and transportation facilities than were considered when the Development was first approved; and

9. Shall be collected only once for each Development, unless changes or modifications to the Development are proposed which result in greater direct impacts on park and transportation facilities than were considered when the Development was first permitted.

10. May be imposed for system improvement costs previously incurred by the City, to the extent that new growth and development will be served by the previously constructed improvements, and provided that such fee shall not be imposed to make up for any system improvement deficiencies.

Section 7. Approval of Development. Prior to approving or permitting a Development, an Approving Authority shall consult with the Director concerning mitigation of a Development's impacts.

Section 8. Fee Schedules and Establishment of Service.

A. Impact Fee Schedules setting forth the amount of the Impact Fees to be paid by Development are listed in Appendix 'B' for Roads and Appendix 'C' for parks, attached hereto and incorporated herein by this reference. Administrative fees to be paid as part of the Impact Fee program are also included in the Fee Schedules.

B. For the purpose of this ordinance, the entire City shall be considered one Service Area.

Section 9. Calculation of Impact Fees.

A. The Director shall calculate the Impact Fees set forth in Appendix B, more specifically described in the Gig Harbor 6-Year Road Plan and the Parks Open Space and Recreation Plan, which:

1. Determines the standard fee for similar types of Development, which shall be

reasonably related to each Development's proportionate share of the cost of the Projects described in Appendix 'A', and for parks shall be calculated as set forth in Appendix 'C'.

2. Reduces the proportionate share by applying the benefit factors described in subsection B of this section.

B. In calculating proportionate share, the Director shall:

1. Identify all park and transportation facilities that will be impacted by users from each Development.

2. Identify when the capacity of a park or transportation facility has been fully utilized;

3. Update the data as often as practicable, but at least annually;

4. Estimate the cost of constructing the Projects in Appendix 'A' for roads as of the time they are placed on the List, and the cost of maintaining the city's level of park service as shown on Appendix 'D' and then update the cost estimates at least annually, considering the:

a. Availability of other means of funding park and transportation facility improvements;

b. Cost of existing park and transportation facility improvements; and

c. Methods by which park and transportation facility improvements were financed;

5. Update the fee collected against a Project which has already been completed, through an advancement of City funds, at a rate, determined annually, which is equivalent to the City's return on its investments.

C. The Director shall reduce the calculated proportionate share by giving credit

for the following benefit factors:

1. The purchase, installation and/or improvement of park and transportation facilities, if:
  - a. the facilities are located on land owned by the City, Pierce County, a school district or a special district; and
  - b. a designated public owner is responsible for permanent, continuing maintenance and operation of the facilities; and
  - c. the Director determines that the facilities correspond to the type(s) of park and transportation facilities being impacted by the Development as determined pursuant to this ordinance; and
  - d. the Director determines, after consultation with the County, school district or special purpose district, as applicable, and an analysis of supply and demand data, the Parks Open Space and Recreation Plan, the 6-Year Road Plan and any applicable Pierce County park and transportation plan, that the proposed park and transportation facility improvements better meet the City's need for park and transportation facilities than would payment of funds to mitigate the park and transportation impacts of the Development.
2. The credit against the Impact Fee shall be equal to the fair market value of the purchase, installation and/or improvement.
3. A developer of a planned residential development or mobile home park may receive credit only for park and transportation facilities provided in addition to those normally required under SEPA for such developments pursuant to Chapter 18.04 GHCM.
4. When the Director has agreed to a developer's proposal to satisfy some or all of the Impact Fee through the purchase, installation and/or improvement of park and transportation facilities, the developer shall prepare and submit a facility improvement plan to the Director for approval prior to recordation of a plat or short plat for subdivisions, and prior to issuance of a

building permit for all other developments.

5. In the determination of credit toward the impact fee, the Director shall also consider the extent to which the proposed dedication or conveyance meets the following criteria:

- a. The land should result in an integral element of the Gig Harbor Park/Road System;
- b. The land is suitable for future park and/or transportation facilities;
- c. The land is of an appropriate size and of an acceptable configuration;
- d. The land has public access via a public street or an easement of an equivalent width and accessibility;
- e. The land is located in or near areas designated by the City or County for park, trail or land use plans for recreation purposes;
- f. The land provides linkage between Pierce County and/or other publicly-owned recreation or transportation properties;
- g. The land has been surveyed or adequately marked with survey monuments, or otherwise readily distinguishable from adjacent privately-owned property;
- h. The land has no known physical problems associated with it, such as the presence of hazardous waste, drainage, erosion, or flooding problems which the Director determines would cause inordinate demands on public resources for maintenance and operation;
- i. The land has no known safety hazards;
- j. The developer is able to provide documentation, as nearly as practicable, of the land's compliance with the criteria of this subsection, and of clear title; and
- k. The developer is able to provide and fund a long-term method, acceptable to the Director, for the management and maintenance of the land, if applicable.

The amount of credit determined pursuant to subsection C above shall be credited proportionately among all the units in the Development, and the Impact Fee for each unit for which a permit or approval is applied shall be reduced accordingly.

Section 10. Variation from Impact Fee Schedule. If a developer submits information demonstrating a significant difference between the age, social, activity or interest characteristics of the population of a proposed subdivision or Development and the data used to calculate the Impact Fee Schedule, the Director may allow a special calculation of the Impact Fee requirements for the subdivision or Development to be prepared by the Developer's consultant; at the Developer's cost; provided, however, that the Director shall have prior approval of the qualifications and methodology of the Developer's consultant in making such calculation, and any time period mandated by statute or ordinance for the Approving Authority's decision on the subdivision or Development shall not include the time spent in preparing the special calculation. Whether the Director accepts the data provided by the special calculation shall be at the Director's discretion.

Section 11. Payment of Fees.

A. All developers shall pay an Impact Fee in accordance with the provisions of this ordinance at the time that the applicable development permit is ready for issuance. The Fee paid shall be the amount in effect as of the date of the permit issuance.

B. The Impact Fee, as initially calculated for a development permit, shall be recalculated at the time of issuance if the Development is modified or conditioned in such a way as to alter park and transportation impacts for the Development.

C. A developer may obtain a preliminary determination of the Impact Fee before application for a development permit, by paying the administrative fee and providing the Director with the information needed for processing.



Section 12. Time of Payment of Impact Fees.

A. Payment of any required Impact Fees shall be made prior to the recording of a final plat or short plat and in all other cases, prior to the issuance of a building permit; Provided, however, that for subdivisions, as defined in chapter 19.14 GHMC, the developer may elect to postpone payment of the Impact Fees for each lot within the subdivision until issuance of a building permit for each lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat or short plat and included in the deed for each affected lot within the subdivision.

B. When a subdivision or Development is conditioned upon the dedication of land, or the purchase, installation or improvement of park and transportation facilities, a final plat or short plat shall not be recorded, and a building permit shall not be issued for other development until:

1. The Director has determined in writing that any land to be dedicated is shown on the face of the final plat or short plat, or a deed conveying the land to the City, Pierce County, a school district or special purpose district, as appropriate, has been recorded with the Pierce County Auditor; and

2. The Director has determined in writing, after consultation with the designated public owner responsible for permanent, continuing maintenance and operation of the facilities, that the developer has satisfactorily undertaken, or guaranteed to undertake in a manner acceptable to the Director, any required purchase, installation or improvement of park and transportation facilities.

Section 13. Project List.

A. The Director shall annually review the City's Parks Open Space and Recreation Plan, the Six-Year Parks Improvement Plan, the Six-Year Road Plan and the Projects listed in Appendix A and B and shall:

1. Identify each Project in the Comprehensive Plan that is Growth-Related and the proportion of each such Project that is Growth-Related;
2. Forecast the total monies available from taxes and other public sources for park and transportation improvements for the next six (6) years;
3. Update the population, building activity and demand and supply data for park and transportation facilities and the Impact Fee Schedule for the next six (6) year period.
4. Calculate the amount of Impact Fees already paid; and
5. Identify those Comprehensive Plan projects that have been or are being built but whose performance capacity has not been fully utilized.

B. The Director shall use this information to prepare an annual Draft Amendment to the fee schedule. A draft amendment to Exhibits 'A' and 'D', which shall comprise:

1. The Projects on the Comprehensive Plan that are Growth-Related and that should be funded with forecast public monies and the Impact Fees already paid; and
2. The Projects already built or funded pursuant to this ordinance whose performance capacity has not been fully utilized.

C. The Council, at the same time that it adopts the annual budget and appropriates funds for capital improvement projects, shall by separate ordinance establish the annual Project List by adopting, with or without modification, the Director's Draft Amendment.

D. Once a Project is placed on Appendix 'A', or the City amends its level of park service in Appendix 'D' a fee shall be imposed on every Development that impacts the Project until the Project is removed from the List by one of the following means:

1. The Council by ordinance removes the Project from Appendix 'A' and/or 'D', in which case the fees already collected will be refunded if necessary to ensure that Impact Fees remain reasonably related to the park and transportation impacts of Development that have paid an Impact Fee; provided that a refund shall not be necessary if the Council transfers the Fees to the budget of another Project that the Council determines will mitigate essentially the same park and transportation impacts; or

2. The capacity created by the Project has been fully utilized, in which case the Director shall administratively remove the Project from the Project List.

Section 14. Funding of Projects.

A. An Impact Fee trust and agency fund is hereby created. The Director shall be the fund manager. Impact fees shall be placed in appropriate deposit accounts within the Impact Fee fund.

B. The Impact Fees paid to the City shall be held and disbursed as follows:

1. The Fees collected for each Project shall be placed in a deposit account within the Impact Fee fund;

2. When the Council appropriates Capital Improvement Project (CIP) funds for a Project on the Project List, the Fees held in the Impact Fee fund shall be transferred to the CIP fund. The non-Impact Fee monies appropriated for the Project shall comprise both the public share of the Project cost and an advancement of that portion of the private share that has not yet been collected in Impact Fees;

3. The first money spent by the Director on a Project after a Council appropriation shall be deemed to be the Fees from the Impact Fee fund;

4. Fees collected after a Project has been fully funded by means of one or more Council appropriations shall constitute reimbursement to the City of the funds advanced for the private share of the Project. The public monies made available by such reimbursement shall be used to pay the public share of other Projects.

5. All interest earned on Impact Fees paid shall be retained in the account and expended for the purpose or purposes for which the Impact Fees were imposed.

C. Projects shall be funded by a balance between Impact Fees and public funds, and shall not be funded solely by Impact Fees.

D. Impact Fees shall be expended or encumbered for a permissible use within six (6) years of receipt, unless there exists an extraordinary or compelling reason for Fees to be held longer than six (6) years. The Director may recommend to the Council that the City hold Fees beyond six (6) years in cases where extraordinary or compelling reasons exist. Such reasons shall be identified in written findings by the Council.

E. The Director shall prepare an annual report on the Impact Fee account showing the source and amount of all monies collected, earned or received and projects that were financed in whole or in part by Impact Fees.

Section 15. Use and Disposition of Dedicated Land. All land dedicated or conveyed pursuant to this ordinance shall be set aside for development of park and transportation facilities. The City and Pierce County, any school district or special purpose district to which land is dedicated or conveyed pursuant to this ordinance, shall make every effort to use, develop and maintain land dedicated or conveyed for park and transportation facilities.

In the event that use of any such dedicated land is determined by the Director or Pierce County, any school district or special purpose district to be infeasible for development of park and transportation facilities, the dedicated land may be sold or traded for another parcel of land in the City, subject to the requirements of state law and City ordinances. The proceeds from such a sale shall be used to acquire land or develop park and transportation facilities in the City.

Section 16. Refunds.

A. A developer may request and shall receive a refund when the developer does not proceed with the development activity for which Impact Fees were paid, and the developer shows that no impact has resulted. However, the administrative fee shall not be refunded.

B. In the event that Impact Fees must be refunded for any reason, they shall be refunded with interest earned to the Owners as they appear of record with the Pierce County Assessor at the time of refund.

C. When the City seeks to terminate any or all Impact Fee requirements, all unexpended or unencumbered funds shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the City shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two (2) times and shall notify all potential claimants by first class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one (1) year. At the end of one (1) year, any remaining funds shall be retained by the City, but must be expended on Projects on the City's adopted plans. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

Section 17. Exemption or Reduction for Low-Income Housing.

A. Public housing agencies or private non-profit housing developers participating

in publicly-sponsored or subsidized housing programs may apply for exemptions from the Impact Fee requirements. The Director shall review proposed developments of low-income housing by such public or non-profit developers pursuant to criteria and procedures adopted by administrative rule. If the Director determines that a proposed Development of low-income housing satisfies the adopted criteria, such Development shall be exempted from the requirement to pay an Impact Fee.

B. Private developers who dedicate residential units for occupancy by low-income households may apply to the Director for reductions in Impact Fees. If the Director determines that the developer's program for low-income occupancy of housing units satisfy the adopted criteria, the Director shall reduce the calculated Impact Fee for the Development so that the developer does not pay an impact fee for those units dedicated for low-income household occupancy.

C. The amount of the Impact Fee not collected from low-income Development shall be paid from public funds other than Impact Fee accounts.

D. The Director is hereby instructed and authorized to adopt administrative rules to implement this section. Such rules shall provide for the administration of this program and shall:

1. Encourage the construction of housing for low-income households by public housing agencies or private non-profit housing developers participating in publicly-sponsored or subsidized housing programs;
2. Encourage the construction in private developments of housing units for low-income households that are in addition to units required by another housing program or development condition;
3. Ensure that housing that qualifies as "low income" meets appropriate standards regarding household income, rent levels or sale prices, location, number of units and development size;

4. Ensure that developers who obtain an exemption from or reduction from Impact Fees will in fact build the proposed low income housing and make it available to low income households for a minimum of fifteen (15) years;

5. Implement an exemption plan whereby payment of the Impact Fee is deferred for low income housing and forgiven over a fifteen (15) year period.

Section 18. Appeals.

A. A developer may appeal the amount of the Impact Fee to the Hearing Examiner, who shall conduct a hearing on the appeal and appeal shall be consolidated with any appeal of the underlying permit. The developer shall bear the burden of proving:

1. That the Director committed error in calculating the developer's proportionate share, as determined by an individual fee calculation, or, if relevant, as set forth in the Impact Fee Schedule, or in granting credit for the benefit factors; or

2. That the Director based his determination upon incorrect data.

B. An appeal must be filed with the Director within ten (10) calendar days of the Director's issuance of his/her final decision shall be regarding the fee amount. In order to obtain an appealable final decision, the developer must:

1. Request in writing a meeting to review the fee amount with the Director's staff. The Director's staff shall consider any studies and data submitted by the developer seeking to adjust the amount of the fee; and

2. Request in writing reconsideration by the Director or his/her designee of an adverse decision by staff. The request for reconsideration shall state in detail the grounds for the request. The Director or his designee shall issue a final, appealable decision within ten (10) working days of receiving a request for reconsideration unless the Director

or his/her designee determines that a meeting with the developer is needed to properly consider the request, in which case the meeting shall be held within ten (10) working days of receipt of the request and a final decision issued within ten (10) working days of the meeting.

C. Appeals from the decision of the Hearing Examiner shall be to the City Council, pursuant to the provisions of Gig Harbor Municipal Code Chapter 19.05 GHMC.

Section 19. Relationship to SEPA.

A. All Development shall be subject to environmental review pursuant to SEPA and other applicable City ordinances and regulations.

B. Payment of the Impact Fee shall constitute satisfactory mitigation of those park and transportation impacts related to the specific improvements identified on the Project List (Appendix 'A' and Appendix 'D').

C. Further mitigation in addition to the Impact Fee shall be required if adverse impacts appropriate for mitigation pursuant to SEPA are identified that are not adequately mitigated by an Impact Fee.

D. Nothing in this ordinance shall be construed to limit the City's authority to deny development permits when a proposal would result in probable significant adverse impacts identified in an environmental impact statement and reasonable mitigation measures are insufficient to mitigate the identified impact.

Section 20. Park and Transportation Facility Requirements in Adjoining Municipalities/Districts. Level of service requirements and demand standards different than those provided in the Gig Harbor Comprehensive Park Plan shall be applied to park and recreation facility impacts in adjoining municipalities/districts if such different standards are provided in an interlocal



agreement between the City and the affected municipality. Otherwise, the standards contained in the Gig Harbor Comprehensive Plan shall apply to park and transportation impacts in adjoining jurisdictions.

Section 21. Necessity of Compliance. A development permit issued after the effective date of this ordinance shall be null and void if issued without substantial compliance with this ordinance by the Director, the Department and the Approving Authority.

Section 22. Severability. If any part of this ordinance is found to be invalid, that finding shall not affect the validity of any remaining part of this ordinance.

Section 23. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

APPROVED:

\_\_\_\_\_  
MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY \_\_\_\_\_

FILED WITH THE CITY CLERK: 2/4/99  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO. \_\_\_\_\_

SUMMARY OF ORDINANCE NO. \_\_\_\_

of the City of Gig Harbor, Washington

---

On the \_\_\_\_\_ day of \_\_\_\_\_, 1999, the City Council of the City of Gig Harbor, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO TRANSPORTATION AND PARK IMPACT FEES, AUTHORIZING THE IMPOSITION OF IMPACT FEES ON NEW DEVELOPMENT TO PROVIDE FUNDING FOR THE DEVELOPMENT'S PROPORTIONATE SHARE OF OFF-SITE OR SYSTEM IMPROVEMENTS REASONABLY RELATED TO THE NEW DEVELOPMENT; DESCRIBING THE METHOD FOR THE CALCULATION OF THE FEES; REFUNDS OF THE FEE, AND PROVIDING FOR AN ADMINISTRATIVE APPEAL OF THE FEE; ADDING A NEW CHAPTER 19.12 TO THE GIG HARBOR MUNICIPAL CODE.**

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

---

CITY CLERK, MOLLY TOWSLEE

Appendix 'A' / Transportation

Appendix 'A'  
Rate Schedule / Transportation

TIP #	Project Description	Year Scheduled	Total Project Cost	Police County Participation	Participating Agencies	Total State Grant Cost	Total USFTA, US Intermodal Cost	Total Grant	Participating Agencies	Total Project Cost	% of Total Project Cost	Participating Agencies	% of Total Project Cost
1	EAST-WEST (BORGEN) ROAD CONSTRUCTION (PH - Swede Hill Interchange (SR-16) to Peacock Hill Ave.	1999	\$2,950,000	\$824,000	0	0.0%	50	0.0%	\$824,000	\$503,000	17.1%	100%	
4	POINT FOSDICK DRIVE IMPROVEMENTS (PH 1) - 1,000 ft. South of Olympic Dr to 44th Street	1999	\$667,000	\$0	0	0.0%	\$482,000	72.3%	\$482,000	\$56,000	8.2%	39%	(0.5x0.39)x0.667
11	POINT FOSDICK DRIVE IMPROVEMENTS (PH 2) - 44th Street to City Limits	2001-2002	\$545,000	\$0	355,926	65.3%	\$0	0.0%	\$355,926	\$56,549	10.2%	49%	(0.5x0.49)x0.645
12	OLYMPIC DRIVE/56TH STREET IMPROVEMENTS - 950ft. west of Point Fosdick Drive to 38th Avenue	2001-2002	\$1,341,000	\$0	875,774	65.3%	\$80,000	6.0%	\$955,774	\$66,681	4.2%	39%	(0.5x0.49)x1.34
19	56th St / Pt. Fosdick Dr. IMPROVEMENTS - Olympic Drive to Olympic Drive	2003-2004	\$1,182,000	\$0	771,935	65.3%	\$38,000	3.0%	\$807,935	\$84,475	7.1%	49%	(0.5x0.49)x1.182
22	EAST-WEST (BORGEN) ROAD CONSTR. (PH 2) - Swede Hill Interchange (SR-16) to W. of Woodridge	2003-2004	\$4,050,000	\$0	1,751,625	43.3%	\$150,000	3.7%	\$1,901,625	\$123,375	3.0%	100%	(0.5x1.0)x4.05
23	CRESCENT VALLEY CONNECTOR - Peacock Hill Avenue to Crescent Valley Road	2003-2004	\$4,300,000	\$0	1,859,750	43.3%	\$0	0.0%	\$1,859,750	\$280,250	6.8%	100%	(0.5x1.0)x4.3
25	NORTH-SOUTH CONNECTOR - East/West Road to Peacock Hill Avenue	2000-2001	\$150,000	\$0	0	0.0%	\$0	0.0%	\$0	\$75,000	50.0%	100%	(0.5x1.0)x0.15
26	HUNT STREET CROSSING - Kimball Drive to 38th Ave.	2003-2004	\$11,800,000	\$0	5,103,500	43.3%	\$398,100	3.4%	\$5,501,600	\$388,400	3.4%	100%	(0.5x1.0)x1.18
<b>TOTAL</b>			<b>\$28,985,000</b>	<b>\$824,000</b>	<b>\$10,710,629</b>	<b>\$1,348,100</b>	<b>\$72,088,009</b>	<b>\$1,647,81</b>	<b>\$72,834,738</b>	<b>\$5,900,000</b>	<b>50.0%</b>		

Appendix 'A-2' / Transportation  
**RATE SCHEDULE**

**Capacity Cost per Growth Trip**

Total Cost of Added Road Capacity	\$	12,554,725
+ Total Growth Trips in UGA		27,753
Capacity Cost per Growth Trip	\$	452.37

**Adjustment for Payment of Gas Tax**

Average Trip Length (miles)		5.43
+ Average Miles per Gallon (fleet)		20.73
Gallons of Gas per trip		0.261939219
x Gas Tax per Gallon (municipal share)	\$	0.02652
City Gas Tax per Trip	\$	0.006946366
x Days per Year		365
City Gas Tax per Year per Trip Generated	\$	2.54
x Multiplier (30 years 5% NPV)		15.37
City Gas Taxes Paid by New Development (present value)	\$	38.97
x Portion Used by City for New Capacity for Growth		50%
City Gas Taxes per Trip Credited Against Impact fee	\$	19.48

**Net Capacity Cost per Growth Trip**

Capacity Cost per Growth Trip	\$	452.37
- City Gas Taxes per Trip Credited Against Impact Fee	\$	19.48
Net Capacity Cost per Growth Trip	\$	432.89

**RATE SCHEDULE**

**Appendix 'B' / Transportation**

**Impact Fee Rate Schedule**

ITE Code	ITE Land Use Category	Trip Rate (1)	% New Trips (2)	Peak Hour Factor (3)	Net New Trips Per Unit of Measure	Impact Fee Per Unit @ \$ 432.89 Per Trip
110	Light Industrial	3.49	100%	1.33	4.64 1,000 sq. ft.	\$ 2.01 per square foot
140	Manufacturing	1.93	100%	1.84	3.55 1,000 sq. ft.	1.54 per square foot
151	Mini-warehouse	1.30	100%	0.95	1.24 1,000 sq. ft.	0.54 per square foot
210	Single Family House	4.78	100%	1.00	4.78 dwelling	2,069.21 per dwelling unit
220	Apartment	3.24	100%	0.92	2.98 dwelling	1,290.01 per dwelling unit
230	Condominium	2.93	100%	0.89	2.61 dwelling	1,129.84 per dwelling unit
240	Mobile Home	2.41	100%	1.14	2.75 dwelling	1,190.44 per dwelling unit
250	Retirement Community	1.16	100%	0.90	1.04 dwelling	450.20 per dwelling unit
310	Hotel	4.35	100%	0.83	3.61 room	1,562.73 per room
320	Motel	5.10	100%	0.56	2.88 room	1,238.06 per room
420	Marina	1.48	100%	0.61	0.90 berth	389.60 per berth
430	Golf Course	4.17	100%	0.44	1.83 acre	792.19 per acre
444	Movie Theater	11.96	100%	1.88	22.48 1,000 sq. ft.	9.73 per square foot
492	Racquet Club	8.57	100%	0.98	8.40 1,000 sq. ft.	3.64 per square foot
530	High School	5.45	100%	1.68	9.16 1,000 sq. ft.	3.97 per square foot
560	Church	4.66	100%	0.73	3.40 1,000 sq. ft.	1.47 per square foot
610	Hospital	8.39	100%	0.59	4.95 1,000 sq. ft.	2.14 per square foot
620	Nursing Home	1.30	100%	0.62	0.81 bed	350.64 per bed
710	Office 10,000 Sq. Ft.	12.30	100%	1.31	16.11 1,000 sq. ft.	6.97 per square foot
710	Office 50,000 Sq. Ft.	8.29	100%	1.28	10.61 1,000 sq. ft.	4.59 per square foot
710	Office 100,000 Sq. Ft.	7.02	100%	1.26	8.85 1,000 sq. ft.	3.83 per square foot
720	Medical Office	17.09	100%	1.13	19.31 1,000 sq. ft.	8.36 per square foot
820	Retail 10,000 Sq. Ft.	83.80	49%	0.85	34.90 1,000 sq. ft.	15.11 per square foot
820	Retail 50,000 Sq. Ft.	45.83	48%	0.87	19.14 1,000 sq. ft.	8.29 per square foot
820	Retail 100,000 Sq. Ft.	35.34	74%	0.88	23.01 1,000 sq. ft.	9.96 per square foot
820	Retail 200,000 Sq. Ft.	27.25	74%	0.88	17.75 1,000 sq. ft.	7.68 per square foot
832	Restaurant: sit-down	102.68	52%	0.72	38.44 1,000 sq. ft.	16.64 per square foot
833	Fast Food, No Drive-up	393.11	52%	0.51	104.25 1,000 sq. ft.	45.13 per square foot
844	Service Station	150.18	27%	0.48	19.46 pump	8,424.02 per pump
850	Supermarket	88.80	49%	0.82	35.68 1,000 sq. ft.	15.45 per square foot
851	Convenience Market - 24 Hr.	369.00	31%	0.69	78.93 1,000 sq. ft.	34.17 per square foot
860	Wholesale Warehousing	3.37	100%	0.29	0.98 1,000 sq. ft.	0.42 per square foot
911	Bank/Savings: Walk-in	70.31	30%	1.17	24.68 1,000 sq. ft.	10.68 per square foot
912	Bank/Savings: Drive-in	132.61	30%	1.56	62.06 1,000 sq. ft.	\$ 26.87 per square foot

- (1) ITE Rate divided by 2
- (2) Eliminates pass-by trips

Appendix 'C' / Parks

**RATE SCHEDULE**

Based on the 50% assessment identified in "Note (3)" of Appendix 'C-2' (p. 143 , City of Gig Harbor Parks, Recreation and Open Space Plan) of this ordinance, the Park Impact Fee is set at \$1500 per dwelling unit.

## Appendix 'C-2' / Parks

### Financial strategies 1996-2002 (city facilities within city limits)

	Alternative 1 75 percent (1) Growth Impt Fee w/\$.0075 bond	Alternative 2 50 percent Growth Impt Fee w/\$.0050 bond	Alternative 3 25 percent Growth Impt Fee w/\$.0025 bond	Alternative 4 0 percent Growth Impt Fee w/\$.0000 bond
<b>ELOS/PLOS standard projections</b>				
Renovations and repairs	(\$150,000)	(\$150,000)	(\$150,000)	(\$150,000)
ELOS city facilities growth impact 1996-2002	(\$1,042,208)	(\$1,042,208)	(\$1,042,208)	(\$1,042,208)
<b>SUBTOTAL</b>	<b>(\$1,192,208)</b>	<b>(\$1,192,208)</b>	<b>(\$1,192,208)</b>	<b>(\$1,192,208)</b>
<b>PLOS city facility proposals</b>	<b>(\$2,011,862)</b>	<b>(\$2,011,862)</b>	<b>(\$2,011,862)</b>	<b>(\$2,011,862)</b>
<b>TOTAL EXPENDITURES</b>	<b>(\$3,204,070)</b>	<b>(\$3,204,070)</b>	<b>(\$3,204,070)</b>	<b>(\$3,204,070)</b>

### Proposed revenues

GENERAL FUND TRENDS (1989-1995)	Ave expnd	Allocate	Inflate				
General Funds	\$29,875	100.0%	11.5%	\$239,131			
Real Estate Excise Tax (REET-CIP)	\$23,913	100.0%	13.5%	\$201,596			
IAC, ALEA, ISTEA	\$9,810	100.0%	5.0%	\$66,724			
SEPA mitigations (2)	\$12,000	0.0%	0.0%	\$0			
<b>CUMULATIVE TOTAL CITY GENERAL FUND REVENUES</b>				<b>\$507,450</b>	<b>\$507,450</b>	<b>\$507,450</b>	<b>\$507,450</b>

### GROWTH IMPACT FEE - CITYWIDE COLLECTIONS

Additional population 1996-2002	3.5%	855				
ELOS growth impact/person (3)		\$1,218.96				
Assessment rate		75.0%	50.0%	25.0%	0.0%	
<b>TOTAL GROWTH IMPACT FEES</b>		<b>\$781,858</b>	<b>\$521,105</b>	<b>\$260,553</b>	<b>\$0</b>	
<b>CUMULATIVE TOTAL GENERAL FUNDS+GROWTH IMPACT FEES</b>		<b>\$1,289,108</b>	<b>\$1,028,556</b>	<b>\$768,003</b>	<b>\$507,450</b>	

### PARK, RECREATION & OPEN SPACE OBLIGATION BONDS

Park and open space facility debt capacity (7.5% of assessed)					
Assessed valuation 1995	\$325,960,487				
Assessed rate per \$1.00 valuation (4)	\$0.0075	\$0.0050	\$0.0025	\$0.0000	
<b>REVENUE GENERATED FROM BOND</b>	<b>\$2,444,704</b>	<b>\$1,829,802</b>	<b>\$814,901</b>	<b>\$0</b>	
<b>CUMULATIVE TOTAL GENERAL FUNDS+GROWTH IMPACT+BOND</b>	<b>\$3,733,812</b>	<b>\$2,658,358</b>	<b>\$1,582,904</b>	<b>\$507,450</b>	

<b>DIFFERENCE BETWEEN PROPOSED EXPENDITURES AND REVENUES</b>	<b>\$529,742</b>	<b>(\$545,712)</b>	<b>(\$1,621,166)</b>	<b>(\$2,696,620)</b>
--	------------------	--------------------	----------------------	----------------------

- Note:
- (1) GMA does not allow growth requirements to be financed 100% with growth impact fees.
  - (2) If GMA impact fee provisions are used, SEPA mitigations may no longer be used to obtain in-lieu payments for park land and/or facilities (RCW 82.02.100).
  - (3) Average number of persons per dwelling unit is 2.47 meaning growth impact fee/dwelling unit would be:  
\$3,044.26 at 100% assessment, \$2,283.20 at 75% assessment, \$1,522.13 at 50% assessment, and \$781.07 at 25% assessment.
  - (4) Under alternative 1, a \$0.0075 bond assessment per \$1.00 valuation (equals \$750 for a \$100,000 house) would require an annual payment of \$68.43 (for a \$100,000 house) if the bond were financed at 6.75 percent for a 10 year period.  
Similarly, the annual cost would be \$46.28 under alternative 2, \$23.14 under alternative 3, and \$0.00 under alternative 4.

Appendix 'D' / Parks

Capital improvement program 1996-2002

Agency/Department: Gig Harbor Public Works Department

Address: 3105 Judson Street

City, zip code: Gig Harbor, Washington 98335

Phone: 206.851.8145 Fax: 206.851.8563 County: Pierce County

Prty	Project site	Lvl	Act	Item	Funds	Unit	Unit Cost	Qty	Qty Cost
<b>CONSERVANCY/RESOURCE PARKS</b>									
high	Wilkinson Wetlands	lcl	acq	acquire/accept donation	GMA/SEPA	acres	\$31,250.00	16.0	\$500,000
			dvp	trail-class 4 w/o services	GMA/SEPA	miles	\$37,651.00	0.5	\$18,826
			dvp	trailhead w/parking/sanican	GMA/SEPA	stall	\$2,440.27	15	\$36,604
moderate	WWTP	lcl	dvp	trail-class 3 w/o services		miles	\$46,485.00	0.25	\$11,621
			dvp	trailhead w/parking/restrooms		stall	\$6,549.43	10	\$65,494
low	Scofield Property	rgl	acq	acquire upland site		acres	\$1,038,728.00	1.1	\$1,190,000
			acq	acquire tidelands		acres	\$5,000.00	10.0	\$50,000
			dvp	trail-class 4 w/o services		miles	\$37,651.00	0.25	\$9,413
			dvp	trailhead w/parking/restrooms		stall	\$6,549.43	15	\$98,242
low	Acquire Tallman's Wetl	lcl	acq	acquire wetlands site	SEPA	acres	\$31,250.00	0.0	\$0
			dvp	trail-class 4 w/o services		miles	\$37,651.00	0	\$0
			dvp	trailhead w/parking/restrooms		stall	\$6,549.43	0	\$0
									\$1,980,199

RESOURCE PARKS

high	City Park	lcl	acq	acquire adjacent property		acres	\$75,757.00	2.0	\$150,282
			dvp	trail-class 5 w/o services		miles	\$14,359.00	0.25	\$3,590
high	City Park Extension	lcl	acq	acquire east of Wheeler Street		acres	\$100,000.00	1.1	\$110,000
high	Gig Harbor Marine Park	rgl	plan	master plan harbor use		plan	\$50,000.00	1	\$50,000
high	Jerisich Park	rgl	dvp	dock extension/vessel pump-out		sq ft	\$32.00	1050	\$33,600
			acq	acquire Skanskia property		acres	\$1,166,666.67	1.5	\$1,750,000
			dvp	restore net shed		sq ft	\$50.00	3752	\$187,600
			dvp	develop picnic facilities		table	\$3,400.00	5	\$17,000
low	WWTP	lcl	acq	acquire adjacent properties		acre	\$8,240.00	11.5	\$94,760
low	Wheeler Street-end	lcl	dvp	picnic facilities w/o services		table	\$3,400.00	0	\$0
									\$2,398,812

TRAIL SYSTEMS

high	Harbor Ferry Landing	rgl	dvp	view platform w/access		sq ft	\$850.00	240	\$204,000
high/mod	Harbor Ridge MS	lcl	dvp	trail-multi w/o services		miles	\$189,450.00	0.05	\$8,611
			dvp	overlook platform w/picnic		sq ft	\$50.00	200	\$10,000
low/mod	Harbor Heights	lcl	dvp	trail-multi w/o services		miles	\$189,450.00	0.14	\$25,834
			dvp	overlook w/picnic		sq ft	\$32.00	200	\$6,400
low	Lagoon/Narrows Trail	rgl	acq	trail use rights		plan	\$15,000.00	1	\$15,000
			dvp	trail-multi w/o svcs-UGA		miles	\$87,447.00	5.5	\$476,984
			dvp	trailhead w/parking/sanican		stall	\$2,440.27	30	\$73,208
mod/high	SR-16 Mtn Bike Trail	lcl	dvp	mtn bike 1-w/o svcs UGA		miles	\$14,683.00	1.8	\$26,696
low	Pioneer/Harborview Pla	lcl	dvp	streetscape		sq ft	\$12.00	12,000	\$144,000
low	Water Trailheads	rgl	acq	water trailhead w/svs		site	\$22,304.00	0.5	\$11,152
									\$1,001,835

ATHLETIC FIELDS

high	City Park	lcl	acq	acquire adjacent property		acres	\$25,000.00	11.9	\$297,521
high	Gig Harbor North	lcl	acq	acquire community park site	SEPA	acres	\$0.00	20	\$0
high	Tallman Park	lcl	acq	acquire community park site	SEPA	acres	\$0.00	20	\$0
high	Skateboard Court	lcl	dvp	develop skateboard facility		each	\$50,000.00	1	\$50,000
high	Harbor Ridge MS	rgl	plan	master plan site rcn uses		plan	\$15,000.00	1	\$15,000
high	Henderson Alt/PLC	rgl	plan	master plan site rcn uses		plan	\$25,000.00	1	\$25,000
high	GHPSD school sites	lcl	plan	master plan site rcn uses		plan	\$15,000.00	1	\$15,000
									\$402,521

COMMUNITY/RECREATION CENTER

high	GLC/Henderson Alt	rgl	plan	master plan facilities		plan	\$50,000.00	1	\$50,000
high	Harbor Ridge MS	rgl	plan	master plan facilities		plan	\$10,000.00	1	\$10,000
			dvp	renovate building		sq ft	\$25.00	3000	\$75,000
mod	City Park	lcl	acq	acquire Mason's Building		each	\$50,000.00	1	\$50,000
									\$185,000

TOTAL

\$5,968,417





*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MARK HOPPEN, CITY ADMINISTRATOR** *MH*  
**SUBJECT: DEFINITIONS FOR CONCURRENCY AND IMPACT FEE**  
**ORDINANCES**  
**DATE: MARCH 15, 1999**

**INFORMATION/BACKGROUND**

The Concurrency Ordinance and Transportation and Parks Impact Fee Ordinance proposed along with this ordinance require supporting definitions. This ordinance has been crafted by Legal Counsel to meet this need.

**RECOMMENDATION**

Staff recommends that this ordinance be passed at the same reading as the other two ordinances.

ORDINANCE No. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO CONCURRENCY AND IMPACT FEES, SETTING FORTH THE DEFINITIONS TO BE USED FOR BOTH THE CITY'S CONCURRENCY ORDINANCE (CHAPTER 19.10 GHMC) AND THE TRANSPORTATION IMPACT FEE ORDINANCE (CHAPTER 19.12 GHMC), ADDING A NEW CHAPTER 19.14 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City is required by law to adopt a Concurrency Ordinance for transportation facilities; and

WHEREAS, the City is authorized by RCW 82.02.050 through 82.02.100 to impose impact fees on development activities by ordinance; and

WHEREAS, the City Council will consider Concurrency and Transportation Impact Fee Ordinances for adoption; and

WHEREAS, the definitions in this ordinance relate to the Concurrency and Transportation Impact Fee Ordinances;

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

Section 1. A new chapter 19.14 shall be added to the Gig Harbor Municipal Code, to read as follows:

## CONCURRENCY AND IMPACT FEE DEFINITIONS

**Definitions.** The following words and terms shall have the following meanings for the purpose of chapter 19.10 GHMC, the Concurrency Ordinance, and chapter 19.12 GHMC, the Transportation Impact Fee Ordinance, unless the context clearly appears otherwise. Terms otherwise not defined herein shall be given the meaning set forth in RCW 82.02.090, or given their usual and customary meaning

1. "Act:" The Growth Management Act, Chapter 36.70A RCW, or as hereinafter amended.
2. "Adequate public facilities:" Facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.
3. "Approving Authority:" The City employee, agency or official having authority to issue the approval or permit for the Development Activity involved.
4. "Available public facilities:" Facilities are in place, or a financial commitment has been made to provide the facilities, within six years.
5. "Capacity:" The ability of a public facility to accommodate users, expressed in an appropriate unit of measure, such as average daily trip ends within the LOS standards for the facility.
6. "Capacity, Available:" Capacity in excess of current demand ("Used Capacity") for a specific public facility which can be encumbered, reserved, or committed or the difference between capacity and current demand ("Used Capacity").
7. "Capacity, Reserved:" Capacity which has been reserved through use of the capacity reservation certificate process in chapter 19.10 GHMC.
8. "Capacity, Encumbered:" A reduction in the available capacity resulting from issuance of a capacity reservation certificate or that portion of the available capacity.
9. "Capacity Evaluation:" The evaluation by the Director based on adopted LOS standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development, as defined in chapter 19.10 or chapter 19.12 GHMC.

10. "Capacity Reservation Certificate:" (preliminary "PCRC") means a determination made by the Director that (1) a proposed development activity or development phase will be concurrent with the applicable facilities at the time the PCRC is issued; and (2) the Director has reserved road capacity for an application for a period of 120 days or until the City makes a final decision on the underlying permit or approval, whichever is later, as long as the applicant submits a completed application within 120 days of receiving the PCRC.

11. "Capacity Reservation Certificate:" (final "FCRC") means a capacity reservation certificate that allows a developer to reserve road facility capacity for one, two or three years.

12. "Capital Facilities:" The facilities or improvements included in a capital facilities plan.

13. "Capital Facilities Plan:" The capital facilities plan element of the City's comprehensive plan adopted pursuant to Chapter 36.70A RCW and RCW 36.70A.070, and any amendments to the plan.

14. "Change of Use:" For the purposes of this Title, any change, redevelopment or modification of use of an existing building or site, which meets the definition of "Development Activity" herein.

15. "City:" The City of Gig Harbor, Washington.

16. "Comprehensive land use plan" or "comprehensive plan:" A generalized coordinated land use policy statement of the City Council, adopted pursuant to Chapter 36.70A RCW.

17. "Concurrent with Development:" means that strategies or improvements are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six (6) years. See RCW 36.70A.090(6).

18. "Council:" the City Council of the City of Gig Harbor.

19. "County:" Pierce County, Washington.

20. "Dedication:" Conveyance of land to the City for public facility purposes by deed, other instrument of conveyance or by dedication, on a duly filed and recorded plat or short plat.

21. "Demand management strategies:" Strategies aimed at changing travel behavior rather than at expanding or improving the transportation network to meet travel demand. Such strategies can include the promotion of work hour changes, ride-sharing options, parking policies and telecommuting.

22. "Department:" The Public Works Department of the City of Gig Harbor.
23. "Developer:" Any person or entity who makes application or receives a development permit or approval for any development activity as defined herein.
24. "Development Activity" or "Development:" Any construction or expansion of a building, structure, or use; any change in the use of a building or structure, or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the City.
25. "Development Agreement:" The agreements authorized in RCW 36.70B.210 and Concurrency Resolution Agreements, as described in chapter 19.10 of the Gig Harbor Municipal Code Sections.
26. "Development Permit" or "project permit:" Any land use permit required by the City for a project action, including but not limited to: building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional use, shoreline substantial developments, site plan review, or site specific rezones, and, for purposes of the City's Concurrency Ordinance, shall include applications for amendments to the City's comprehensive plan which request an increase in the extent or density of development on the subject property.
27. "Director:" The Director of the Gig Harbor Public Works Department or his/her authorized designee.
28. "Existing Use:" Development which physically exists or for which the owner holds a valid building permit as of the effective date of this ordinance.
29. "Encumbered:" To reserve, set aside or otherwise earmark the impact fees in order to pay for commitments, contractual obligations or other liabilities incurred for public facilities.
30. "Fair Market Value:" The price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller each being prudently knowledgeable, and assuming the price is not affected by undue stimulus, measured at the time of the dedication to the City.
31. "Feepayer:" A person, corporation, partnership, an incorporated association, or department or bureau of any governmental entity, or any other similar entity, commencing a land development activity. "Feepayer" includes an applicant for an impact fee credit.

32. "Financial commitment:" Those sources of public or private funds or combinations thereof that have been identified as sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

33. "Growth-Related:" A Development Activity as defined herein that increases the level of service of a public facility.

34. "Impact Fee:" The amount of money determined necessary by the City and imposed upon new development activity as a condition of development approval or permitting to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates the additional demand and need for public facilities proportionate to the development's share of the cost of the public facilities and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

35. "Impact Fee Account(s)" or "Account(s):" The account(s) established for each type of public facilities for which impact fees are collected. The Accounts shall be established pursuant to Section 8 of this title, and comply with the requirements of RCW 82.02.070.

36. "Impact Fee Schedule:" The table of impact fees per unit of development, which is to be used by the Director in computing impact fees

37. "Interest:" The interest rate earned by the City for the impact fee account, if not otherwise defined.

38. "Interlocal Agreement" or "Agreement:" The transportation impact fee interlocal agreement by and between the City and the County, and the transportation impact fee interlocal agreement by and between the City and the State concerning the collection and allocation of road impact fees as authorized in Sections 4 and 5 herein, or any other interlocal agreement entered by and between the City and another municipality, public agency or governmental body to implement the provisions of this title.

39. "Level of Service" or "LOS:" An established minimum functional level of public facilities that must be provided per unit of demand or other appropriate measure of need.

40. "Owner:" The owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

41. "Previous Use:" (a) The use existing on the site when a capacity evaluation is sought; or (b) The most recent use on the site, within the five (5) year period prior to the date of application.

#### DEFINITIONS

Rev. February 17, 1999

42. "Project:" A System Improvement, selected by the Gig Harbor City Council for joint private and public funding pursuant to this ordinance and which appears on the Project List.

43. "Project Improvements:" Site improvements and facilities that are planned and designed to provide service for a particular development or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the Council shall be considered a project improvement.

44. "Project List:" The list of Projects described in the City's annual and 6-Year Capital Improvement Program and as developed pursuant to the City's impact fee ordinance.

45. "Proportionate Share:" That portion of the cost of public facility improvements that are reasonably related to demands and needs of new development.

46. "Road:" A right-of-way which affords the principal means of access to abutting property, including an avenue, place, way, drive, lane, boulevard, highway, street, and other thoroughfare, except an alley.

47. "Road facilities:" Includes public facilities related to land transportation.

48. "Semi-Annual Capacity Availability Report:" The report prepared on or by February 1 and September 1 of each year for the previous six (6) month period to include capacity used and projected capacity demand for the next six (6) month period, indicating available and projected capacity for each public facility, and identifying those programmed capital improvements for each public facility that will correct deficiencies or improve level of service standards, summary of development activity, and recommendations.

49. "Service Area:" A geographic area defined by the City or interlocal agreement, in which a defined set of public facilities provide service to development in the area.

50. "State:" The State of Washington.

51. "Subdivision:" All subdivisions as defined in Gig Harbor Municipal Code Title 16, and all short subdivisions as defined in Title 16, which are subject to SEPA, Chapter 42.21C RCW and the Gig Harbor SEPA Ordinance, Title 18.

52. "System Improvements:" Public facilities that are included in Gig Harbor's capital facilities plan and are designed to provide service to areas within the City and community at large, in contrast to Project or On-site Improvements.

53. "Traffic Analysis Zone:" The minimum geographic unit used for traffic analysis .

54. "Transportation Primary Impact Area:" A geographically determined area that delineates the impacted area of a deficient roadway link.

55. "Transportation level of service standards:" Aa measure which describes the operational condition of the travel stream and acceptable adequacy requirement.

56. "Transportation Management Area:" A geographically determined area that contains compact urban development patterns where a dense roadway network and extensive mass transit services are in place. The performance of these areas shall be based on the percentage of lane miles meeting the adopted LOS standards as described in this Ordinance.

57. "Traffic Demand Model:" Describes the simulation through computer modeling of vehicle trip ends assigned on the roadway network.

58. "Trip Allocation Program:" The program established to meter trip ends to new development annually by Service Area and traffic analysis zone to ensure that the City is maintaining adopted LOS standards.

59. "Trip End:" A single or one-directional vehicle movement.

60. "Unit" or "Dwelling Unit:" A dwelling unit as defined in Gig Harbor Municipal Code Section 17.04.320.

**Section 2. Severability.** If any portion, sentence or clause of this ordinance is found by a court of competent jurisdiction to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other portion, sentence or clause.

**Section 3. Effective Date.** This ordinance shall be in full force and effect five (5) days after its passage and publication of a summary, as required by law.

APPROVED:

\_\_\_\_\_  
Mayor Gretchen A. Wilbert



**ATTEST/AUTHENTICATED:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Carol A. Morris, City Attorney

**FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:**





City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: DAVID RODENBACH** *DR*  
**DATE: MARCH 15, 1999**  
**SUBJECT: ORDINANCE FORMING A LOCAL IMPROVEMENT DISTRICT FOR THE CONSTRUCTION OF THE EAST-WEST ROAD**

**INTRODUCTION**

This ordinance establishes a local improvement district (LID) for construction of the East-West Road.

**FINANCIAL**

The estimated funding provided by the LID is approximately \$1.7 million. The proposed, preliminary distribution of these costs among participants is presented below.

<b>Number</b>	<b>Property Owner</b>	<b>Parcel Number</b>	<b>75% Acreage + 25% Frontage</b>	<b>Allocated Cost</b>
1	Ballinger Corp.	122361069	4.29%	\$ 72,234.52
2	Ballinger Corp.	222303001	7.57%	127,637.25
3	Bingham, Quinby R.	222303002	5.61%	94,457.93
4	Ballinger Corp.	222303004	2.82%	47,583.38
5	Ballinger Corp.	222303006	2.84%	47,863.80
6	Olympic Resource Mgt.	222304000	19.81%	333,779.90
7	Olympic Resource Mgt.	222311000	17.39%	293,003.09
8	Olympic Resource Mgt.	222311001	19.86%	334,611.26
9	Olympic Resource Mgt.	222312000	11.29%	190,230.48
10	Ballinger Corp.	222312002	6.76%	113,960.75
11	Ballinger Corp.	222312003	1.76%	29,637.66
<b>TOTALS</b>			<b>100.00%</b>	<b>1,685,000.00</b>
<b>Property Owner</b>				
Ballinger Corp.				438,917.35
Bingham, Quinby R.				94,457.93
Olympic Res. Mgt.				1,151,624.72
<b>TOTAL</b>				<b>\$ 1,685,000.00</b>

**RECOMMENDATION**

Staff recommends passage of this ordinance after a second reading.

**CITY OF GIG HARBOR**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ORDERING CERTAIN LOCAL IMPROVEMENTS AND CREATING A LOCAL IMPROVEMENT DISTRICT; PROVIDING FOR THE PAYMENT OF THE COST OF SUCH IMPROVEMENTS BY SPECIAL ASSESSMENTS; AND PROVIDING FOR THE ISSUANCE AND SALE OF LOCAL IMPROVEMENT DISTRICT BONDS AND INTERIM FINANCING WARRANTS OR NOTES.**

**WHEREAS**, on February 22, 1999, the City Council of the City of Gig Harbor, Washington (the "City") adopted resolution No. 528 declaring its intention to order certain local improvements within the City and to create a local improvement district; and

**WHEREAS**, the proposed improvements are within the transportation element of the comprehensive plan of the City, as amended; and

**WHEREAS**, an environmental review of the proposed improvements has been undertaken; and

**WHEREAS**, a hearing was held on March 22, 1999, after notice as provided by law, and after discussion of the proposed improvements and due consideration thereof and of all objections thereto, the Council has determined to order the local improvements described below and to create a local improvement district; and

**WHEREAS**, estimates of the costs and expenses of the proposed improvements, a description of the boundaries of the district, a statement of what portion of the costs and expenses of the improvements would be borne by the property within the proposed district, and a diagram showing the lots, tracts and parcels to be benefited and other information pertaining to the proposed district, have been filed with the City Clerk and certified to the City Council;

**NOW, THEREFORE**, the City Council of the City of Gig Harbor, Washington **ORDAINS** as follows:

Section 1. The City shall acquire, construct and install the following improvements within the following described areas of the City:

Phase 1 will construct a single lane roundabout intersection connecting the proposed East -- West Road, Canterwood Boulevard, Burnham Drive, the northbound ramps to and from State Route 16. The remainder of the Phase 1 project will provide two travel lanes, storm drainage improvements (incl. Storm water detention and water quality facilities), and curb, gutter, planter strips, and a sidewalk on the south side extending east from the roundabout to Peacock Hill Avenue. Additional improvements include wetland mitigation, and provisions for lighting and underground utilities. Anticipated features for the Phase 2 fully developed street section include a landscaped median with left-turn pockets, architectural lighting, water, sanitary sewer, storm sewer, and a bicycle lane, curb, gutter and sidewalk on each side.

The foregoing improvements are hereafter referred to as the "Improvements."

Section 2. The plans and specifications, which are 65% complete, for the Improvements, as prepared by the Public Works Department, and now on file in the City Clerk's office, are hereby adopted and approved. The Improvements, when completed, shall be in accordance with said plans, the provisions of this ordinance and any other ordinances as hereafter may be adopted in connection herewith; provided, however, that changes in detail of such plans that do not significantly alter the scope or costs of the Improvements will not require further approval.

Section 3. There is hereby established a local improvement district of the City to be known as "Local Improvement District No. 1" (herein referred to as "LID No. 1"). The boundaries of LID No. 1 shall be as described in Exhibit A attached hereto and incorporated by this reference.

It is hereby found that the above-described boundaries embrace as nearly as practicable all the property specially benefited by the Improvements.

Section 4. The total cost and expense of the Improvements thereto is estimated to be \$2,800,000, of which 60% shall be borne by and assessed against the property within LID No. 1 specially benefited by the Improvements. Assessments shall be made against the property within LID No. 1 in accordance with the special benefits accruing to such property.

Section 5. Upon completion of the Improvements, an assessment roll shall be prepared and, after notice and hearing in the manner provided by law, an assessment roll shall be confirmed. Assessments not paid within the 30-day prepayment period provided by law shall be payable in installments and the City shall issue improvement district bonds payable from such unpaid installments. The number of years said installments shall run, the dates of payment of the same and the rate of interest that the unpaid installments shall bear shall be as hereafter fixed by ordinance.

Section 6. There is hereby created a fund of the City to be known as the "Local Improvement District No. 1 Fund" for the purpose of paying the cost of the

Improvements provided for in this ordinance and into which there shall be paid all of the assessments collected in LID No. 1 as and when directed by the ordinance confirming the assessment roll. All moneys received from the sale of bonds, notes and warrants drawn on the LID No. 1 Fund shall be deposited into said Fund, and applied solely in payment of the costs and expenses of the improvements.

Section 7. Pending the issuance of local improvement district bonds, the City may, for the purpose of meeting any and all costs and expenses of constructing the Improvements for which funds are not otherwise available, as the same are installed prior to the sale of the bonds, issue interim financing warrants against the LID No. 1 Fund, or issue local improvement district bond anticipation notes pursuant to RCW 39.50, bearing interest at such rate or rates and with such terms as may hereafter be established by the Council by ordinance. Such interim warrants or notes, together with the interest due thereon to the date of delivery of the bonds, shall be redeemed and retired from the proceeds of the sale of local improvement district bonds or prepayments of assessments. Such warrants or notes shall be issued in an aggregate principal amount not in excess of the cost and expense of the improvements.

Section 8. This ordinance shall be published in the official newspaper of the city, and shall take effect and be in full force five(5) days after the date of its publication.

**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 22 day of March, 1999.

---

Gretchen A. Wilbert, Mayor

ATTEST:

---

Molly Towslee  
City Clerk

Filed with city clerk:  
Passed by the city council:  
Date published:  
Date effective:

## EXHIBIT A

### LEGAL DESCRIPTION FOR PROPOSED LID:

The North half of the Northeast quarter, the Northeast quarter of the Northwest quarter, and the North half of the Northwest quarter of the Northwest quarter, of Section 31, Township 22 North, Range 2 East, W.M., Pierce County, Washington.

EXCEPT a tract of land bounded and described as follows:

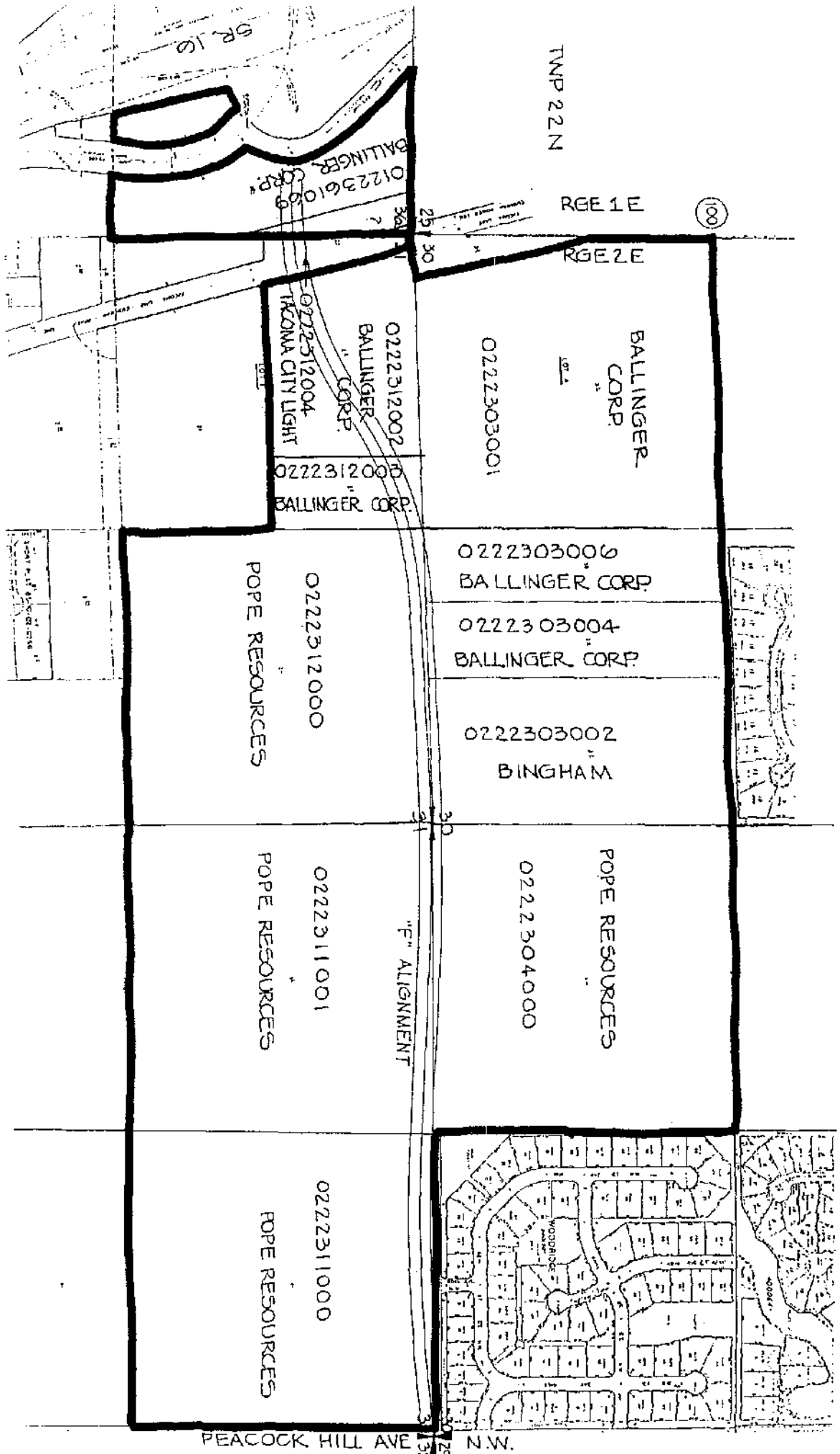
Beginning at the Northwest corner of Section 31, Township 22 North, Range 2 East of the W.M.; running thence East 54 feet; thence South 14 degrees 49 feet East 679 feet to the South line of the North half of the Northwest quarter of the Northwest quarter of said Section 31; thence West 238 feet to the Section line; thence North along the same 666 feet to the beginning containing 2.23 acres.

The Southwest quarter of the Southeast quarter; the South half of the Southwest quarter of Section 30, Township 22 North, Range 2 East, W.M., Pierce County, Washington.

EXCEPT the following described property:

Beginning at the Southwest corner of Section 30, Township 22 North, Range 2 East of the W.M., run, thence North on Section line 7792 feet; thence South 14 degrees 49 minutes East 819 feet to the South line of the Southwest quarter of the Southwest quarter of the Southwest quarter of said Section 30; thence West along the same, 209 feet to the beginning, conveyed to the City of Tacoma by Deed recorded under Recording No. 675729, records of Pierce County, Washington.

The East half of the Northeast quarter of the Northeast quarter of Section 36 within Township 22 North, Range 1 East, W.M., Pierce County, Washington. EXCEPT that portion conveyed to the State of Washington for State Road No. 16 MP 8.34 to MP 18.87 Narrows Bridge to Olympic Drive, as described in Deed recorded under Recording No. 2397369. Also EXEPT Canterwood Boulevard – Burnham Drive City Streets.



TMP 22 N

RGE 1 E

108

RGE 2 E

0122361009  
BALLINGER CORP

0222312002  
BALLINGER CORP  
0222312004  
"IKOMA CITY LIGHT"  
CORP  
0222312008  
BALLINGER CORP

0222303001  
BALLINGER CORP

0222303006  
BALLINGER CORP

0222303004  
BALLINGER CORP

0222303002  
BINGHAM

0222312000  
POPE RESOURCES

0222304000  
POPE RESOURCES

0222311001  
POPE RESOURCES

"F" ALIGNMENT

0222311000  
POPE RESOURCES

PEACOCK HILL AVE N.W.





*City of Gig Harbor Police Dept.*  
3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-2236

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: MITCH BARKER** *MB*  
**SUBJECT: COMMUNICATIONS MAINTENANCE CONTRACT**  
**DATE: MARCH 9, 1999**

#### **INFORMATION/BACKGROUND**

The Police Department and Public Works Department have used the services of the Pierce County radio shop for communications maintenance for a number of years. This is a year-to-year contract and requires renewal to continue. The renewal date was January 1, 1999. The County was late in sending out the renewal contracts so there has been a delay in presenting these copies. We have asked the County to consolidate these two contracts for 2000, which they will do. This will streamline future contracts.

#### **FISCAL IMPACTS**

The rates quoted in the submitted contracts were used in our budget planning for 1999.

#### **RECOMMENDATION**

The Police and Public Works Departments recommend that the Council authorize the Mayor to renew the contract with Pierce County for communications maintenance services for 1999.



Pierce County

Department of Emergency Management

TIM LENK  
Supervisor

COMMUNICATIONS DIVISION  
2403 South 35th Street  
Tacoma, Washington 98409  
(253) 798-7147 FAX (253) 472-5565

# MEMO

**To:** All Contracting Agencies  
**From:** Gretchen O'Connor *Gretchen*  
**Subject:** Renewal of Contract -- 1999  
**Date:** January 7, 1999

Please find enclosed two copies of contracts for radio communications work to be performed for 1999. If you wish to contract with us for this year, please sign both copies, retain one copy for your file, and return one signed copy to us in the enclosed self addressed envelope.

Should you have any questions or require additional information, please do not hesitate to contact us. We can be reached Monday - Friday during business hours of 7:00 a.m. to 3:30 p.m. We look forward to working with you.

Enc.



## **AGREEMENT FOR COMMUNICATIONS MAINTENANCE PROGRAM**

AGREEMENT made January 1, 1999, between PIERCE COUNTY, herein referred to as "County", and CITY OF GIG HARBOR - PD referred to as GIG HARBOR - PD.

### SECTION I. THE PARTIES

This is a communications maintenance and installation program contract between GIG HARBOR - PD and PIERCE COUNTY.

### SECTION II. TERM OF AGREEMENT - TERMINATION

This agreement shall commence as of January 1, 1999 and terminate on December 31, 1999. Either party may terminate this agreement upon thirty (30) days written notice.

### SECTION III. OBLIGATIONS OF COUNTY

- A. All maintenance, repair, installation, engineering, and upgrading of GIG HARBOR - PD's radio communications system previously agreed to or requested in writing by GIG HARBOR - PD shall be carried out by County, according to schedules or arrangements to be negotiated by the parties giving due consideration to the immediacy of the need and the workload of the County.
- B. On notice from GIG HARBOR - PD, County shall make any repairs necessitated by normal wear and tear resulting from normal operation, whenever such repairs are required for safe and proper operation of radio system unit.
- C. County and its agents and representatives shall at all reasonable times be given access to the radio system unit for the purpose of inspecting, altering, repairing, improving or adding to or removing the same.
- D. The described work on base station and associated equipment will be done on site. Work on all equipment, including portables, will be performed at the County radio shop, which shall include installation of radio equipment in all GIG HARBOR - PD's vehicles.

### SECTION IV. FEES

GIG HARBOR - PD Shall reimburse the County for its services described above, at the rate of Seventy-Five (\$75.00) Dollars per hour from 7:30 a.m. through 3:00 p.m., plus time and one-half or double time adjustments required by law, where performed outside these hours as authorized by GIG HARBOR - PD. In addition, the County shall be reimbursed its cost plus 20% for all materials and parts provided by County, except that prior written authorization by GIG HARBOR - PD shall be required for materials or parts in excess of Five Hundred (\$500) Dollars. Payment shall be made by GIG HARBOR - PD within thirty (30) days of presentation of invoice, listing time, parts and materials by the County.

SECTION V. INDEMNITY

Notwithstanding anything to the contrary contained in this agreement, GIG HARBOR -PD shall not be responsible or liable in any manner whatsoever for, and the County shall indemnify GIG HARBOR -PD against any and all claims, suits, damages, costs or expenses arising from or growing out of, or caused directly or indirectly by any defect or error in, or any negligence or error, in connection with the installation, maintenance, engineering or upgrading of the radio system unit performed by the County, except for the sole negligence of GIG HARBOR -PD. The County will not be responsible for claims arising out of the Antenna Supporting Structures.

SECTION VI. ASSIGNABILITY

This agreement shall not be assigned by County without the written consent of GIG HARBOR - PD. If this agreement is assigned without GIG HARBOR - PD's written consent either by act of County or by operation of law, it shall thereupon terminate subject to the provisions hereinbefore set forth.

SECTION VII. GOVERNING LAW

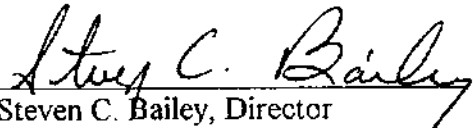
This agreement shall be governed by and construed under the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

CITY OF GIG HARBOR - PD

PIERCE COUNTY

BY: \_\_\_\_\_  
Authorized Signatory

  
Steven C. Bailey, Director  
Department of Emergency Management  
Radio Communications Division

## **AGREEMENT FOR COMMUNICATIONS MAINTENANCE PROGRAM**

AGREEMENT made January 1, 1999, between PIERCE COUNTY, herein referred to as "County", and CITY OF GIG HARBOR - PD referred to as GIG HARBOR - PD.

### SECTION I. THE PARTIES

This is a communications maintenance and installation program contract between GIG HARBOR - PD and PIERCE COUNTY.

### SECTION II. TERM OF AGREEMENT - TERMINATION

This agreement shall commence as of January 1, 1999 and terminate on December 31, 1999. Either party may terminate this agreement upon thirty (30) days written notice.

### SECTION III. OBLIGATIONS OF COUNTY

- A. All maintenance, repair, installation, engineering, and upgrading of GIG HARBOR - PD's radio communications system previously agreed to or requested in writing by GIG HARBOR - PD shall be carried out by County, according to schedules or arrangements to be negotiated by the parties giving due consideration to the immediacy of the need and the workload of the County.
- B. On notice from GIG HARBOR - PD, County shall make any repairs necessitated by normal wear and tear resulting from normal operation, whenever such repairs are required for safe and proper operation of radio system unit.
- C. County and its agents and representatives shall at all reasonable times be given access to the radio system unit for the purpose of inspecting, altering, repairing, improving or adding to or removing the same.
- D. The described work on base station and associated equipment will be done on site. Work on all equipment, including portables, will be performed at the County radio shop, which shall include installation of radio equipment in all GIG HARBOR - PD's vehicles.

### SECTION IV. FEES

GIG HARBOR - PD Shall reimburse the County for its services described above, at the rate of Seventy-Five (\$75.00) Dollars per hour from 7:30 a.m. through 3:00 p.m., plus time and one-half or double time adjustments required by law, where performed outside these hours as authorized by GIG HARBOR - PD. In addition, the County shall be reimbursed its cost plus 20% for all materials and parts provided by County, except that prior written authorization by GIG HARBOR - PD shall be required for materials or parts in excess of Five Hundred (\$500) Dollars. Payment shall be made by GIG HARBOR - PD within thirty (30) days of presentation of invoice, listing time, parts and materials by the County.

SECTION V. INDEMNITY

Notwithstanding anything to the contrary contained in this agreement, GIG HARBOR -PD shall not be responsible or liable in any manner whatsoever for, and the County shall indemnify GIG HARBOR -PD against any and all claims, suits, damages, costs or expenses arising from or growing out of, or caused directly or indirectly by any defect or error in, or any negligence or error, in connection with the installation, maintenance, engineering or upgrading of the radio system unit performed by the County, except for the sole negligence of GIG HARBOR -PD. The County will not be responsible for claims arising out of the Antenna Supporting Structures.

SECTION VI. ASSIGNABILITY

This agreement shall not be assigned by County without the written consent of GIG HARBOR - PD. If this agreement is assigned without GIG HARBOR - PD's written consent either by act of County or by operation of law, it shall thereupon terminate subject to the provisions hereinbefore set forth.

SECTION VII. GOVERNING LAW

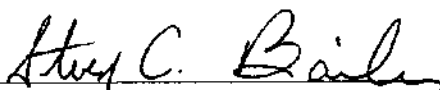
This agreement shall be governed by and construed under the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

CITY OF GIG HARBOR - PD

PIERCE COUNTY

BY: \_\_\_\_\_  
Authorized Signatory

  
Steven C. Bailey, Director  
Department of Emergency Management  
Radio Communications Division

## **AGREEMENT FOR COMMUNICATIONS MAINTENANCE PROGRAM**

AGREEMENT made January 1, 1999, between PIERCE COUNTY, herein referred to as "County", and CITY OF GIG HARBOR - PW referred to as GIG HARBOR - PW.

### SECTION I. THE PARTIES

This is a communications maintenance and installation program contract between GIG HARBOR -PW and PIERCE COUNTY.

### SECTION II. TERM OF AGREEMENT - TERMINATION

This agreement shall commence as of January 1, 1999 and terminate on December 31, 1999. Either party may terminate this agreement upon thirty (30) days written notice.

### SECTION III. OBLIGATIONS OF COUNTY

- A. All maintenance, repair, installation, engineering, and upgrading of GIG HARBOR -PW's radio communications system previously agreed to or requested in writing by GIG HARBOR -PW shall be carried out by County, according to schedules or arrangements to be negotiated by the parties giving due consideration to the immediacy of the need and the workload of the County.
- B. On notice from GIG HARBOR -PW, County shall make any repairs necessitated by normal wear and tear resulting from normal operation, whenever such repairs are required for safe and proper operation of radio system unit.
- C. County and its agents and representatives shall at all reasonable times be given access to the radio system unit for the purpose of inspecting, altering, repairing, improving or adding to or removing the same.
- D. The described work on base station and associated equipment will be done on site. Work on all equipment, including portables, will be performed at the County radio shop, which shall include installation of radio equipment in all GIG HARBOR -PW's vehicles.

### SECTION IV. FEES

GIG HARBOR - PW Shall reimburse the County for its services described above, at the rate of Seventy-Five (\$75.00) Dollars per hour from 7:30 a.m. through 3:00 p.m., plus time and one-half or double time adjustments required by law, where performed outside these hours as authorized by GIG HARBOR -PW. In addition, the County shall be reimbursed its cost plus 20% for all materials and parts provided by County, except that prior written authorization by GIG HARBOR -PW shall be required for materials or parts in excess of Five Hundred (\$500) Dollars. Payment shall be made by GIG HARBOR -PW within thirty (30) days of presentation of invoice, listing time, parts and materials by the County.

SECTION V. INDEMNITY

Notwithstanding anything to the contrary contained in this agreement, GIG HARBOR - PW shall not be responsible or liable in any manner whatsoever for, and the County shall indemnify GIG HARBOR - PW against any and all claims, suits, damages, costs or expenses arising from or growing out of, or caused directly or indirectly by any defect or error in, or any negligence or error, in connection with the installation, maintenance, engineering or upgrading of the radio system unit performed by the County, except for the sole negligence of GIG HARBOR - PW. The County will not be responsible for claims arising out of the Antenna Supporting Structures.

SECTION VI. ASSIGNABILITY

This agreement shall not be assigned by County without the written consent of GIG HARBOR -PW. If this agreement is assigned without GIG HARBOR -PW's written consent either by act of County or by operation of law, it shall thereupon terminate subject to the provisions hereinbefore set forth.

SECTION VII. GOVERNING LAW


This agreement shall be governed by and construed under the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

CITY OF GIG HARBOR -PW

PIERCE COUNTY

BY: \_\_\_\_\_  
Authorized Signatory

  
Steven C. Bailey, Director  
Department of Emergency Management  
Radio Communications Division



# AGREEMENT FOR COMMUNICATIONS MAINTENANCE PROGRAM

AGREEMENT made January 1, 1999, between PIERCE COUNTY, herein referred to as "County", and CITY OF GIG HARBOR - PW referred to as GIG HARBOR - PW.

## SECTION I. THE PARTIES

This is a communications maintenance and installation program contract between GIG HARBOR -PW and PIERCE COUNTY.

## SECTION II. TERM OF AGREEMENT - TERMINATION

This agreement shall commence as of January 1, 1999 and terminate on December 31, 1999. Either party may terminate this agreement upon thirty (30) days written notice.

## SECTION III. OBLIGATIONS OF COUNTY

- A. All maintenance, repair, installation, engineering, and upgrading of GIG HARBOR -PW's radio communications system previously agreed to or requested in writing by GIG HARBOR -PW shall be carried out by County, according to schedules or arrangements to be negotiated by the parties giving due consideration to the immediacy of the need and the workload of the County.
- B. On notice from GIG HARBOR -PW, County shall make any repairs necessitated by normal wear and tear resulting from normal operation, whenever such repairs are required for safe and proper operation of radio system unit.
- C. County and its agents and representatives shall at all reasonable times be given access to the radio system unit for the purpose of inspecting, altering, repairing, improving or adding to or removing the same.
- D. The described work on base station and associated equipment will be done on site. Work on all equipment, including portables, will be performed at the County radio shop, which shall include installation of radio equipment in all GIG HARBOR -PW's vehicles.

## SECTION IV. FEES

GIG HARBOR - PW Shall reimburse the County for its services described above, at the rate of Seventy-Five (\$75.00) Dollars per hour from 7:30 a.m. through 3:00 p.m., plus time and one-half or double time adjustments required by law, where performed outside these hours as authorized by GIG HARBOR -PW. In addition, the County shall be reimbursed its cost plus 20% for all materials and parts provided by County, except that prior written authorization by GIG HARBOR -PW shall be required for materials or parts in excess of Five Hundred (\$500) Dollars. Payment shall be made by GIG HARBOR -PW within thirty (30) days of presentation of invoice, listing time, parts and materials by the County.

SECTION V. INDEMNITY

Notwithstanding anything to the contrary contained in this agreement, GIG HARBOR - PW shall not be responsible or liable in any manner whatsoever for, and the County shall indemnify GIG HARBOR - PW against any and all claims, suits, damages, costs or expenses arising from or growing out of, or caused directly or indirectly by any defect or error in, or any negligence or error, in connection with the installation, maintenance, engineering or upgrading of the radio system unit performed by the County, except for the sole negligence of GIG HARBOR - PW. The County will not be responsible for claims arising out of the Antenna Supporting Structures.

SECTION VI. ASSIGNABILITY

This agreement shall not be assigned by County without the written consent of GIG HARBOR -PW. If this agreement is assigned without GIG HARBOR -PW's written consent either by act of County or by operation of law, it shall thereupon terminate subject to the provisions hereinbefore set forth.

SECTION VII. GOVERNING LAW

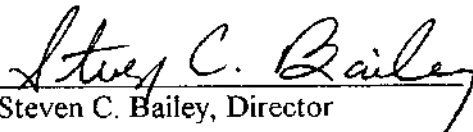
This agreement shall be governed by and construed under the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

CITY OF GIG HARBOR -PW

PIERCE COUNTY

BY: \_\_\_\_\_  
Authorized Signatory

  
Steven C. Bailey, Director  
Department of Emergency Management  
Radio Communications Division



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR**  
**SUBJECT: ENGINEERING STUDY - CONSULTANT SERVICES CONTRACTS**  
**DATE: MARCH 3, 1999**

#### **INTRODUCTION/BACKGROUND**

The National Pollutant Discharge Elimination System (NPDES) permit issued August 15, 1997 for the City's expanded wastewater treatment plant, and the September 30, 1997 settlement agreement with the Waste Action Project stipulate that the City perform an engineering study to evaluate discharge alternatives, including extension of the City's outfall outside Gig Harbor.

Section S12 of the NPDES permit requires that the City test the water quality in Gig Harbor two times per year at five separate locations. Sampling for all locations must be completed within a 24-hour period for each sampling event.

Following an advertisement for Statements of Qualifications, and telephone calls to six sanitary engineering firms, the six firms responded with statements of interest. Three firms subsequently declined further consideration due to other commitments, and the remaining three firms were interviewed. Based on the interviews, evaluation of materials submitted for review, and references, the consulting team led by Earth Tech, a civil/sanitary engineering firm, was selected as the most qualified to perform the work. Their selection was based on their understanding of the project, familiarity with the site and area, qualifications of their consultant team, and previous work for the City and other agencies.

Due to issues relating to Article XIII in the City's standard contract, and in order to reduce costs, separate contracts have been prepared for each of the consultant team. On February 22, 1999 Council authorized execution of a consultant services agreement with Earth Tech, as the lead consultant, for \$53,948. Their scope of services provides for evaluation of wastewater disposal and related treatment options, including water reuse and extension of the outfall outside the harbor.

A major component of the Engineering Study will be evaluation of potential outfall locations. The outfall and water quality evaluation will be performed primarily by Cosmopolitan Engineering Group of Tacoma. Jones and Stokes Associates, Inc., will focus on fisheries impacts related to the outfall, dispersion analysis for the outfall, environmental issues and documents, and public involvement.

The scope of services for Cosmopolitan Engineering Group includes the field and laboratory sampling and testing services for the 1999 receiving water quality program as required under Condition S12 of the NPDES permit. Cosmopolitan Engineering Group was selected based on

**MAYOR WILBERT AND CITY COUNCIL MEMBERS**

**MARCH 3, 1999**

**PAGE 2**

their previous work for the City, familiarity with the special water sampling and testing requirements, and working relationships with Department of Ecology staff.

**FISCAL CONSIDERATIONS**

Sufficient funds are available for this work.

**RECOMMENDATION**

I recommend that the Council authorize execution of the Consultant Services Contract with Cosmopolitan Engineering Group for the Wastewater Outfall Studies and the 1999 NPDES Permit Water Quality Studies, in an amount not to exceed sixty-nine thousand five-hundred seventy-five dollars and no cents (\$ 69,575.00).

I recommend that the Council authorize execution of the Consultant Services Contract with Jones and Stokes Associates, Inc., for the Gig Harbor Outfall Engineering Report, in an amount not to exceed twenty-five thousand one-hundred fifty-eight dollars and no cents (\$ 25,158.00).

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
COSMOPOLITAN ENGINEERING GROUP**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and **Cosmopolitan Engineering Group** organized under the laws of the State of Washington, located and doing business at 117 South 8<sup>th</sup> Street, Tacoma, Washington 98402(hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the preparation of an Engineering Study to satisfy **Special Condition S4.G of the National Pollutant Discharge Elimination System Permit, No. WA-002395-7**, issued for the City's wastewater treatment plant on August 15, 1997, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated **February 24, 1999**, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, 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:

**I. Description of Work**

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

**II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed **sixty-nine thousand five-hundred seventy-five dollars and no cents (\$69,575.00)** for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. **PROVIDED, HOWEVER**, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours** dated February 24, 1999. 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** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed within 280 calendar days of the execution of this Agreement; provided however, that additional time shall be granted by the City for excusable delays or extra work.

### **V. Termination**

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to one 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 provisions of this section shall survive the expiration or termination of this Agreement.

## VIII. Insurance

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

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

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

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

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

E. It is the intent of this contract for the Consultant's insurance to 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 in respect to the City. 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 notification will be given to the City of Gig Harbor for 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 Public Works Director and the City shall determine the term or provision's true intent or meaning. The City Public Works Director 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 Public Works Director'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:

William Fox, P.E.  
Cosmopolitan Engineering Group  
117 South 8<sup>th</sup> Street  
Tacoma, Washington 98402

Wes Hill, P.E.  
Director of Public Works  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

**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 \_\_\_\_\_, 19\_\_\_\_.

By: William Fox  
Its Principal

The City of Gig Harbor

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

Notices to be sent to:

CONSULTANT  
William Fox, P.E.  
Cosmopolitan Engineering Group  
117 South 8<sup>th</sup> Street  
Tacoma, Washington 98402

Wes Hill, P.E.  
Director of Public Works  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

\_\_\_\_\_  
Gig Harbor City Attorney

ATTEST:

\_\_\_\_\_  
Gig Harbor City Clerk

## **EXHIBIT A – SCOPE OF SERVICES**

### **City of Gig Harbor Wastewater Outfall Studies**

#### **Objectives**

This scope of work is intended to satisfy two objectives:

1. This scope will evaluate the feasibility and projected cost for a new outfall to the Tacoma Narrows, and the corresponding effluent treatment requirements. This work will be conducted concurrently and in coordination with wastewater facility planning by Earth Tech and Jones and Stokes, which are contracted separately with the City of Gig Harbor.
2. This scope also provides for water quality monitoring and reporting for 1999 as specified in the City's NPDES permit section S12.

#### **Outfall Alternatives Study in Support of Earth Tech's Wastewater Facility Planning**

The outfall alternatives analysis will be conducted for the proposed effluent flow range of 1.6 mgd, 3.5 mgd and 20-year projected flows. Earth Tech will utilize design flows developed under a separate effort (1999 Comprehensive Sanitary Sewer Plan Update) and conduct treatment plant evaluations in parallel with the outfall studies described in this scope of work.

The results of these wastewater disposal studies will be presented in an Appendix to Earth Tech's Facility Plan. The studies will also be conducted in consultation with the Washington State Departments of Ecology, Fish and Wildlife, Health and Natural Resources. At the conclusion of this scope of work, and if the outfall extension is selected by the City of Gig Harbor, this report will serve as the basis for subsequent permitting, SEPA documentation, predesign and design for the outfall improvements.

This scope of work is guided by the following Ecology policy documents:

- Criteria for Sewage Works Design (Orange Book), Chapter E2.42, Guidance for Marine Outfall Siting and Design, June 1998.
- NPDES Permit Writer's Manual, Appendix 6.1 Guidance for Conducting Mixing Zone Analyses, July 1998.
- Inter-Agency Permit Streamlining Document: Shellfish and Domestic Wastewater Discharge Outfall Projects, October 1995; and Municipal Outfall Siting Agreement Guidance for Shellfish Protection and Mitigation, February 1997.

#### **Task 1 – Project Management**

A Project Management Plan (PMP) and Sampling and Analysis Plan (SAP) will be developed for this study. The plans will outline responsibilities, methods, budgets and schedules for all work conducted under this scope of work. QA/QC procedures will be established. Anticipated quarterly status meetings with the City and Earthtech will also be conducted. Monthly status reports and invoicing are also included in this task.

### **Task 2 – Establish Future Flows and Loads**

This work will be completed by Earth Tech and supplied to Cosmopolitan Engineering Group.

### **Task 3 – Water Quality Impacts of Continued Effluent Discharge in Gig Harbor**

3.1 Mixing Zone Study. The mixing zone model parameters, including calculation of reflux, were established in the 1997 Mixing Zone Study Report completed under Section S9 of the NPDES permit. The existing mixing zone model will be updated for future effluent design flows, which will be used to calculate water quality-based NPDES toxicant limits. The toxicants to be studied include chlorine, ammonia, metals and whole effluent toxicity.

3.2 Nutrient Balance. This task will establish a preliminary mass balance of nitrogen sources in Gig Harbor based on existing water quality data and literature through February 1999. The measured nitrogen sources will include the treatment plant, Crescent and Donkey Creeks, and marine water from the Narrows. Other sources that will be estimated from literature include septic systems in East Gig Harbor, commercial and live-aboard vessels and the Puget Sound Herring net pens. The City will furnish the estimated number of commercial vessels, live-aboards and tributary homes served by septic systems.

### **Task 4 – Hydraulic Analysis**

This task will be conducted by Earth Tech.

### **Task 5 – Agency Coordination**

There are several regulatory agencies that will be consulted during this project. A joint project meeting will be scheduled with the key state and federal agencies early in the project to apprise them of the objectives, content and schedule for this study.

5.1 Department of Ecology. Ecology is the principal agency that will review the Engineering Report, approve of any outfall modifications, and issue the NPDES permit. We will discuss with them the scope and objectives of the mixing zone and water quality studies for the Narrows outfall option. We will seek their concurrence with the scope of this study, and answer any questions they may have during their evaluation of the study results. Ecology will be consulted at various milestones during the course of the outfall study.

5.2 Department of Health. Health is responsible for establishing shellfish harvest closure zones around outfalls. We will consult with them at the beginning of the project to confirm the criteria that will be used to establish the closure zone for the Narrows candidate diffuser sites. Kitsap County and others are currently challenging these criteria, so they may change during the course of this study. Cosmopolitan Engineering is part of the workgroup advocating the changes, so any such changes will be reflected in this study.

5.3 Department of Fish and Wildlife and Army Corps of Engineers. WDFW manages the aquatic resources in Puget Sound, and would issue the HPA permit for any outfall modifications. The Corps of Engineers issues Section 404 permits for excavation within navigable waters. The guidance we would seek from WDFW includes approval of biological field studies (particularly geoduck densities within the shellfish closure zone), avoidance and mitigation criteria for eelgrass and shellfish in the Narrows, scoping of any habitat issues within Gig Harbor. Guidance required

from ACOE and WDFW includes dredged material handling requirements and allowable construction windows.

5.4 National Marine Fisheries, Muckleshoot Tribe, US Fish and Wildlife Service. This task will be completed by Jones and Stokes.

5.5 Department of Natural Resources. An aquatic lands easement from DNR will be required for any new outfall alignment in Gig Harbor or the Narrows. We will consult DNR regarding any restrictions, conditions and costs on gaining an easement across state tidelands within the Harbor. DNR will also seek compensation for the commercial harvest value of geoduck within the shellfish closure zone around the diffuser. We will seek ways to mitigate this cost to the City of Gig Harbor according to the Interagency Shellfish Agreement, and solutions as they are evolving from the Kitsap County case.

#### Task 6 – Evaluation of New Outfall to the Narrows

This task will evaluate the feasibility and water quality benefits of a new wastewater outfall to the Tacoma Narrows. This task will consider the water quality impacts, effluent treatment requirements, outfall siting criteria, agency permitting and mitigation requirements, and the preferred pipeline route, material constructability and costs.

6.1 Conductivity, Temperature and Depth (CTD) and Current Measurements. CTD sampling will be conducted during three quarters in 1999 (exact schedule to be worked out with Ecology under the SAP). Dissolved oxygen, temperature and salinity profiles will be sampled at the existing monitoring site in the Narrows (Station 1). One additional day of current measurement with an Acoustic Doppler Current Profiler (ADCP) will be conducted over one average tide cycle. This data is required by Ecology protocol for the mixing zone modeling.

6.2 Aquatic Resource Reconnaissance Dive. Up to four dive transects will be visually inspected in the area of potential outfall alignments in the Narrows. These dives will record information on submarine soil conditions, macroalgae (including eelgrass), and geoduck shellfish. The dives will be conducted by a WDFW certified diver, according to a dive plan submitted to WDFW for comment. The dive will be conducted between June and September to satisfy WDFW requirements.

6.3 Develop Outfall Siting and Diffuser Alternatives. Three candidate sites for a new diffuser will be established. A preliminary preferred alignment will be established from the results of the reconnaissance dive above, to minimize disruption of aquatic resources. The proximity of public beaches and recreational sites will also be considered in selecting candidate diffuser sites.

The alternative diffuser sites are anticipated to range from a minimum depth of 70 ft to 150 ft MLLW datum. Diffuser design criteria will be developed for each depth (*i.e.* number of ports, size and orientation of ports, port spacing, slope of diffuser). Diffuser head losses will be calculated for the range of design flow conditions.

6.4 Mixing Zone Study. A mixing zone study will be conducted for each of the candidate diffuser alternatives. Acute and chronic dilution factors will be determined using the EPA model PLUMES, according to Ecology guidance. The modeling will be based on the CTD and current meter data collected in the field studies described above.

6.5 Water Quality-based Effluent Limits. Ecology and EPA protocol will be used to establish the effluent limitations for toxicants that would appear in future NPDES permits issued for the plant. The toxicants that will be studied include chlorine, ammonia, metals (copper, cadmium, mercury, lead, nickel, silver and zinc) and whole effluent toxicity. This would be done for the five-year period associated with the next NPDES permit renewal, at the full projected capacity of 3.5 mgd, and for the 20-year planning horizon. This analysis will determine whether there is a need for NPDES toxicant limits with a Narrows outfall, and whether the existing level of wastewater treatment is adequate for current and projected flows. If additional effluent treatment limits are required, the expected limits will be calculated using EPA and Ecology protocol.

6.6 Analyze Far Field Outfall Dispersion Effects. This work will be conducted by Jones and Stokes.

6.7 Develop Outfall Routing Alternative. One pipeline alternative will be developed that would extend from the existing outfall site or WWTP to the Narrows via the bottom of Gig Harbor. This subtask will evaluate alignment and profile, tideland ownership (principally DNR), hydraulics including air relief, pipeline diameter, materials and methods of construction, burial and/or armoring requirements to mitigate anchorage impacts, sediment chemistry along the route (from existing DNR data), and estimate of probable construction costs. This task will also assess whether the existing outfall can be used in a new outfall to the Narrows, or if it would need to be replaced from the treatment plant.

#### Task 7 – Evaluation of Treatment Plant Upgrade Options

This work will be completed by Earth Tech

#### Task 8 – Public Involvement

Cosmopolitan Engineering Group will provide technical support for one public meeting to be established by the City of Gig Harbor.

#### Task 9 – Report Preparation

A Technical Report will be prepared, documenting the field studies, mixing zone and water quality modeling, effluent limitations, engineering and cost analyses and permitting issues identified in the tasks above. The Technical Report will be formatted as an Appendix to the Engineering Report prepared by Earthtech. The Technical Report will satisfy the Engineering Report requirements of WAC 173-240-060 (d), (e) and (l).

#### Task 10 – Environmental Checklist

This work will be completed by Jones and Stokes

#### Task 11 – Optional On-Call Tasks

At the City's option, we will perform other supplementary tasks as requested by, and agreed to in writing by the City Public Works Director. Work scope and budget will be prepared and agreed to on an individual task assignment basis. If a task assignment is not authorized, Cosmopolitan Engineering Group will not be compensated for preparation of the work scope and budget for that task order.

## **1999 NPDES Permit Water Quality Studies**

The following tasks will be conducted to satisfy the requirements of Gig Harbor's NPDES permit condition S12 for 1999. The work described in these tasks is equivalent to the work conducted in 1998 for the City of Gig Harbor.

### **Task 12 – Mobilization**

This task will include up-front planning and mobilization expenses to prepare for the field sampling, including:

- Update sampling plan and scheduling criteria for the two water quality sampling events
- Establish agreements with laboratories
- Prepare field equipment

### **Task 13 – Weekly Temperature Sampling**

Water temperature profiles and surface pH sampling shall be conducted by the City of Gig Harbor. Stations, depths, parameters, equipment and reporting shall be as established for the sampling conducted in 1998. Results will be faxed to Cosmopolitan each following day.

### **Task 14 – Water Quality Sampling**

The weekly sampling results shall be used to establish the date for the "critical conditions" sampling event specified in the permit. The sampling plan update in Task 12 will establish the criteria that trigger the sampling event, including tidal conditions and time of day.

Water samples shall be obtained at the same five sample locations, depths and in the same manner as was performed in the 1997 and 1998 water quality monitoring. Stations 1 through 3 are marine stations in Gig Harbor and the Narrows, Station 4 is Crescent Creek, and Station 5 is the WWTP effluent. The city shall collect and analyze the fecal coliform sample for Station 5.

There will be two sampling events. The first will be the "critical conditions" event, which will be scheduled from the results of weekly temperature sampling. The second event will occur in the last week of October, 1999.

Stations 1 through 3 shall be sampled in each event for the field and laboratory analytes specified in Section S12.C.1 of the NPDES permit, including metals. Conductivity, temperature and depth profiles will be obtained with a Sea-Bird Model SBE-19 Seacat Profiler. Stations 4 and 5 shall be sampled for the analytes specified in Section S12.C.2. PSEP protocol shall be followed in the collection and handling of water samples. The same analytical laboratories from 1997 and 1998 are anticipated to be used again in 1999.

### **Task 15 – Report**

The results of all field studies will be prepared for submittal to Ecology as specified in the permit. The weekly monitoring data furnished by the City shall be presented as a series of temperature profiles. A narrative section will summarize the temperature and pH trends and justify the identified critical condition for the water quality sampling.

The 1999 water quality sampling results for conventional parameters shall be presented in the same table format as the 1997 and 1998 results. Figures showing the 1999 results in a timeline with past data, similar to the 1997 and 1998 reports, shall also be presented. The metals data will be presented in separate tables with no trend analysis or graphical presentation. QA/QC for the metals data shall be presented.

*The report shall be prepared as a draft for review by the City of Gig Harbor prior to January 15, 2000. Following comments by the City, five copies of the final report will be provided to the City for transmittal to Ecology by February 15, 2000.*



**EXHIBIT B - SCHEDULE OF RATES AND ESTIMATED HOURS**

**Part I: Gig Harbor Outfall Alternatives Study**

**LABOR**

Task	Name: Engineer III	Name: Engineer II	Name: Tech/CAD	Task Subtotal
	Rate: \$35.15 Hrs \$	Rate: \$25.64 Hrs \$	Rate: \$18.25 Hrs \$	
1. Project Management	24 \$844	20 \$513	16 \$292	\$1,648
3. Water Quality Impacts in Gig Harbor	12 \$422	24 \$615		\$1,037
5. Agency Coordination	32 \$1,125	24 \$615	4 \$73	\$1,813
6. Evaluation of New Outfall to the Narrows	56 \$1,968	140 \$3,590	24 \$438	\$5,996
8. Public Participation	4 \$141			\$141
9. Report Preparation	16 \$562	24 \$615	24 \$438	\$1,616
<b>Subtotal</b>	<b>144 \$5,082</b>	<b>232 \$5,948</b>	<b>68 \$1,241</b>	<b>\$12,251</b>

DIRECT LABOR SUBTOTAL: \$12,251  
 INDIRECT LABOR AND OVERHEAD @ 173%: \$21,194  
 SUBTOTAL: \$33,445  
 PROFIT @ 15%: \$5,017  
 TOTAL DIRECT, INDIRECT AND PROFIT: \$38,462

**DIRECT COSTS**

Item	Quantity	Unit	Unit Cost	\$
Task 11 - Optional On Call Tasks Allowance	1	Allowance	\$2,500	\$2,500
Aquatic Resource Recon Dives	2	days	\$4,500	\$9,000
Research Vessel	3	days	\$450	\$1,350
Sample Equipment	3	days	\$125	\$375
CTD and DO Measurement	3	events	\$800	\$2,400
Current Meter	1	tidal day	\$2,200	\$2,200
Reproduction/Plotting/Miscellaneous	1	lump sum	\$170	\$170
Mileage	400	miles	\$0.310	\$124

DIRECT SUBTOTAL: \$18,119

PART I COST: \$56,581

**Part II: NPDES Permit Water Quality Sampling**

**LABOR**

Task	Name: Engineer III	Name: Engineer II	Name: Tech/CAD	Task Subtotal
	Rate: \$35.15 Hrs \$	Rate: \$25.64 Hrs \$	Rate: \$18.25 Hrs \$	
12. Mobilization	2 \$70	8 \$154		\$224
13. Weekly Temperature Sampling				\$0
14. Water Quality Sampling	4 \$141	32 \$820	44 \$803	\$1,764
15. Report Preparation	4 \$141	16 \$410	4 \$73	\$624
<b>Subtotal</b>	<b>10 \$352</b>	<b>54 \$1,385</b>	<b>48 \$876</b>	<b>\$2,612</b>

DIRECT LABOR SUBTOTAL: \$2,612  
 INDIRECT LABOR AND OVERHEAD @ 173%: \$4,519  
 SUBTOTAL: \$7,131  
 PROFIT @ 15%: \$1,070  
 TOTAL DIRECT, INDIRECT AND PROFIT: \$8,201

**DIRECT COSTS**

Item	Quantity	Unit	Unit Cost	\$
Boat and Operator	2	events	\$450	\$900
Sample Equipment (bottles, GPS, CTD, etc.)	2	events	\$150	\$300
Oceanography Lab - UW	2	events	\$280	\$560
Metals Lab - Columbia Analytical	2	events	\$1,250	\$2,500
Conventional Lab - ARI	2	events	\$220	\$440
Mileage	300	miles	\$0.310	\$93

DIRECT SUBTOTAL: \$4,793

PART II COST: \$12,994

**PROJECT TOTAL BUDGET: \$69,575**



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

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Jones & Stokes Associates, Inc. organized under the laws of the State of Washington, located and doing business at 2820 Northup Way, Suite 100, Bellevue, Washington 98004 (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the preparation of an Engineering Study to satisfy Special Condition S4.G of the National Pollutant Discharge Elimination System Permit, No. WA-002395-7, issued for the City's wastewater treatment plant on August 15, 1997, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated March 3, 1999, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, 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:

**I. Description of Work**

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

**II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed **twenty-five thousand one-hundred-fifty dollars and no cents (\$25,150.00)** for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** 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** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** is to be completed within 360 calendar days of the execution of this Agreement; provided however, that additional time shall be granted by the City for excusable delays or extra work.

### **V. Termination**

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to one 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 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 performance of the work hereunder by the Consultant, its agents, representatives, employees, sub-consultants or sub-contractors.

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

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

C. The Consultant's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. The Consultant's insurance shall be primary insurance as respects the City. The City shall be given thirty (30) days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

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

E. It is the intent of this contract for the Consultant's insurance to 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 in respect to the City. 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 notification will be given to the City of Gig Harbor for 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 Public Works Director and the City shall determine the term or provision's true intent or meaning. The City Public Works Director 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 Public Works Director'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:

Jones & Stokes Associates, Inc.  
Attn: Grant T. Bailey  
2820 Northup Way, Suite 100  
Bellevue, Washington 98004

Wes Hill, P.E.  
Director of Public Works  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

## **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,

**XVIII. Modification**

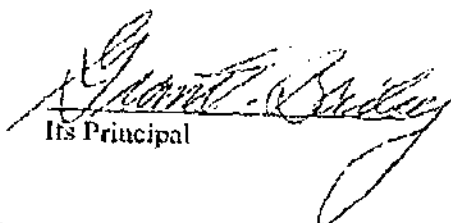
No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

**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 \_\_\_\_\_, 19\_\_\_\_.

THE CITY OF Gig Harbor

By:   
Its Principal

By: 3/14/99  
Mayor

Notices to be sent to:

CONSULTANT  
Jones & Stokes Associates, Inc.  
Grant T. Bailey  
2820 Northrup Way, Suite 100  
Bellevue, WA 98004

Wes Hill, P.E.  
Director of Public Works  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

\_\_\_\_\_  
Gig Harbor City Attorney

ATTEST:

\_\_\_\_\_  
Gig Harbor City Clerk

## **EXHIBIT A SCOPE OF SERVICES**

### **Gig Harbor Outfall Engineering Report March 3, 1999**

This scope of services describes the work necessary to support the preparation of an Engineering Study and Report for wastewater treatment plant improvements and effluent discharge alternatives. The report will evaluate the feasibility and cost of continued discharge of effluent to Gig Harbor (at a higher level of treatment, if necessary); versus the cost and feasibility of extending the outfall to the Tacoma Narrows (possibly with a lesser degree of treatment). Effluent reuse will also be considered as a discharge alternative.

#### **Task 1 - Meetings/Project Management**

Jones & Stokes Associates will manage in-house staff to ensure compliance with established schedules and quality standards, meetings with City staff and/or other consultants for periodic progress reviews, and one meeting with the Department of Ecology to discuss their review comments.

#### **Task 5 - Agency Coordination**

There are several regulatory agencies that will be consulted during this project. Jones & Stokes Associates will attend a project meeting with the key state and federal agencies early in the project to apprise them of the objectives, content, and schedule for this study.

**5.1 Department of Ecology.** Ecology is the principal agency that will review the Engineering Report, approve any treatment plant or outfall modifications, and issue the NPDES permit. Jones & Stokes Associates will discuss with them the scope and objectives of the various mixing zone and water quality studies for the Gig Harbor and Narrows outfall options.

**5.4 National Marine Fisheries, Muckleshoot Tribe, U.S. Fish and Wildlife Service.** These agencies, along with the WDFW, focus on fisheries issues. Jones & Stokes Associates will consult with these agencies to establish fish rearing habitats, fish populations, Usual and Accustomed fishing areas, and hatchery activities relative to the proposed outfall extension. Information from these contacts will be used to evaluate general environmental sensitivity within and outside the harbor.

**EXHIBIT A**  
**SCOPE OF SERVICES**  
March 3, 1999

**Task 6 - Evaluation of New Outfall to the Narrows**

Jones & Stokes Associates will evaluate the feasibility and water quality benefits of a new wastewater outfall to the Tacoma Narrows. This task will consider the water quality impacts, effluent treatment requirements, outfall siting criteria, agency permitting and mitigation requirements, the preferred pipeline route and material, constructability, and costs.

**6.6 Analyze Far Field Outfall Dispersion Effects.** Farfield effects at three locations outside the harbor will be evaluated by Jones & Stokes Associates. Farfield effects will include differences associated with potential diffuser depths, locations, and configurations.

**Task 8 - Public Involvement**

**8.1 Public Meeting.** Under this task, Jones & Stokes Associates will organize a public meeting and prepare and present handouts, graphics, maps, and information related to the preliminary conclusions of the study. Public input concerning sensitive issues will be received and recorded. This effort will be responsive to citizen interests and can be used to develop SEPA documentation.

**Task 9 - Report Preparation**

A draft and final report conforming to the requirements of WAC 173-240-060 will be prepared by Jones & Stokes Associates to describe the work.

**9.1 Environmental Checklist.** Jones & Stokes Associates will prepare an environmental checklist consistent with SEPA for inclusion in the draft and final reports.

**Task 11 - Optional On-Call Tasks**

**11.1 Second Public Meeting.** At the City's option, Jones & Stokes Associates will organize a second public meeting and prepare and present handouts, graphics, maps, and information related to the final conclusions of the study and environmental checklist. Public input will be received, recorded, and documented.

**11.2 Other Supplementary Tasks.** At the City's option, Jones & Stokes Associates will perform other supplementary tasks as requested by, and agreed to in writing by the City Public Works Director. Work scope and budget will be prepared by Jones & Stokes Associates and agreed to by the City on an individual task assignment basis. If a task assignment is not authorized, Jones & Stokes Associates will not be compensated for preparation of the work scope and budget for that task order.

**HIBIT B  
SCHEDULE OF RATES AND  
ESTIMATED HOURS**

**COST ESTIMATE  
GIG HARBOR OUTFALL  
ENGINEERING REPORT  
Jones & Stokes Associates**

Task	Technical Staff Hours						Other Direct Expenses			Total Cost			
	Grant Bailey	Rick Oestman	Larry Larsen	Andy Wones	Shawn Yotter	Subtotal	Word Processing and Edit	Graphics	Subtotal		Travel and Per Die	Misc*	Subtotal
1. Meetings/Management	10	24				\$3,438				\$178	\$125	\$332	\$3,770
5. Agency Coordination	8	24				\$3,168				\$183		\$200	\$3,368
6. Farfield Dispersion	4	12	8	16		\$3,544							\$3,544
8. Public Involvement	8	16			14	\$3,242	6	4	\$470	\$121	\$400	\$570	\$4,282
9. Report Preparation	4	16				\$1,932	16	8	\$1,128		\$29	\$32	\$3,092
9.1 Environmental Checklist		24		8		\$2,632	4		\$188				\$2,820
11. Optional On-Call Tasks						\$4,282							\$4,282
<b>Total Hours</b>	34	116	8	24	14		26	12					
<b>Fully-burdened rates, 1999</b>	\$135	\$87	\$109	\$68	\$55		\$47	\$47					
<b>Subtotals</b>	\$4,590	\$10,092	\$872	\$1,632	\$770	\$22,238	\$1,222	\$564	\$1,786	\$528	\$607	\$1,134	\$25,158
<b>Total Cost</b>													\$25,158

\* Subtotals include 9.5% overhead and administrative fee for these items.

**COST ESTIMATE FOR  
GIG HARBOR OUTFALL  
ENGINEERING REPORT**

P157/PB98-1  
02/25/99/le





*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR** *WH*  
**SUBJECT: WWTP PROCESS CONTROL SYSTEM - CONSULTANT SERVICES**  
**CONTRACT**  
**DATE: MARCH 3, 1999**

### **INTRODUCTION/BACKGROUND**

The vendor for various components of the control system at the wastewater treatment plant has confirmed that several elements of the control system installed prior to the recent upgrade are not Year 2000 compliant. Some of these components are eighteen years old, and have proven increasingly difficult to maintain due to lack of spare parts, outdated technology and or program logic, and limited vendor support.

After reviewing the Consultant Services Roster, and checking with several sewerage agencies and sanitary engineering design firms, Casne Engineering, Inc., an electrical engineering consultant, was selected by staff as the most qualified firm to develop a plan for updating the control system. Their selection was based on their experience and focus on control systems for sewerage facilities, and ability to perform the work.

In addition, Casne Engineering's scope of services includes electrical engineering in support of the work by Earth Tech for the Pump Station 3 replacement, and evaluation of Pump Station 2. Casne Engineering was included on the consultant team proposed by Earth Tech that was selected by the City to design the replacement for Pump Station 3, and evaluate options for Pump Station 2. Due to issues relating to Article XIII in the City's standard contract, and in order to reduce costs, a separate contract has been prepared for the prime and subconsultant.

On February 22, 1999 Council authorized execution of a consultant services agreement with Earth Tech, as the lead consultant, for \$85,372. Earth Tech's scope of services provides for evaluation of two alternative sites for the replacement pump station, design and preparation of contract documents for the new Pump Station 3 and support facilities, evaluation of Pump Station 2, and design of a replacement for the 10-inch asbestos-cement water main in Harborview Drive from its present terminus at the North Harborview Drive intersection south to approximately the site of the new pump station.

### **FISCAL CONSIDERATIONS**

Sufficient funds are available for this work.

### **RECOMMENDATION**

I recommend that the Council move and approve execution of the Consultant Services Contract with Casne Engineering, Inc, in an amount not to exceed sixty-two thousand six-hundred fourteen dollars (\$62,614.00).

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
CASNE ENGINEERING, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and **Casne Engineering, Inc.** organized under the laws of the State of Washington, located and doing business at **355 118<sup>th</sup> Avenue SE, Suite 100, Bellevue, Washington 98005** (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in **the design of an upgrade to the Wastewater Treatment Plant process control system, the replacement of Pump Station 3, and evaluation of Pump Station 2**, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated **March 3, 1999**, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, 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:

**I. Description of Work**

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

**II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed **sixty-two thousand six hundred fourteen dollars and no cents (\$62,614.00)** for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** 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** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** is to be completed within 280 calendar days of the execution of this Agreement; provided however, that additional time shall be granted by the City for excusable delays or extra work.

### V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to one 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 provisions of this section shall survive the expiration or termination of this Agreement.

## VIII. Insurance

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

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

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

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

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

E. It is the intent of this contract for the Consultant's insurance to 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 in respect to the City. 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 notification will be given to the City of Gig Harbor for 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 Public Works Director and the City shall determine the term or provision's true intent or meaning. The City Public Works Director 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 Public Works Director'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:

Robert Casne  
Casne Engineering, Inc.  
355 118<sup>th</sup> Avenue SE, Suite 100  
Bellevue, WA 98005

Wes Hill, P.E.  
Director of Public Works  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

**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.

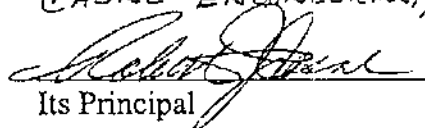
**XVIII. Modification**

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 \_\_\_\_\_, 19\_\_.

CASNE ENGINEERING, INC  
By:   
Its Principal

THE CITY OF Gig Harbor  
By: \_\_\_\_\_  
Mayor

Notices to be sent to:  
CONSULTANT  
Robert Casne  
Casne Engineering, Inc.  
355 118<sup>th</sup> Avenue SE, Suite 100  
Bellevue, WA 5

Wes Hill, P.E.  
Director of Public Works  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

APPROVED AS TO FORM

ATTEST:

\_\_\_\_\_  
Gig Harbor City Attorney

\_\_\_\_\_  
Gig Harbor City Clerk

## **EXHIBIT A**

---

Exhibit A is comprised of the following two parts:

Part 1 Scope letter dated February 5, 1999 from Casne Engineering to Mr. Wes Hill, P.E., Public Works Director. Subject: Wastewater Collection Telemetry Upgrade Electrical Scope and Fee Estimate together with the associated "Fee Estimate Worksheet" dated 2-5-99.

Part 2 Scope letter dated January 28, 1999 from Casne Engineering to Mr. Wes Hill, P.E., Public Works Director. Subject: Gig Harbor WWPS 3A Design – Electrical Scope and Fee Estimate together with the associated "Fee Estimate Worksheets," pages 1 and 2, dated 1-28-99.

February 5, 1999

**EXHIBIT A**  
**Part 1**  
**SCOPE OF SERVICES**  
February 5, 1999

**City of Gig Harbor**  
3105 Judson Street  
Gig Harbor, WA. 98335

**Attention:** Mr. Wes Hill, P.E., Public Works Director

**Subject:** Wastewater Collection Telemetry Upgrade  
Electrical Scope and Fee Estimate

Dear Wes:

We propose to design and program a new SCADA System with Graphic User Interface for some existing WWTP features and for the Wastewater Collection system. We will design a PLC with I/O for the WWTP and interface to the existing WW Telemetry I/O through a new remote base controller. We will program all logic in the new PLC.

Our agreement for this design and programming includes the following:

- neither the hardware nor software will be proprietary in any way
- all software and logic will remain the property of the owner
- the configuration would be open system architecture, allowing for upgrade or change by the owner or any of many companies that provide such service
- hardware and software are state of the art
- the system will be easily expanded to include new modifications to the treatment plant and additional lift stations
- we can provide operator training so that you, the owner, can make changes to the Graphic User Interface system
- you should experience increased reliability
- Your PLC and PC & software will be Y2K compliant

We propose to accomplish the following SCOPE OF WORK:

- A) Casne will specify the PLC, computer hardware and SCADA software for City purchase.



**EXHIBIT A**  
**Part 1**  
**SCOPE OF SERVICES**  
February 5, 1999


- B) The following existing information in the wastewater treatment plant control panel will be integrated into the new system, plus the wastewater collection station alarms.
1. Influent flow
  2. Average basin DO
  3. Blower speed
  4. Effluent flow
  5. Waste activated sludge flow
  6. Return activated sludge #1-flow
  7. Return activated sludge, #2-flow
  8. Waste activated sludge flow to ATAD
  9. Totalization of all flows
  10. Alarm recording of existing and new alarms
- C) Casne Engineering will prepare design drawings for panel fabrication and installation.
- D) Casne Engineering will then accomplish the programming and start-up services and provide on-going services to the City. We will provide up to six screens of the WWTP and pump stations (4/screen), alarm dialer setup and PC and PLC configuration.

We will reuse the existing I/O tone equipment and phone line communications to the wastewater pump stations.

Drawings will be provided in AUTOCAD Release 14. An electronic copy will be submitted with hard copy for City review. Specifications will be prepared in Microsoft Word 6.0 or newer in CSI format. An electronic file copy will be submitted with hard copy for City review.

Please call if you have any questions regarding this proposal.

Sincerely,  
**CASNE ENGINEERING, INC.**



**Robert J. Casne, P.E.**  
**President**

January 28, 1999

**EXHIBIT A**  
**Part 2**  
**SCOPE OF SERVICES**  
January 28, 1999

**City of Gig Harbor**  
**3105 Judson Street**  
**Gig Harbor, WA 98335**

**Attention: Mr. Wes Hill, P.E., Public Works Director**

**Subject: Gig Harbor WWPS 3A Design - Electrical Scope and Fee Estimate**

Dear Wes:

In response to your request for electrical power, control and instrumentation design services on this project, we have prepared this scope of services and fee estimate.

We propose a preliminary design to decide the following:

Wastewater Pump Station #3A

1. We will compare siting an outdoor genset at the new pump station with intercepting the existing standby feeder from the WWTP and upsizing the genset.
2. We will discuss outdoor panel sizing for the three VFDs, the automatic transfer switch and controls.

Wastewater Pump Station #2

3. Determine starter upgrade required.
4. Determine standby and utility power modifications.

We will provide the final design of the influent wastewater pump station to the wastewater treatment plant. We understand this pump station to be a wet well with three submersible pumps driven by variable speed drives or using pre-rotation type pumps. We will provide standby power for this station by installing a new genset at the pump station. Level control shall be provided from either a sonic level sensor or submersed level sensor. Float switches will provide backup alarm and control if the level sensor should fail. Influent flow meter will be replaced or repaired. A PLC will be utilized to implement control. The power and control panels will be housed in above-grade outdoor power and control panels. Alarms, flow and station level will be hardwired in conduit back to the WWTP control panel.

Attached is a task and drawing list of the effort we believe will be required during design. We will provide utility coordination and a design review meeting. We will provide drawings on AutoCAD release 14 and specifications in CSI format on Word for Windows.

Please call if you have any questions regarding this proposal.

Sincerely,  
**CASNE ENGINEERING, INC.**

  
for  
**Kenneth L. Albinger, P.E.**  
**Municipal Department Manager**

Cc: Kris Guttormsen, Earth Tech

**EXHIBIT B**

---

**1998 RATE SCHEDULE**

<u>CLASSIFICATION</u>	<u>HOURLY BILLING RATE</u>
PROJECT MANAGER	\$110.00
SENIOR ENGINEER	\$99.00
ENGINEER	\$84.00
DESIGNER	\$70.00
CAD TECHNICIAN	\$60.00
WORD PROCESSOR	\$47.00

EXHIBIT B  
Part 1  
SCHEDULE OF RATES AND  
ESTIMATED HOURS  
February 5, 1999



**FEE ESTIMATE WORKSHEET**

Client Name	City of Gig Harbor
Project Name	Improvements to WWTP Controls
Project Number	Hardware and Software Integration P98345

Date	2-5-99
File	FEES2-5-99
Tab	PAGE 1

Phase	Task/ Labor Code	Description of Task	Project Manager (PM)	Senior Engineer (SE)	Engineer (ENGR)	Designer (DES)	Auto CAD	Clerical (WP)	Total
			\$110.00	\$90.00	\$84.00	\$70.00	\$60.00	\$47.00	
3	410	<b>A HARDWARE SPECIFICATION</b> City Purchased Equipment		12				4	\$1,376
7	710	<b>B PROGRAMMING EXISTING FEATURES</b> Written Descriptions of Operation		16	8				
		Influent Flow Analog			4				\$336
		Average Basin Do Analog			4				\$336
		Blower Speed Analog			4				\$336
		Effluent Flow Analog			4				\$336
		Waste Activated Sludge Flow Analog			4				\$336
		Return Activated Sludge #1 Flow Analog			4				\$336
		Return Activated Sludge #2 Flow Analog			4				\$336
		Waste Activated Sludge Flow to ATAD Analog			4				\$
		Totalization of all Flows Analog			4				\$336
		Alarm Recording of Existing and New Alarms			12				\$1,008
3	330	<b>C DRAWINGS</b> Control System Block Diagram		6			8		\$1,074
		Elevation Details Drawing		8			12		\$1,512
		PLC Wiring Diagrams		12			12		\$1,908
7	730	<b>D SOFTWARE SERVICES</b> Provide Graphic Screens (6)		6	60				\$5,634
		Alarm Dialer Setup		4	12				\$1,404
		PC Configuration		8	20				\$2,472
		PLC Configuration		8	20				\$2,472
		Documentation		14	16				\$2,730
		Training 1 day w/Prep		8	8				\$1,464
		Ongoing Services		8	30				\$3,312
		Meetings		6	6				\$1,098
		Design Descriptions & Screen Review		6	6				\$1,098
		<b>E SUPPLEMENTAL SERVICES</b>							\$3,500
				122	234		32	4	

<b>Expense Computation:</b>		<b>\$35.0</b>
15 trips x 100 miles x \$0.31/mile=	\$465	\$1,728
Miscellaneous Expenses	\$1,263	<b>\$36,814</b>

THE ABOVE RATES & FEES QUOTED ARE VALID FOR A PERIOD OF 90 DAYS.

Client Name	EARTH TECH
Project Name	GIG HARBOR PRE-DESIGN OF PS #3A & PS #2
Project Number	P97188

Date	1-28-99
File	FEES1-28-99
Tab	PAGE 1

Phase	Task/ Labor Code	Description of Task	Project Manager (PM) \$110	Senior Engineer (SE) \$99	Engineer (ENGR) \$84	Designer (DES) \$70	Auto CAD (CADDR) \$60	Clerical (WP) \$47	Total
		<b>WWPS #3A</b>							
		1. OUTDOOR GENSET AT PS 3A VS. FEEDER TO PLANT GENSET		8					\$792
		2. ABOVE GRADE CABINET SIZE		4			4		\$636
		<b>WWPS #2</b>							
		SITE VISIT	4						\$440
		PUMP SIZE & DRIVE TYPE		2					\$198
		SERVICE SIZE & STANDBY POWER		2					\$198
		ONE LINE DIAGRAM	1	4			4		\$746
<b>Total Hours</b>			5	20			8		

<b>Expense Computation:</b>
-----------------------------

Subtotal	\$3,010
Expenses	\$90
<b>TOTAL</b>	<b>\$3,100</b>

THE ABOVE RATES & FEES QUOTED ARE VALID FOR A PERIOD OF 90 DAYS.

Client Name EARTH TECH  
Project Name GIG HARBOR WASTEWATER PUMP STATION  
Project Number P97188

Date 1-28-99  
File FEES1-28-99  
Tab PAGE2

Phase	Task/ Labor Code	Description of Task	Project Manager (PM) \$110	Senior Engineer (SE) \$99	Engineer (ENGR) \$84	Designer (DES) \$70	Auto CAD (CADDR) \$60	Clerical (WP) \$47	Total
	E1	ELECTRICAL SYMBOLS & LEGEND		1			1		\$159
	E2	ELECTRICAL ONE LINE DIAGRAM, EQUIPMENT ELEVATIONS & CALCS		6	10		14		\$2,274
	E3	SITE PLAN & DETAILS		4	12		14		\$2,244
	E4	STATION POWER & CONTROL PLAN & ELEVATION			16		14		\$2,184
	E5	MODIFICATIONS TO PLANT STANDBY POWER & ADDITION TO CONTROLS		20			14		\$2,820
	E6	CONTROL PANEL ELEVATIONS & CP WIRING DIAGRAM		4	12		14		\$2,244
	E7	CONTROL WIRING DIAGRAMS		4	12		14		\$2,244
	E8	CONTROL WIRING DIAGRAMS		4	12		14		\$2,244
		UTILITY COORDINATION		2	6				\$702
		REVIEW MEETING WITH CLIENT		6					\$594
		ELECTRICAL SPECIFICATIONS		6	16			4	\$2,126
		CONSTRUCTION COST ESTIMATE		4	6				\$900
		QC REVIEW	12						\$1,320
<b>Total Hours</b>			12	61	102		99	4	

**Expense Computation:**

Subtotal	\$22,055
Expenses	\$645
<b>TOTAL</b>	<b>\$22,700</b>

THE ABOVE RATES & FEES QUOTED ARE VALID FOR A PERIOD OF 90 DAYS.



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR** *Wes Hill*  
**SUBJECT: WELLS 5 AND 6 - CONSULTANT SERVICES CONTRACT**  
**DATE: MARCH 3, 1999**

#### **INTRODUCTION/BACKGROUND**

Wells 5 and 6 are located west of Skansie Avenue, and just south of the private portion of 76<sup>th</sup> Street in the North Creek Estates subdivision. Well 5 has been developed and is a high production well primarily serving the City's water system customers east of State Route (SR) 16. Well 6 is adjacent to Well 5 but has not been placed in service. Its depth is lower than Well 5, and there are potential water chemistry issues that will need to be resolved once the well is brought on line.

Well 6 has a "supplemental" water right at this time. Under current Department of Ecology nomenclature, this means that water from Well 6 is only available to supplant water from other sources in the City's system. Bringing Well 6 on line will allow more time for recovery at the other well sites.

A budgeted objective for 1999 is completion of Well 6, and modification to the facilities for Well 5. After reviewing the Consultant Services Roster, the engineering design firm of Gray and Osborne, Inc., was selected as the best qualified to perform the work. Their selection was based on their understanding of this project, familiarity with the City's water system and the site, qualifications for the work, and ability to complete the work within the project schedule.

Authorization is requested to execute a Consultant Services Contract in the not-to-exceed amount of \$27,018 with Gray and Osborne, Inc., for engineering services for completion of Well 6 and modifications to Well 5.

#### **FISCAL CONSIDERATIONS**

Sufficient funds are available for this work.

#### **RECOMMENDATION**

I recommend that the Council authorize execution of the Consultant Services Contract with Gray and Osborne, Inc., for engineering services for Wells 5 and 6 in an amount not to exceed twenty-seven thousand eighteen dollars and no cent (\$27,018.00).

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
GRAY & OSBORNE, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and **Gray & Osborne, Inc.** organized under the laws of the State of Washington, located and doing business at **701 Dexter Avenue North, Suite 200, Seattle, Washington 98109** (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the **survey, design, and preparation of contract documents, and related work for development of Well 6 and modifications to the facilities for Well 5**, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated **March 2, 1999**, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, 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:

**I. Description of Work**

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

**II. Payment**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed **twenty-seven thousand eighteen dollars and no cents (\$27,018.00)** for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. **PROVIDED, HOWEVER**, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** 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** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by **December 31, 1999**; provided however, that additional time shall be granted by the City for excusable delays or extra work.

### V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to one 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 provisions of this section shall survive the expiration or termination of this Agreement.

### VIII. Insurance

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

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

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

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

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

E. It is the intent of this contract for the Consultant's insurance to 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 in respect to the City. 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 notification will be given to the City of Gig Harbor for 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 Public Works Director and the City shall determine the term or provision's true intent or meaning. The City Public Works Director 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 Public Works Director'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:

Thomas Peters, P.E.  
Gray & Osborne, Inc.

Wes Hill, P.E.  
Director of Public Works

701 Dexter Avenue, Suite 200  
Seattle, Washington 98109

City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

### 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.

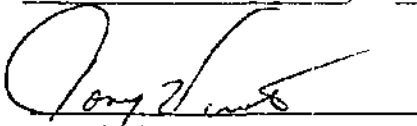
### XVIII. Modification

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 \_\_\_\_\_, 19\_\_\_\_.

By:   
Its Principal

The City of Gig Harbor  
By: \_\_\_\_\_  
Mayor

Notices to be sent to:  
CONSULTANT  
Thomas Peters, P.E.  
Gray & Osborne, Inc.  
701 Dexter Avenue North, Suite 200  
Bellevue, Washington 98109

Wes Hill, P.E.  
Director of Public Works  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

---

Gig Harbor City Attorney

ATTEST:

---

Gig Harbor City Clerk

J:\99cont\gig0309c.doc

EXHIBIT A  
SCOPE OF SERVICES

March 2, 1999

Mr. Wes Hill, P.E.  
Public Works Director  
City of Gig Harbor  
3105 Judson Street  
Gig Harbor, Washington 98335

SUBJECT: PROPOSAL FOR ENGINEERING SERVICES FOR EQUIPPING  
WELL NO. 6  
CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON  
G&O #97717.00

Dear Mr. Hill:

We have prepared the following proposal and scope of work for engineering services for equipping Well No. 6 for your review and approval. These services will be provided under the engineering services agreement between the City of Gig Harbor and Gray & Osborne, Inc.

Please find enclosed a schedule of rates and hour estimate for housing and equipping well 6 and if necessary well 5. The hydrogeological and pump test information for well 6 provided to us by the City will be relied upon for properly sizing the equipment. Gray & Osborne's responsibilities include value engineering, and a design approach acceptable to the City. A technical memorandum establishing the recommended design parameters (i.e. pump type and horsepower requirements, electrical requirements etc.) and project cost will be completed and provided to the City for comment prior to design. We will also perform a survey of the lot on which well 5 and 6 are presently located to ensure the proper placement and alignment of existing and proposed facilities. If we find any discrepancies in the original survey, we will file a record of survey as required by State law.

Upon City concurrence of our technical memorandum, we will proceed with the preparation of plans and specifications. A draft set of plans and specs will be provided to the City and DOH for review and comment. Comments will be incorporated into a final set of construction documents prior to delivery to the City. In order to reduce the consultant costs, the City wishes to advertising, bid and award this project in house. To reduce construction costs, the City intends to construct all or part of this project with



EXHIBIT A  
SCOPE OF SERVICES

Mr. Wes Hill, P.E.  
March 2, 1999  
Page 2

force account. Gray & Osborne will assist the City in both efforts through bid support services and on-call support services. The estimated hours for these services are detailed in Exhibit A. Construction management and resident inspection services are not included in this proposal. Of course, we would be available to answer questions or provide the City with guidance should issues arise during the construction phase of this project.

We appreciate the continued opportunity to be of service to the City of Gig Harbor.

Please call if we can provide you with any additional information.

Very truly yours,

GRAY & OSBORNE, INC.

Thomas Peters P.E.

TP/sdm

**EXHIBIT B**  
**City of Gig Harbor**  
**Well No. 6 Design Services**  
 Revised 3/2/99

**SCHEDULE OF RATES AND HOUR ESTIMATE**

	<b>Project Manager</b>	<b>Project Engineer</b>	<b>Design Engineer</b>	<b>Structural</b>	<b>Electrical</b>	<b>Technician/ Draftsperson</b>
1. Preliminary Review, Value Engineering, Concept and Approach. DOH Approval	2	6	6	6	8	0
2. Pump and Piping	4	8	24	3		40
3. Well House	4	8	12	8	0	48
4. Site Development	4	8	24	2	0	36
5. Electrical and Controls	4	8	6	0	40	40
6. Bid Support Services	2	4	6	6	6	6
7. On-Call Support Services	2	4	8	3	6	17
Manhour Estimate	22	46	86	28	60	187
Estimated Hourly Rate	\$31.00	\$28.00	\$20.00	\$28.00	\$28.00	\$18.00
Salary Costs	\$682.00	\$1,288.00	\$1,720.00	\$784.00	\$1,680.00	\$3,366.00
Direct Labor Costs						\$9,520
Indirect Labor Costs (134%)						\$12,757
Total Labor Costs						\$22,277
Fee (15%)						\$3,342
Expenses, Mileage, One Survey Day including PLS Time						\$1,400
<b>TOTAL ESTIMATED FEE</b>						<b>\$27,018</b>



*City of Gig Harbor. The "Maritime City"*

3105 JUDSON STREET  
GIG HARBOR, WASHINGTON 98335  
(253) 851-8136

**TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS**  
**FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR**  
**SUBJECT: ROSEDALE STREET RIGHT-OF-WAY DEDICATION**  
**DATE: MARCH 4, 1999**

#### **INTRODUCTION/BACKGROUND**

A 12-square foot segment of right-of-way is needed on the southwest corner of the Rosedale Street-Stinson Avenue intersection to accommodate a redesigned corner sidewalk configuration for the Rosedale Street Improvement Project. The configuration is necessary to fully accommodate the Americans with Disabilities Act (ADA) sidewalk ramp requirements.

The property owners have agreed to donate the right-of-way in accordance with the Federal-aid right-of-way acquisition procedures, and in consideration of the sidewalk improvements at their property corner. A Level 1 site assessment has not been performed for this right-of-way dedication.

Council approval of the attached right-of-way dedication is being requested.

#### **POLICY/FISCAL CONSIDERATIONS**

This easement does not impose any new financial obligations on the City, and will allow full construction of the corner sidewalk to complete the pedestrian linkages at the intersection, including accommodations for ADA access.

#### **RECOMMENDATION**

I recommend Council accept the attached right-of-way dedication agreement.

AFTER RECORDING RETURN TO:

The City of Gig Harbor  
Attn: Public Works Department  
3105 Judson Street  
Gig Harbor, WA 98335

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

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

1. Agreement for Dedication of Right-of-Way to the City of Gig Harbor

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

1. Spadoni Brothers, Inc.

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

1. City of Gig Harbor

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

See Attached Exhibit A

**Assessor's Property Tax Parcel or Account Number:** 02-21-07-1034

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

March 3, 1999

John and Roger Spadoni  
Spadoni Brothers, Inc.  
7910 Stinson Avenue  
Gig Harbor, WA 98335

City of Gig Harbor  
Mark Hoppen  
City Administrator  
3105 Judson Street  
Gig Harbor, WA 98335


SUBJ: Rosedale Street Improvement Project  
- Right-of-Way Donation  
- Parcel No. 02-21-07-1034

Dear Mr. Hoppen:

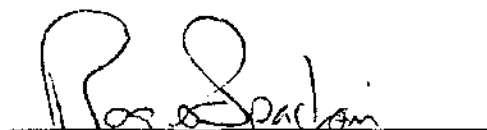
In consideration of the City of Gig Harbor constructing a sidewalk on the southwest corner of the Rosedale Street-Stinson Avenue intersection, and the construction of other project improvements, we are willing to donate a portion of parcel number 02-21-07-1034 (as shown on Exhibit C), to the City of Gig Harbor.

Our donation of said property to the City of Gig Harbor for street / transportation purposes is made voluntarily, and with full knowledge of our entitlement to receive just compensation therefore. We hereby release the City of Gig Harbor from obtaining an appraisal of the acquired property.

Sincerely,

  
John Spadoni - Secretary Treasurer  
Property Owner

  
Larry Spadoni - Vice President  
Property Owner

  
Roger Spadoni - President  
Property Owner

  
Leonard Spadoni - Vice President  
Property Owner

**AGREEMENT FOR DEDICATION OF RIGHT-OF-WAY  
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this 8<sup>th</sup> day of March, 1999, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and Spadoni Brothers, Inc. (hereinafter the Owners"), whose address is 7910 Stinson Avenue, Gig Harbor, Washington, 98335.

**RECITALS**

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the property legally described in Exhibit "A," (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owners have agreed to dedicate certain right-of-way on, over, under and across the Property, which right-of-way is legally described in Exhibit "B" (the "Right-of-Way") and shown on Exhibit "C" which are attached hereto and by this reference incorporated herein, to the City for a roadway and related improvements; and

WHEREAS, in exchange for the Owners' dedication of the Right-of-Way, the City agrees to construct a sidewalk on the southwest corner of the Rosedale Street-Stinson Avenue intersection, and other improvements, as shown on the construction plans entitled "Rosedale Street Improvement Project," Federal Aid Project No. STP US-TA96 (235) dated March 1999; and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owners agree as follows:

**TERMS**

Section 1. Grant of Right-of-Way to the City.

**A. Grant.**

Permanent Easement. The Owners hereby convey and grant to the City, its successors and assigns, a permanent, nonexclusive right-of-way easement over, in, along, across, under and upon the property described in Exhibit "B," at the location described therein, for the purpose of constructing the Rosedale Street improvements, as shown in Exhibit "C," together with the nonexclusive right of ingress to and egress from the Roadway over the Owners' property, and for the reconstruction, operation, repair and maintenance of same.

**B. Conditions.** This permanent easement is subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully perform:

1. The City shall bear all costs and expenses associated with the construction, improvement, maintenance, repair and operation of the roadway improvements.

2. The Owners shall not retain the right to use the surface or the area beneath the easement, and shall not use any portion of the right-of-way for any purpose inconsistent with use of the property as a public roadway. The Owners shall not construct any structures or plant any landscaping on or over the easement.

3. The City shall have all necessary access to the easement without prior notification to the Owners.

Section 2. The perpetual rights granted herein to the City shall continue in force until such time as the City, its successors or assigns, shall permanently abandon the same, and upon such removal or abandonment, all rights hereby granted shall terminate.

Section 3. This Agreement shall be recorded in the office of the Pierce County Auditor and shall run with the Properties. The burdens and benefits of the easements granted under this Agreement shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, legal representatives, successors assigns and beneficiaries.

Section 4. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 5. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Easement Agreement, which contains the entire understanding of the parties on the subject.

Section 6. Any invalidity, in whole or in part, of any provision of this agreement shall not affect the validity of any other provision.

Section 7. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the

day and year first above written.

ACCEPTANCE:

The City of Gig Harbor

By: Raymond Spadoni  
Its President

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

By: N/A RMS  
Its Vice President - Larry Spadoni

Attest:  
By: \_\_\_\_\_  
City Clerk

By: N/A RMS  
Its Vice President - Leonard Spadoni

Approved as to form:  
By: \_\_\_\_\_  
City Attorney

By: John Spadoni Sec  
Its Secretary Treasurer - John Spadoni



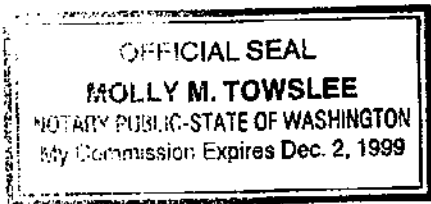
STATE OF WASHINGTON )

COUNTY OF PIERCE )

) ss.  
)

I certify that I know or have satisfactory evidence that Roger Spadoni is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as President of Spadoni Brothers Inc. to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: 3/8/99



Molly M Towslee  
(Signature)  
Molly M. Towslee  
NOTARY PUBLIC, State of Washington,  
residing at: Big Harbor  
My appointment expires: 12/2/99

STATE OF WASHINGTON )

COUNTY OF PIERCE )

) ss.  
)

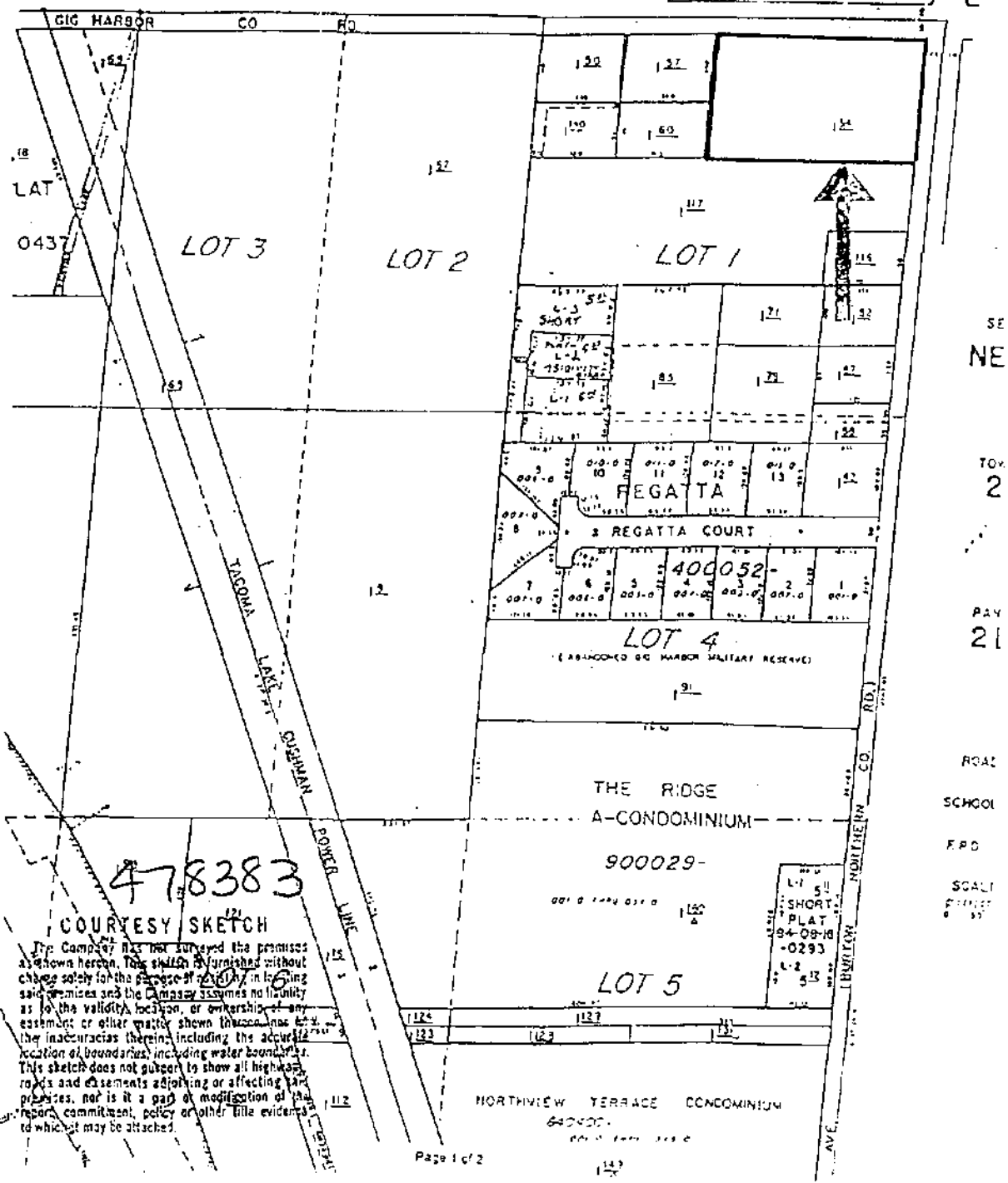
I certify that I know or have satisfactory evidence that John Spadoni is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as Secretary of Spadoni Brothers to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: 3/8/99



Molly M Towslee  
(Signature)  
Molly M. Towslee  
NOTARY PUBLIC, State of Washington,  
residing at: Big Harbor  
My appointment expires: 12/2/99

EXHIBIT "A"



**478383**  
**COURTESY SKETCH**  
 The Compiler has not surveyed the premises as shown hereon. This sketch is furnished without charge solely for the purpose of assisting in locating said premises and the Compiler assumes no liability as to the validity, location, or ownership of any easement or other matter shown thereon, nor as to the inaccuracies therein, including the accurate location of boundaries, including water boundaries. This sketch does not purport to show all highways, roads and easements adjoining or affecting said premises, nor is it a part of modification of a report, commitment, policy or other title evidence to which it may be attached.

## EXHIBIT "A"

### EXHIBIT A

---

Beginning at the Northeast corner of Government Lot 1 in SECTION 7,  
TOWNSHIP 21 NORTH, RANGE 2 EAST of the W.M., in Pierce County,  
Washington, thence West along the North line of said Lot to a point 280  
feet East of the Northwest corner of said Lot; thence South parallel with  
the West line of said Lot, 234 feet; thence East to the East line of said  
Lot; thence North along said East line to the point of beginning.

EXCEPT the North 30 feet for Carrs Inlet-Gigh Harbor Road, and

EXCEPT the East 30 feet for Burton Northern County Road

END OF EXHIBIT A

## EXHIBIT "B"

Parcel Number: 022107-1-034 (Right-of-Way Dedication)

### LEGAL DESCRIPTION

Legal: The Northeast corner of the parcel as described in Exhibit A, more particularly:

Beginning at the Northeast corner of Government Lot 1 in SECTION 7, TOWNSHIP 21 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington, thence West along the North line of said Lot to a point 280 feet East of the Northwest corner of said Lot; thence South parallel with the West line of said Lot, 234 feet; thence East to the East line of said Lot; thence North along said East line to the point of beginning.

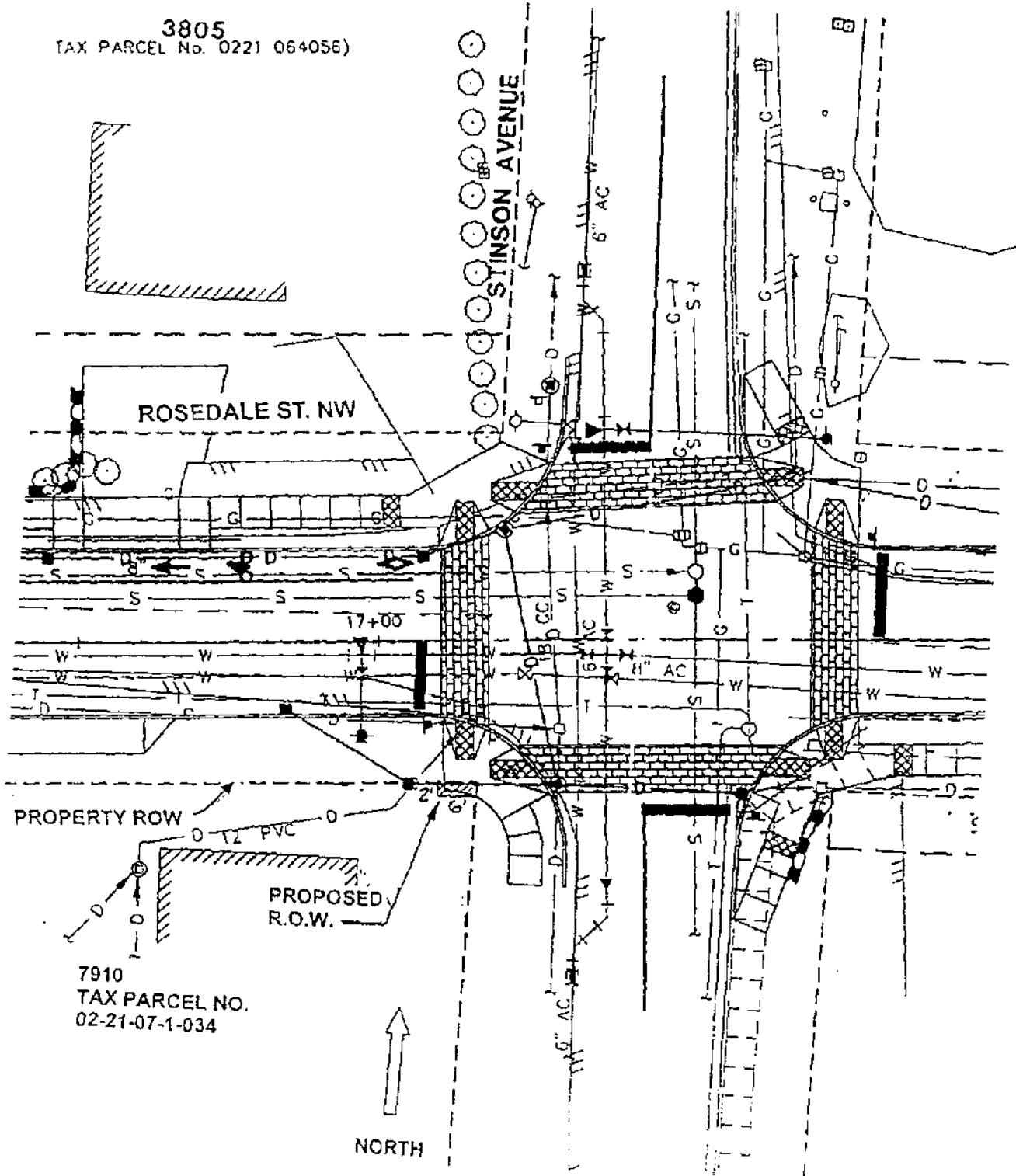
EXCEPT the North 30 feet for Carrs Inlet-Gig Harbor Road (Rosedale Street), and

EXCEPT the East 30 feet for Burton Northern County Road (Stinson Avenue),

and being that rectangular portion of the above described parcel lying North of a line located two-feet South of the Southern right-of-way of Rosedale Street, and East of a line located six (6)-feet West of the Eastern right-of-way line of Stinson Avenue.

EXHIBIT "C"

3805  
TAX PARCEL No. 0221 064056)



PROPERTY ROW

PROPOSED R.O.W.

7910  
TAX PARCEL NO.  
02-21-07-1-034



RESOLUTION OF BOARD OF DIRECTORS OF

SPADONI BROS., INC.

RESOLVED, That the President of this Corporation be Roger Spadoni and he hereby is authorized and empowered to enter into a contract for real estate transaction in the name and in behalf of this Corporation, upon such terms and conditions as may be agreed upon.

I, John Spadoni, do hereby certify that I am the duly elected and qualified Secretary and the keeper of the records and corporate seal of Spadoni Bros., Inc., a corporation organized and existing under the laws of the State of Washington, and that the above is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors thereof, convened and held in accordance with law and the Bylaws of said Corporation on October 12, 1989, and that such resolution is now in full force and effect.

IN WITNESS WHEREOF, I have affixed my name as Secretary and have caused the corporate seal of said Corporation to be hereunto affixed, this 12th day of October, 1989.

  
Secretary

RESOLUTION OF STOCKHOLDERS OF  
SPADONI BROTHERS, INC.

WHEREAS, The Stockholders of this Corporation deem it advisable to encourage long-term service and greater productivity on the part of certain employees hereinafter named, be it

RESOLVED, That the President and Secretary/Treasurer are hereby authorized to sell or exchange all or any part of this Corporation's property and assets, or form subsidiary entities dedicated to providing retirement income for Roger Spadoni, Lawrence Spadoni, John Spadoni, and Leonard Spadoni, upon such terms and conditions and for such consideration as the Board of Directors shall deem expedient and for the best interests of the Corporation. Resolved further, that such terms and conditions shall not interfere with the Corporation's ability to honor the provisions of its Pension Plan with respect to Roy Spadoni, Claude Spadoni, and Jaquelline Spadoni.

Claude Spadoni  
Claude Spadoni

John Spadoni  
John Spadoni

Lawrence Spadoni  
Lawrence Spadoni

Leonard Spadoni  
Leonard Spadoni

Roger Spadoni  
Roger Spadoni

Roy Spadoni  
Roy Spadoni

