

**GIG HARBOR
CITY COUNCIL MEETING**



September 8, 1997

7:00 P.M., CITY HALL COUNCIL CHAMBERS

AGENDA FOR GIG HARBOR CITY COUNCIL MEETING

September 8, 1997 - 7:00 p.m.

PUBLIC HEARING: Licensing of Adult Entertainment Facilities.

CALL TO ORDER:

SWEARING IN CEREMONY: Officer Fred Douglas.

APPROVAL OF MINUTES:

CORRESPONDENCE / PROCLAMATIONS:

1. Proclamation - Fire Prevention Week.
2. WFOA - Professional Finance Officer Award for 1997.
3. Thank you letter - Mayor Tadashi Yokoyama, City of Takuma, Japan.
4. Proclamation - Constitution Week.

OLD BUSINESS:

1. Third Reading of Ordinance - Harbor Code Revision.
2. Second Reading - Amendment to Sewer Extension Ordinance.

NEW BUSINESS:

1. Horizon West - Outside Sewer Request.
2. First Reading - Adult Entertainment Licensing Ordinance.
3. Rosedale Street - Project Prospectus and Local Agency Agreement.
4. Rosedale Street - Consultant Services Agreement.
5. Jerisich Dock - DNR Lease Agreement.
6. Copier Maintenance Contract Renewal.
7. Public Comment / Non-Agenda / Presentations Before Council.
8. Liquor License Renewals - Bartell Drug; Gig Harbor Yacht Club, Hy-Iu-Hee-Hee.
9. Special Occasion Liquor License - St. Nicholas Church.

PUBLIC COMMENT/DISCUSSION:

MAYOR'S REPORT: Transportation - Taking a Serious Look at Choices.

COUNCIL COMMENTS:

STAFF REPORTS:

1. Chief Mitch Barker - GHPD Stats.
2. Wes Hill - Public Works Department.

ANNOUNCEMENTS OF OTHER MEETINGS:

AWC Regional Meeting with Legislators - October 29th in Pt. Orchard, 6:00 p.m. at Myhre's.

APPROVAL OF BILLS:

APPROVAL OF PAYROLL:

EXECUTIVE SESSION: For the purpose of discussing litigation, potential litigation, and property acquisition.

ADJOURN:

DRAFT

REGULAR GIG HARBOR CITY COUNCIL MEETING OF AUGUST 25, 1997

PRESENT: Councilmembers Markovich, Picinich, Owel, Ekberg and Mayor Wilbert.
Councilmember Platt was absent.

CALL TO ORDER: 7:08 p.m.

APPROVAL OF MINUTES:

MOTION: Move approval of the minutes of the August 11, 1997 as presented.
Picinich/Owel - two voted in favor. Councilmembers Markovich and Ekberg
abstained.

CORRESPONDENCE/PROCLAMATIONS: None scheduled.

OLD BUSINESS:

1. Second Reading of Ordinance - Harbor Code Revision. Mark Hoppen, City Administrator, explained that this was the second reading of the ordinance and that the changes suggested at the first reading had been incorporated. Carol Morris, Legal Counsel, proposed a few additional changes to the ordinance to clarify language and reference state law. Councilmember Markovich had additional comments which were addressed. Mayor Wilbert asked if anyone from the audience wished to speak on the ordinance.

Jim Pasin - 2710 39th St. NW. Mr. Pasin said as a boat owner that comes in and out of the harbor, he was concerned that regulations would become overly restrictive and discourage pleasure boating. Mark Hoppen explained that the purpose of the ordinance was not to be overly restrictive, but to prevent incidences that could endanger pleasure boaters. Mr. Pasin asked several questions about language in the ordinance, which were addressed by staff and council.

Jessy Farr - 8109 66th Ave. Mr. Farr said that there were several myths going around about conditions in the harbor. He explained that there have never been more than three live-a-boards at a time, and currently there are none. He added that most live-a-boards have been cruisers from around the world laying over for a while. He agreed that he would like to see the derelict boats removed as they posed a danger. He also urged Council to be careful when making regulations as Gig Harbor is a boater-friendly community and there are people from all over the world to visit.

Councilmember discussed the proposed changes and asked that the ordinance be brought back for a third reading with the changes incorporated.

MOTION: Move that this ordinance return for a third reading with the proposed changes.
Ekberg/Owel - unanimously approved.

2. Termination of Sewer Moratorium. Mark Hoppen explained that the NPDES permit for the Wastewater Treatment Plant had been received and was in effect August 15th, and that this ordinance terminated the sewer moratorium imposed. Carol Morris proposed changes to include when the NPDES permit was in effect. She also spoke about the procedure to pass this ordinance with one reading.

MOTION: Move to adopt Ordinance No. 764 with the following corrections to add another paragraph stating that August 15th the City received the permit from the Department of Ecology and at the end of Section 1 and Section 2 to add "which was August 15, 1997", and utilizing the emergency passing procedures.
Picinich/Ekberg - unanimously approved.

3. East Gig Harbor Annexation - Motion to Consider. Carol Morris explained that at the last council meeting, the annexation petition from East Gig Harbor had been accepted, but that Council had not stated in the motion whether it would required the assumption of a portion of the city's bonded indebtedness and/or the adoption or proposed zoning for the area, which is required by state law. She read the debt information provided by Tom Enlow, Finance Director, and recommended that Council establish on the record whether the property owners would assume a share of the city's bonded indebtedness and zoning for the area.

Jack Bujacich - 3607 Ross Avenue. Mr. Bujacich advised Council to be aware of the inadequate roads, water and sewage facilities on the eastside and urged that the property owners on the eastside be required to form an ULID to make upgrades to these services, rather than to burden existing taxpayers.

MOTION: Move that upon the annexation of the Eastside, the property owners will assume all of its share of the city's bonded indebtedness and the zoning for the area be adopted under the city's Preannexation Zoning Ordinance No. 734 as Single Family Residential.
Markovich/Owel - unanimously approved.

4. Chapel Hill PUD - Street Acceptance. Wes Hill, Public Works Director, explained that in 1994, Council approved Chapel Hill planned unit development. He added that all work has been completed in June, and a two-year maintenance bond was in place for improvements on Edward Street. He explained that staff had been working with the owner toward dedication of the right-of-way to the city and described the conditions that had been met to date.

MOTION: Move we accept the right-of-way dedication and street and storm drainage improvements on Edwards Street subject to our legal counsel's approval of

the condition of title and documents granting an easement to the City of Gig Harbor for the subject property.
Markovich/Ekberg - unanimously approved.

NEW BUSINESS:

1. Emergency Ordinance Amending Gambling Taxes. Ms. Morris explained that in the last legislative session, legislature amended the statutes to create new exemptions that have been incorporated into the gambling tax ordinance. Because the law took effect July 27th, she suggested utilizing the emergency passing procedure so it would become effective immediately. She answered questions about language in the ordinance.

MOTION: Move to approve Ordinance No. 765, amending the regulation of gambling taxes, and utilizing the emergency passage procedure.
Picinich/Markovich - unanimously approved.

2. Emergency Response Mutual Aid Agreement. Wes Hill explained that several agencies had gotten together to draft a mutual aid agreement that would allow emergency public works assistance to other jurisdictions and to receive maximum reimbursement for the appropriate federal agencies. He added that this agreement had the support of the Association of Washington Cities and had been coordinated through the offices of TransAid.

MOTION: Move to direct the Public Works Director to sign the "Public Works Emergency Response Mutual Aid Agreement" on behalf of the city and to forward a certified copy to the TransAid Office.
Markovich/Picinich - unanimously approved.

3. Pioneer Park - Rotary Project. Mark Hoppen presented this proposal to have a 'pocket park' developed to display the last remaining light pole from the original Narrows Bridge. He explained that KeyBank Corporation is willing to lease the area next to the bank for a public park and discussed some of the terms of the lease. He described certain aspects of the park and recommended that this proposal be reviewed by the Design Review Committee and approved by the Public Works Department.

MOTION: Move we go ahead with the signing of the lease agreement with KeyBank Corporation in regards to the project of installing the last Narrows light pole and that the project would go to the Design Review Committee for review.
Picinich/Owel -

After further discussion the following amended motion was proposed.

AMENDED MOTION: Move to send the project to the Design Review Committee and if approved by the Public Works Department, the project return to Council for review prior to signing the contract.
Picinich/Ekberg - unanimously approved.

4. First Reading - Amendment to Sewer Extension Ordinance. Mark Hoppen explained that when the Wollochet Sewer District executed a contract to extend sewerage to the city sewer system, City Code Chapter 13.34 was amended to allow for emergency provisions. He added that upon review, certain limitations have been identified that would allow an existing facility with a failing system to connect but not a new facility. He explained that the new ordinance would allow more discretion in allowing for extensions. Carol Morris explained that the new language still follows statute, and the only changes are the restrictions placed by the City. This ordinance will return at the next council meeting for a second reading.

5. Avalon Woods - Request for Dedication. Mr. Hill explained that the property owners in the development have asked for consideration for the city to take over maintenance and ownership of the street and storm drainage system. He added that staff had looked at the street and storm sewers and they appear to be in good condition, but that the detention pond may be of some concern. He recommended that if there was interest in this proposal, that an independent engineering evaluation be performed on the facilities. Councilmember Markovich asked what the benefit/burden relationship would be to accepting dedication of road and/or storm drainage systems. Mr. Hill explained that it varied by plat and what standards were in place at the time of construction. He added that this dedication may benefit the city when applying for Federal Aid because arterial street mileage is relative to overall street mileage. Carol Morris pointed out that the city would assume any liability when assuming these dedications and suggested developing a procedure to have property owners pay for an engineering review before the proposal is considered for acceptance.

Jack Bujacich - 3607 Ross Avenue. Mr. Bujacich said it was a wise decision to have any facilities reviewed for maintenance issues and cited an example of sub-standard construction of a retention pond on the Westside.

Mark Hoppen agreed that it is not only an issue of who should pay for the assessment for inclusion within the city system, but also an obligation to protect the public interest to make sure these mechanisms are safe. He was directed to return with a procedure to deal with these requests.

6. WWTP Expansion Project - Contract Closure. Wes Hill gave a brief history of the project and explained the procedure to close out the construction contract. He added that the city would assume responsibility for the two-year warranty period as part of the change order to save time and money.

MOTION: Move to approve Change Order No. 4 for the Wastewater Treatment Plant Expansion Project in the credit amount of fifteen-thousand four-hundred ninety-eight dollars and no cents (\$15,498.00), including Washington State sales tax, and acceptance of the project in the final contract amount of two-million two-hundred twenty-nine thousand six-hundred seventy-four dollars and eleven cents (\$2,229,674.11), including Washington State sales tax.
Picinich/Owel - unanimously approved.

MOTION: Move we approve execution of the attached First Amendment to Agreement Between McClure & Sons and the City of Gig Harbor.
Picinich/Markovich - unanimously approved.

7. Pavement Marking - Contract Award. Wes Hill explained that the patching and crack sealing had been completed on city streets in preparation of restriping. He gave a summary of the two proposals and recommended award of the contract to Apply-A-Line.

MOTION: Move we approve award and execution of the contract for Pavement Marking on City Streets - 1997, to Apply-A-Line, Inc., as the lowest responsible respondent, for their price quotation proposal amount of fourteen-thousand five-hundred thirty dollars and seventy-six cents (\$14,530.76.)
Ekberg/Owel - unanimously approved.

8. Jerisich Dock Improvement Project - DNR Lease. Wes Hill explained that the survey work and supporting documentation required for the lease application had been completed and forwarded to DNR for review. He added that DNR is requiring that the lease agreement be renewed and that a \$500 assignment of funds be in place during the 30 year lease.

MOTION: Move approval of an assignment of funds in the amount of five-hundred dollars and no cents (\$500.00) to the State of Washington in accordance with the requirements for an Aquatic Land Lease from the Department of Natural Resources for the Jerisich Dock improvements.
Markovich/Picinich - unanimously approved.

PUBLIC COMMENT:

Lois Eyrse - Representing the Chamber of Commerce. Ms. Eyrse read a prepared statement regarding her concerns with the sign code process. Ms. Eyrse submitted a copy of the letter for the record.

Phil Arenson - 6750 Kimball Dr. Mr. Arenson said he appreciated the Council allowing comment during agenda items. He then recommended moving the public comment portion of the meeting back to the beginning to facilitate small children and the elderly. Mr. Arenson spoke of his concerns regarding the delays in the Kimball Drive project. He said the merchants had experienced a difficult time this summer due to construction in the area. He asked for consideration for the project. Mark Hoppen explained that an area meeting had been scheduled by Tom Taylor for September 4th.

Geoff Patrick - Peninsula Gateway. Mr. Patrick introduced Mark Hines and explained that Mr. Hines would be taking over the city beat portion of the newspaper.

MAYOR'S REPORT:

Gig Harbor's Own Song Benefits FISH. Mayor Wilbert showed the CD titled "Under a Gig Harbor Moon" produced by Laurel Cole that will be released on September 12th. She added that part of

the proceeds during the release party will be donated to Peninsula FISH.

COUNCIL COMMENTS:

Councilmember Owel stated that she attended the Shipboard Science on Puget Sound research vessel. She explained that this was a project geared toward children and gave an overview of the types of activities available on-board..

STAFF REPORT:

1. Mark Hoppen gave an update on the Highway 16 / Narrows Bridge project. He used a large collection of paperwork to illustrate the activities taking place. He described some of the interaction that had taken place with property owners adjoining Highway 16 regarding possible connections.
2. Wes Hill gave a brief update on the Skateboard Park Project.

ANNOUNCEMENT OF OTHER MEETINGS:

Legislative Breakfast at Madrona Links - Thursday, August 28th at 7:15 a.m.

APPROVAL OF BILLS:

MOTION: Move approval of checks #18377 through #18381 and #18500 through #18550 in the amount of \$59,201.01.
Owel/Ekberg - unanimously approved.

EXECUTIVE SESSION:

MOTION: Move to adjourn to Executive Session at 9:37 p.m. for approximately 20 minutes for the purpose of discussing litigation, potential litigation, and property acquisition.
Owel/Picinich - unanimously approved.

MOTION: Move to return to regular session at 9:50 p.m.
Owel/Markovich - unanimously approved.

Councilmember Owel thanked Mark Hoppen for the memorandum regarding termination of the sewer connection moratorium for public information and that she felt it was very helpful.

ADJOURN:

MOTION: Move to adjourn at 9:52 p.m.
Markovich/Owel - unanimously approved.

Cassette recorder utilized.

Tape 466 Side A 151 - end.

Tape 466 Side A 000 - end.

Tape 467 Both Sides.

Tape 468 Side A 000 - end.

Tape 468 Side B 000 - 091.

Mayor

City Clerk

MAYORAL PROCLAMATION

- WHEREAS Smoke and poisonous gases are the leading causes of death in fires, and can kill us long before the flames reach us; and
- WHEREAS Advance escape planning in all occupancies is essential to escaping a fire safely; and
- WHEREAS An adequate escape plan includes knowing two ways out of every room, an outdoor location where everyone will meet upon exiting, and memorizing the fire department's telephone number; and
- WHEREAS Fire drills should be practiced regularly, at least twice a year; and
- WHEREAS Early warning signs of fire must be taken seriously. A quick, decisive response is often what makes the difference between life and death in a fire; and
- WHEREAS This year's Fire Prevention Week theme, "Know When to Go: React Fast to Fire!" emphasizes the importance of escape planning at home and in public settings; and
- WHEREAS The fire service of Gig Harbor is dedicated to the safety of life and property from the devastating effects of fire; and
- WHEREAS The members of the fire service are joined by other concerned citizens of this city, as well as businesses, schools, service clubs and organizations in their fire safety efforts; and
- WHEREAS The local efforts of the fire service are supported by the activities of organizations such as the American Burn Association, the American Red Cross, the Congressional Fire Services Institute, the Fire Marshals Association of North America, the International Association of Arson Investigators, the International Association of Fire Chiefs, the International Association of Fire Fighters, the International Association of Black Professional Fire Fighters, the National Association of State Fire Marshals, the National Fire Protection Association, the National Volunteer Fire Council, and the United States Fire Administration;

I, Gretchen Wilbert, Mayor of the City of Gig Harbor, do hereby proclaim the week of October 5-11, 1997, as Fire Prevention Week. This week commemorated the great Chicago Fire of 1871, which killed more than 250 persons, left 100,000 homeless and destroyed more than 17,400 buildings.

I call upon the people of this city to participate in fire prevention activities at home, work and school, and to heed the message: "Know When to Go: React Fast to Fire!" as the 1997 Fire Prevention Week theme suggests.

In witness hereof, I hereunto set my hand this first day of October, the year of nineteen hundred and ninety-seven.

Mayor Gretchen Wilbert

Date

Washington Finance Officer's Association

PROFESSIONAL FINANCE OFFICER AWARD PROGRAM

c/o KEN JOHNSON
SNOHOMISH COUNTY
3000 ROCKEFELLER AVE, MS 610
EVERETT, WASHINGTON 98201
OFFICE (425) 388-3308
FAX (425) 388-3373

RECEIVED

SEP 2 - 1997

CITY OF GIG HARBOR

August 29, 1997

MS. GRETCHEN WILBERT, MAYOR
CITY OF GIG HARBOR
3105 JUDSON STREET
GIG HARBOR WA 98335

Dear Ms. Wilbert:

The following individual(s) has (have) earned the PROFESSIONAL FINANCE OFFICER AWARD for 1997 from the WASHINGTON FINANCE OFFICER ASSOCIATION (WFOA).

This award requires commitment to ongoing education, professional excellence, and community service. WFOA would like to thank you for your support and encourage you to recognize this accomplishment.

TOM ENLOW
FINANCE DIRECTOR
CITY OF GIG HARBOR

Sincerely,



Ken Johnson,
PFO Committee Chairperson

RECEIVED

AUG 27 1997

CITY OF GIG HARBOR

Dear Mayor Wilbert

Thank you very much for your kindness and hospitality you showed us while Takuma-Town-members were visiting your city "Gig Harbor."

The Welcome party, the City tour, the English class, the trip to Mt. Rainier and the activities with host families, these events must be unforgettable memory for the students all the time. Especially, I really appreciate that you gave them the City tour. And I hear you looked very nice in the "Happi" coat I gave you.

Chairman Yoshiga told me about millions of hearty welcome and pleasant events in Gig Harbor. I appreciate it. Please give my best regards to you all.

Thanking again for your cordiality.

Sincerely yours.

Tadashi Yokoyama

MAYOR,

TADASHI YOKOYAMA

TAKUMA OFFICE

1338-13 TAKUMA-CHO, MITOYO-GUN, KAGAWA-KEN, JAPAN

TEL: 875 (83) 3111

FAX: 875 (83) 4701

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, The Constitution of the United States of America, the guardian of our liberties is a product of reflection and choice, embodying the principles of limited government in a Republic dedicated to rule by law, not by men; and

WHEREAS, September 17, 1997 marks the two hundred tenth anniversary of the drafting of the Constitution of the United States of America by the 1787 Constitutional Convention; and

WHEREAS, It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate this grand occasion; and

WHEREAS, Public Law 915 guarantees the insuring of a proclamation each year by the President of this great county designating September 17 through 23 as Constitution Week,

NOW, THEREFORE, I, Gretchen A. Wilbert, Mayor of the City of Gig Harbor, hereby declare the week of September 17 through 23 as

Constitution Week

and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 15th day of September in the year of our Lord one thousand hundred and ninety seven.

Gretchen A. Wilbert, Mayor

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: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: HARBOR CODE REVISION - THIRD READING OF ORDINANCE
DATE: AUGUST 28, 1997

INFORMATION/BACKGROUND

The attached ordinance is offered for final reading in order to repeal and replace Gig Harbor Municipal Code Chapter 8.24. This revised code contains enforceable definitions and actions to be taken by the Police Chief, who is defined as the Harbor Warden within the chapter. The ordinance presented does not include language relating to the defined navigation and anchorage areas or the length of vessel stay in the bay. *The ordinance includes all revisions made by Council at the August 25, 1997, council meeting.*

POLICY CONSIDERATIONS

The defined navigation and anchorage and length of stay provisions are important for the management of Gig Harbor Bay, but such language is not included in the attached ordinance because these issues require concurrence with Pierce County as long as two jurisdictions manage the bay. (Pierce County is currently working on a response to city concerns with respect to all these issues.) The ordinance as presented offers significant improvements in the city's ability to manage the bay within its jurisdiction.

FISCAL CONSIDERATIONS

Greater allocation of police time on Gig Harbor Bay may be the result of clarified enforcement capabilities.

RECOMMENDATION

Staff recommends approval of the ordinance at this reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO VESSELS AND ACTIVITIES IN GIG HARBOR BAY, REPEALING THE EXISTING HARBOR CODE CHAPTER 8.24 AND ADDING A NEW HARBOR CODE CHAPTER 8.24 TO THE GIG HARBOR MUNICIPAL CODE WITH ADDITIONAL DEFINITIONS, DESCRIPTIONS OF VIOLATIONS, PENALTIES AND PROCEDURES FOR IMPOUNDING AND AUCTIONING OF VESSELS UNDER CERTAIN LIMITED CIRCUMSTANCES.

WHEREAS, the existing Harbor Code (chapter 8.24 GHMC) authorizes the Harbor Warden to take certain actions to enforce the Code; and

WHEREAS, there are no explicit procedures in the existing Harbor Code to guide the Harbor Warden's enforcement of the Code, although the Harbor Warden may follow general procedures set forth in State statute; and

WHEREAS, the City Council determines that the Harbor Warden's responsibilities to enforce the Harbor Code can be more efficiently handled if the procedures are described and set forth in the City's Code; now, therefore,

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

Section 1. Chapter 8.24 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new Chapter 8.24 is hereby added to the Gig Harbor Municipal Code,
to read as follows:

Chapter 8.24

HARBOR CODE

8.24.002	Application and Justification
8.24.004	Authorization
8.24.006	Definitions
8.24.008	Additional Definitions
8.24.010	Harbor Warden
8.24.012	Rules of the Road
8.24.014	Liability
8.24.016	Chapter 88.12 RCW Adopted by Reference
8.24.018	Chapter 352.60 WAC Adopted by Reference
8.24.020	Interference with Navigation
8.24.022	Mooring Buoys
8.24.024	Residential Use of Floating Homes Prohibited
8.24.026	Speed Regulations
8.24.028	Seaplanes
8.24.030	Removal of Obstructing Vessels
8.24.032	Sunken Vessels
8.24.034	Unseaworthy Craft
8.24.036	Impoundment Authority
8.24.038	Impoundment Procedures
8.24.040	Nuisances

8.24.002 Application and justification. The provisions of this chapter shall be applicable to all vessels and watercraft operating in the city limits of Gig Harbor Bay. This chapter may also be enforced in the area of Gig Harbor Bay within the jurisdiction of Pierce County, if the parties have executed an interlocal agreement for such enforcement. The provisions of this chapter shall be construed to supplement United States laws and state laws and regulations when not expressly inconsistent therewith, in the areas where the United States and state laws are applicable. To the extent that this chapter is inconsistent with federal or state laws and regulations, the federal and/or state laws shall control.

8.24.004 Authorization. The City, in the exercise of its police power, assumes control and jurisdiction over all waters within its limits, and such waters shall, for the purposes of this chapter, be known as "Gig Harbor Bay."

8.24.006 Definitions. The "Definitions" contained in RCW 88.12.010, as the same now exists or may hereafter be amended, are hereby adopted by reference, and the definitions set forth therein shall apply throughout this chapter.

8.24.008 Additional definitions. In addition to the definitions in RCW 88.12.010, the following definitions shall apply and have the meanings set forth below, except where the same shall be clearly contrary to or inconsistent with the context of the section in which used.

- A. "Buoy" means a small float moored in the water used to define a navigation channel, convey an official message, or provide temporary moorage for a vessel.
- B. "City" means the City of Gig Harbor.
- C. "Floating Home" means a building constructed on a float, used whole or in part for human habitation as a dwelling or business, and which is normally incapable of self-propulsion, and usually permanently moored, anchored, or otherwise secured, as distinguished from the mooring or anchoring of a vessel.
- D. "Moor" means a position where vessels or watercraft are affixed to devices or structures other than a vessel's parochial anchoring system.
- E. "Obstruction" means any vessel or watercraft or any matter which may in any way block, interfere with or endanger any vessel or watercraft or impede navigation, or which cannot comply with the Rules of the Road identified in GHMC Section 8.24.080.
- F. "Watercraft" means any contrivance used or capable of being used as a means of transportation on water. Cribs, piles, or rafts of logs shall not be included in the terms "watercraft" or "vessel," but shall be included in the term "obstruction" when they shall be floating loose and not under any control or when under control and obstructing any navigable channel.

8.24.010 Harbor Warden. This chapter shall be enforced by the police chief, who shall be designated the Harbor Warden. It shall be the duty of the Harbor Warden, and his/her authorized designees, to:

- A. Enforce the ordinances and regulations of the City upon the waters of the harbor and adjacent lands thereto, when the harbor is affected;
- B. Maintain patrols in the harbor for the protection of life and property, including, but not limited to, the removal and disposition of drifting debris and nuisances from the waters of the harbor;
- C. Investigate and report upon marine and maritime accidents in the harbor;
- D. Coordinate all necessary functions in connection with search and rescue in the harbor;
- E. Promulgate rules and regulations governing the use of the navigable portions of waterways; and
- F. Remove, impound or sell any vessel, watercraft or obstruction anchored or moored in violation of this chapter deemed a public nuisance or a hazard to navigation or operated or afloat under conditions deemed unsafe for water transportation.

8.24.012 Rules of the Road. Except as otherwise specified in this chapter, vessels shall be subject to the International Regulations for Preventing Collisions at Sea, 1972, (72 COLREGS), Title 33, Code of Federal Regulations, part 81-72, Appendix A, as such rules are now or may hereafter be amended or adopted. Vessels engaged in a sanctioned or authorized race, log race, regatta or similar event, shall be subject to the applicable rules for such events, including, but not limited to, differing right-of-way rules.

8.24.014 Liability. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from the failure of any person or owner of a vessel, watercraft or obstruction, to comply with the provisions of this chapter, or by reason or in consequence of any notice, order, citation, permit, permission or approval authorized or issued or done in connection with the implementation or enforcement of this chapter, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this Code by its officers, employees or agents. Nothing in this chapter shall be construed so as to release any person owning or controlling any vessel, watercraft, pier, dock, obstruction or other structure, from any liability from damages, and the safeguards to life and property required by this chapter shall not be construed as relieving any person from installing and maintaining all other safeguards that may be required by law.

8.24.016 Chapter 88.12 RCW Adopted by Reference. Chapter 88.12 RCW, "Regulation of Recreational Vessels," as the same now exist or may hereafter be amended, is hereby adopted by reference.

8.24.018 Chapter 352-60 WAC Adopted by Reference. Chapter 352-60 WAC, "Boating Safety," as the same now exists or may be hereafter amended, is hereby adopted by reference.

8.24.020 Interference with Navigation. No person shall operate any watercraft or vessel on the water in a manner which shall unreasonably or unnecessarily interfere with other watercraft or vessels, or with the free and proper navigation of Gig Harbor Bay, or the launching of any watercraft or vessel at any public boat launching ramp.

8.24.022 Mooring Buoys. Mooring buoys are prohibited in Gig Harbor Bay where such buoys will interfere with customarily traveled routes for vessels. No more than one buoy may be installed for each ownership beyond extreme low water or line of navigability. However, ownerships exceeding 200 feet as measured along the shoreline may be permitted more installations on a case by case basis. The City's permission to install a mooring buoy shall not exempt a person from obtaining any and all necessary permits or permissions required by other government authorities. Nothing in this section shall be interpreted to be inconsistent with chapter 332-30 WAC, or any other state law, regulation or rule regarding the permitting of mooring buoys.

8.24.024 Residential Use of Floating Homes or Houseboats in Harbor Prohibited. It shall be unlawful to use a floating home or houseboat for residential purposes within Gig Harbor Bay.

8.24.026 Speed Regulations. Within the waters of Gig Harbor Bay, it shall be unlawful for any person to operate a vessel or watercraft, or to taxi a seaplane at a speed in excess of five (5) miles per hour, or at a slower speed that produces a damaging wake. Nothing in this section shall be construed as exempting any person from liability caused by wake action from operation of any vessel in Gig Harbor Bay.

8.24.028 Seaplanes. Seaplane operators are encouraged to take off and land in the area outside the mouth of Gig Harbor Bay and may taxi the seaplane into Gig Harbor Bay. However, seaplane takeoffs and landings are prohibited in the City's harbor except in emergency situations and where the pilot can maintain a minimum of 200 feet of lateral separation between the seaplane and other underway or anchored vessels while operating on the water.

8.24.030 Removal of Obstructing Vessels.

A. Acts Prohibited.

1. No person having charge of any vessel, watercraft or obstruction shall moor within Gig Harbor Bay, except at permitted moorage.

2. No person having charge of any vessel, watercraft or obstruction shall make the same fast to any buoy, pier or other structure owned by or under the control of the City, without permission from the City.

3. No person having charge of any towboat shall while towing any vessel, watercraft or obstruction, in any manner obstruct navigation in the Gig Harbor Bay.

B. Harbor Warden Authority. The Harbor Warden shall have the power to order the removal of:

1. Any vessel, watercraft or obstruction anchored or moored in Gig Harbor Bay, or made fast to any buoy, pier, dock or other structure owned by or under the authority and control of the City, in violation of this chapter; and

2. Any towboat and/or its tow obstructing navigation in the Gig Harbor Bay.

8.24.032 Sunken vessels. When any vessel or watercraft or obstruction is in danger of sinking, has been sunk or grounded, or has been delayed in such manner as to stop or seriously interfere with or endanger navigation, the Harbor Warden may order the same immediately removed. If the owner or other person in charge thereof, after being so ordered, does not proceed immediately with such removal, the Harbor Warden may take immediate possession thereof and remove the same. In so doing, the Harbor Warden shall use such methods as in the Harbor Warden's judgment will prevent unnecessary damage to such vessel or watercraft or obstruction, and the expense incurred by the Harbor Warden in such removal shall be paid by the owner of the vessel, watercraft or obstruction. In case of failure to pay, the City may maintain an action for the recovery of such costs.

8.24.034 Unseaworthy craft. It shall be unlawful for any person or owner of a vessel, watercraft or obstruction to tow into or move such vessel, watercraft or obstruction into Gig Harbor Bay, which prior to movement or tow appears or exists in an unseaworthy condition, uses or needs support from another vessel or watercraft to remain afloat, or otherwise appears to lack the capacity for safe movement through and across navigable waters, other than the following: (a) barges or scows or disabled or buoyant aircraft in tow by a towage company authorized to do business in the state; (b) vessels or watercraft temporarily disabled by accident, collision, or other malfunction but otherwise seaworthy and capable of safe movement, and (c) vessels, watercraft or obstructions being towed by or under the control of the Harbor Warden.

8.24.036 Impoundment Authority. The Harbor Warden may take immediate possession and/or impound and remove any vessel, watercraft or obstruction, when:

A. the operator or person in charge of same reasonably appears incapable of safely operating the vessel, watercraft or obstruction;

B. the operator or person in charge of same refuses or neglects to obey an order of the Harbor Warden to proceed from or to an area following a citation or in an emergency;

C. the operator or person in charge operates a vessel, watercraft or obstruction in a negligent, reckless, or other manner so as to endanger the safety of others or to unreasonably interfere with the navigation of other watercraft and vessels, and the Harbor Warden believes such operation of the vessel, watercraft or obstruction would continue unless possession be taken of the same;

D. the vessel, watercraft or obstruction appears unsafe for water transportation; or

E. the vessel, watercraft or obstruction appears abandoned, and seventy-two (72) hours have elapsed after an order to remove the same has been given by the Harbor Warden as provided in Section 8.24.038(A).

8.24.038 Impound Procedures. The Harbor Warden shall implement the following procedures to impound any vessel, watercraft or obstruction under the authority provided in this chapter:

A. Where immediate removal of the vessel, watercraft or obstruction is not required, the Harbor Warden shall attach a readily visible written notification to the vessel, watercraft or obstruction. The written notification shall contain the following information:

1. the date and time the written notification was attached;
2. a statement that if the vessel, watercraft or obstruction is not removed within seventy-two (72) hours from the time the written notification is attached, it will be taken into custody, moored and stored at the owner's expense;
3. the address and telephone number where additional information may be obtained.

B. The Harbor Warden shall check the records to learn the identity of the last owner of record with the State of Washington. The Warden shall make a reasonable effort to contact the owner by telephone in order to give the owner the information on the written notification.

C. If the vessel, watercraft or obstruction is not removed within seventy-two (72) hours from the time the written notification is attached, or in those cases where immediate removal is appropriate (as described in this chapter), the Harbor Warden may take custody of the vessel, watercraft or obstruction and provide for the removal, mooring and/or storage to a place of safety.

D. All vessels, watercraft or obstructions shall be taken to the nearest mooring or storage location that has been inspected by the Police Department.

E. All vessels, watercraft or obstructions shall be handled and returned in substantially the same condition as they existed before being towed.

F. All personal belongings and contents in the vessel, watercraft or obstruction, with the exception of those items of personal property that are registered or titled with the Police Department, shall be kept intact, and shall be returned to the owner of the vessel, watercraft or obstruction during normal business hours and upon request and presentation of a driver's license or other sufficient identification. Personal belongings, with the exception of those items of personal property that are registered or titled with the Department, shall not be sold at auction to fulfill a lien against the vessel, watercraft or obstruction.

G. All personal belongings, with the exception of those items of personal property that are registered or titled with the Police Department, not claimed before the auction, shall be disposed of pursuant to chapter 63.32 or 63.40 RCW.

H. Any person who shows proof of ownership or written authorization from the impounded vessel or watercraft's registration, or of the legal owner of the vessel or watercraft's insurer, may view the vessel or watercraft without charge during normal business hours.

I. The owner of the vessel, watercraft or obstruction is liable for costs incurred in removing, storing and disposing of same, less amounts realized at auction.

J. When the vessel, watercraft or obstruction is impounded, the Harbor Warden shall notify the legal and registered owners of the vessel, watercraft or obstruction if known, of the impoundment and proposed sale of same. The owners of any personal property registered or titled with the Police Department shall be notified of disposition of such property pursuant to Chapters 63.32 or 63.40 RCW, of the impoundment and proposed sale of same. The notification shall be sent by first class mail within twenty-four hours after the impoundment to the last known registered and legal owners of the vehicle, and the owners of any other items of personal property registered or titled with the Police Department. The notice shall include the location, time of the impound, and by whose authority the vehicle was impounded. The notice shall also include the written notice of the right of redemption and opportunity to contest the validity of the impoundment pursuant to the procedures described below.

K. Right to hearing.

1. Any person seeking to redeem an impounded vessel, watercraft or obstruction under this section has a right to a hearing in the district court for the jurisdiction in which the vehicle was impounded, to contest the validity of the impoundment or the amount of towing and storage charges. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the opportunity was provided for in subsection 8.24.038(J) of this section. If the hearing request is not received by the district court within the ten day period, the right to a hearing is waived and the registered owner is liable for any towing, storage or other impoundment charges permitted under this chapter.

2. The procedures to be followed by the district court for notification to parties, jurisdiction, and determinations to be made by the court shall be the same as set forth in state law for vehicles (RCW 46.55.120(2)(b) through 46.55.120(4), as the same currently exist or may hereafter be amended). In the event that the City has incurred costs relating to the towing, storage and impoundment of the vessel, watercraft or obstruction, the procedures for entry of a judgment in RCW 46.55.120 (as the same currently exists or may hereafter be amended,) shall apply to the City.

L. Public auction.

1. If, after the expiration of fifteen days from the date of mailing of notice of impoundment and proposed sale required in subsection 8.24.380(J) above to the registered and legal owners, the vessel, watercraft or obstruction remains unclaimed and has not been listed as stolen, then the Harbor Warden shall conduct a sale of the vessel, watercraft or obstruction at public auction. Prior notification of the public auction shall be given by publication in the City's official newspaper, which shall include the auction date, place and time. The notice shall also contain a description of the vessel, watercraft or obstruction, including any make, model, year and registration number and a notification that a three-hour viewing period will be available before the auction. The auction shall be held during daylight hours of a normal business day.

2. The following procedures are required in any public auction of such vessels, watercraft or obstructions:

a. The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

b. The Harbor Warden shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the Police Department, the Warden shall post a clearly visible sign at the Police Department that describes in detail where the auction will be held. At the bidding site, a copy of the newspaper advertisement that lists the vessels, watercraft or obstruction for sale shall be posted.

c. All bidders must be present at the time of auction unless they have submitted to the Harbor Warden, who may or may not choose to use the preauction bid method, a written bid. Written bids may be submitted up to five calendar days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid.

d. The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded.

e. The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder.

f. In case of bidder defaults, the next bidder has the right to purchase the vessel, watercraft or obstruction for the amount of his or her bid.

g. The successful bidder shall apply for title (if applicable) within fifteen days.

h. If the Harbor Warden receives no bid, or if the Warden is the successful bidder at auction, the Warden shall sell the vessel, watercraft or obstruction to a licensed vehicle wrecker, hulk hauler, or scrap processor, or the Warden shall apply for title to the vessel or watercraft.

M. The City shall have a lien upon the impounded vessel, watercraft or obstruction for services provided in the towing, storage and impoundment, unless the impoundment is determined to have been invalid. The lien does not apply to personal property in or upon the vessel, watercraft or obstruction that is not permanently attached to or is not an integral part of the vessel, watercraft or obstruction except for items of personal property registered or titled with the Police Department. The cost of the auction or a buyer's fee may not be added to the amount charged for the vessel, watercraft or obstruction at auction, or added to the lien imposed or any overage due.

8.24.040 Nuisances. Nuisances Designated -- Removal. Sunken vessels, refuse of all kinds, structures or pieces of any structure, dock sweepings, dead fish or parts thereof, dead animals or parts thereof, timber, logs, piles, boom sticks, lumber, boxes, empty containers and oil of any kind floating uncontrolled on the water, and all other substances of a similar nature, are declared to be public nuisances and it shall be unlawful for any person to throw or place in, or cause or permit to be thrown or placed any of the above articles in the Gig Harbor Bay, or upon the shores thereof or in such position that the same may or can be washed into the harbor, either by high tides, storms, floods or otherwise. Any person causing or permitting such nuisances to be placed in the Gig Harbor Bay shall remove the same, and upon his failure to do so, the same may be removed by the Harbor Warden and the expense thereof shall be paid by and recoverable from the persons creating the nuisance. In all cases, such nuisances may be abated in the manner provided by law including, but not limited to, Chapter 7.48 RCW and Chapter 9.66 RCW. The abatement of any such public nuisance shall not excuse the person responsible therefor from prosecution under this chapter.

Section 3. Severability. 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 4. Codes Adopted by Reference. Pursuant to RCW 35A.12.140, one copy of Chapter 88.12 RCW and one copy of Chapter 352-60 WAC has been filed with the City Clerk and is available for examination by the public.

Section 5. Effective date. 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 CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 8/6/97
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 VESSELS AND ACTIVITIES IN GIG HARBOR BAY, REPEALING THE EXISTING HARBOR CODE CHAPTER 8.24 AND ADDING A NEW HARBOR CODE CHAPTER 8.24 TO THE GIG HARBOR MUNICIPAL CODE WITH ADDITIONAL DEFINITIONS, DESCRIPTIONS OF VIOLATIONS, PENALTIES AND PROCEDURES FOR IMPOUNDING AND AUCTIONING OF VESSELS UNDER CERTAIN LIMITED CIRCUMSTANCES.

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

DATED this _____ day of _____, 199__.

CITY CLERK, MOLLY TOWSLEE



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: AMENDMENT TO SEWER EXTENSION ORDINANCE
DATE: APRIL 28, 1997

INFORMATION/BACKGROUND

A municipal or quasi-municipal corporation may currently apply for an extension of sewer service outside the boundary of the Urban Growth Area if the entity can meet the criteria identified in 13.34.070. (Chapter 13.34 is attached) The intent of this section was to allow municipal or quasi-municipal corporations such as water, sewer or fire districts to make application for water or sewer service for property outside the urban area boundary in order to advance the local public interest.

POLICY CONSIDERATIONS

The ordinance as crafted restricts application to those entities that can show, among other requirements, an emergency order issued by the Department of Ecology. In the case of the Peninsula School District, for instance, this requirement would limit extensions to those schools which had failing septic drainfield systems. New schools would be unable to meet this particular criterion. With the siting of a new middle school under discussion, this ordinance is of particular interest to the Peninsula School District.

Additionally, other criteria might be better left in a *discretionary* category. For instance, the criterion proposed in C.3., if imposed, would mean that a sewer district which was not contiguous to the UGA boundary and the city's sewer system could connect to sewer, but that a school site in the same situation could not. School systems cannot gain easement rights for sewer. Thus, under the C.3. criterion, a school would need to be contiguous to the UGA and immediately adjacent to the city system. Such a stipulation might not be in the local public interest.

FISCAL CONSIDERATIONS

Fiscal considerations with respect to this ordinance are fact situation dependent. The ordinance, both as written and as proposed, provides a framework for the protection of ratepayer interests and potential liabilities.

RECOMMENDATION

This is the second reading of this ordinance. Staff recommends approval of this ordinance as presented.

ORDINANCE NO. __

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO SEWER EXTENSIONS OUTSIDE THE CITY LIMITS, CHANGING THE PROCESS FOR APPLICATION OF SUCH EXTENSIONS BY MUNICIPAL AND QUASI-MUNICIPAL CORPORATIONS TO ALLOW SUBMITTAL TO THE CITY UNDER CERTAIN LIMITED CIRCUMSTANCES, WITHOUT A DEPARTMENT OF ECOLOGY EMERGENCY ORDER; AMENDING SECTION 13.34.070 OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, a municipal or quasi-municipal corporation may now apply for an extension of sewer service outside the boundaries of the City of Gig Harbor, pursuant to Gig Harbor Municipal Code ("GHMC") § 13.34.070; and

WHEREAS, a successful municipal or quasi-municipal applicant for sewer service outside the City boundaries must satisfy all of the requirements of chapter 13.34 GHMC, including a demonstration that "the extension is necessary to protect basic public health, safety and/or the environment;" and

WHEREAS, as a prerequisite, GHMC § 13.34.070(A) now requires an applicant to submit an emergency order issued by the Department of Ecology; and

WHEREAS, the City Council finds that as long as the municipal or quasi-municipal corporation can demonstrate compliance with all of the conditions set forth in chapter 13.34 GHMC relative to such sewer service, an emergency order issued by the Department of Ecology is unnecessary, but submission of such order is one method by which an applicant can demonstrate that the extension will protect basic public health, safety and/or the environment; and

WHEREAS, the City Council desires to eliminate the requirement that an emergency order issue as a prerequisite to extension of all municipal or quasi-municipal extension sewer service outside the City limits, but not to alter the applicant's burden to demonstrate that the extension is necessary to protect basic public health, safety and/or the environment; now, therefore,

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

Section 1. Section 13.34.070 of the Gig Harbor Municipal Code is hereby amended to read:

13.34.070 Extensions for public health, safety or environmental reasons.

A. Municipal corporations or quasi-municipal corporations such as water, sewer or fire districts may make application for water or sewer service to property outside the city urban growth area boundary if, in addition to all other requirements of this title, the applicant can demonstrate that the extension is necessary to protect basic public health, safety, welfare and/or the environment. This showing ~~shall~~ may include, among other documentation, an emergency order issued by the Department of Ecology relative to any sewer extension request.

B. The city council shall review the application and may, in its sole discretion, allow the extension under the following ~~conditions~~ if the council finds:

1. ~~The council finds~~ that the requested service is financially supportable at rural densities and does not permit urban development;
2. ~~Restrictions are placed on the hours that the city will accept sewage flow from the applicants;~~
3. ~~Restrictions are placed on the amount of sewage flow or water provided to the applicant;~~
4. that the city's NPDES permit will not be affected by the extension; and
5. ~~For extensions outside the city's urban growth boundary area, the applicant shall have responsibility for its own facilities;~~

~~63.~~ that the extension is consistent with the goals of the city's water and sewer comprehensive plans and all other applicable law, including, but not limited to, the Public Water System Coordination Act (Chapter 70.116 RCW), and the State Environmental Policy Act (Chapter 42.31C RCW);.

~~7. Any other conditions the council considers appropriate.~~

C. The council's approval of any extension under the criteria in GHMC § 13.34.070(B) above may be conditioned upon the following:

1. restrictions may be placed on the hours that the City will accept sewage flow from the applicants;

2. restrictions may be placed on the amount of sewage flow or water provided to the applicant;

3. for extensions outside the City's urban growth boundary area, the applicant shall have responsibility to maintain and operate its own facilities; and/or

4. any other conditions the council considers appropriate.

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 CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 8/20/97
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 SEWER EXTENSIONS OUTSIDE THE CITY LIMITS, CHANGING THE PROCESS FOR APPLICATION OF SUCH EXTENSIONS BY MUNICIPAL AND QUASI-MUNICIPAL CORPORATIONS TO ALLOW SUBMITTAL TO THE CITY UNDER CERTAIN LIMITED CIRCUMSTANCES, WITHOUT A DEPARTMENT OF ECOLOGY EMERGENCY ORDER; AMENDING SECTION 13.34.070 OF THE GIG HARBOR MUNICIPAL CODE.

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

DATED this ____ day of _____, 199_.

CITY CLERK, MOLLY M. TOWSLEE



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: HORIZON WEST - OUTSIDE SEWER REQUEST
DATE: SEPTEMBER 3, 1997

INFORMATION/BACKGROUND

The Horizon West subdivision, Pierce County Preliminary Plat SPR5-91, is a 78 lot, single family subdivision. Mr. Walt Smith is requesting 16 ERUs of sewer capacity to complement the 59 remaining ERUs of sewer capacity for which he has already contracted with the city. 56 ERUs of the sewerage capacity already purchased are proposed for use outside of the UGA. One ERU of the original 60 contracted ERUs has been utilized to connect the Active Construction office site. The additional 16 ERUs which Mr. Smith is requesting will ensure that the Horizon West area inside the UGA will be serviced with sewer like the 56 units outside the UGA, instead of with septic drainfields.

POLICY CONSIDERATIONS

Since the contract for the 60 ERUs pre-dated the establishment of the urban boundary line, the city is both authorized and committed to extend the remaining 59 ERUs of sewer capacity to the Horizon West development, inside and/or outside of the UGA boundary line within the contracted boundary limitations of the Active Construction capacity commitment area. *It should be noted that the Active Construction capacity commitment area and the ULID#3 contract area are coterminus, but in this ULID #3 area only the existing capacity commitment agreement confers the right to utilize the city's treatment plant capacity.*

The Horizon West site will be served by Harbor Water Company, an on-site water source adequate for residential service through upgrade. Sewer service to these additional lots fosters logical service consistency with previous contractual commitments made by a previous body of the Gig Harbor City Council.

FISCAL CONSIDERATIONS

The property identified for extension is within the boundaries of the city's ULID #3. The current cost per ERU in this Zone D area is \$1780. The capacity commitment payment for a three year commitment is \$4272. The commitment payment will be credited on a pro-rated basis as connections are made within the term of the contract. 100% hook-up (and/or payment for hook-up) must be made within three years to obtain 100% credit for the commitment payment.

RECOMMENDATION

Staff recommends approval of the standard contract as presented for 16 ERUs to Mr. Walt Smith for that portion of the Horizon West Subdivision which lies within the city's UGA.

**active
construction
inc.** August 26, 1997

Mr. Mark Hoppen
City of Gig Harbor
P.O. Box 145
Gig Harbor, WA 98335

RE: HORIZON WEST SUBDIVISION - SEWER CAPACITY ALLOCATION

Dear Mr. Hoppen

This letter is intended to follow up our discussions and formally request of the City council an allocation of an additional 16 ERU's for the Horizon West subdivision located at the Swede Hill Interchange. Originally The Council previously allocated 60 ERU's to the site, and where as the final subdivision map contains 75 lots (see attached). I have included exhibits for the Council's use, including a vicinity map showing the location of the project, a separate map showing the subdivision, and a map showing surrounding properties and location of the Urban/Rural Growth Management Act (GMA) boundary. Originally I requested 15 ERU's since then I used one ERU for my office therefore I now need a total of 16 ERU's.

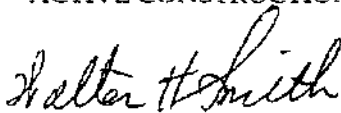
Prior to the adoption of GMA, I applied to the City for sewer service. At that point in time I had a pending subdivision application with Pierce County for 60 lots on the westerly portion of my property. The City council granted the request and I revised the subdivision application to include a total of 75 lots. The subdivision was approved, and final construction plans have been approved by Pierce County and the City of Gig Harbor agencies for construction.

Subsequently I purchased additional sewer capacity for the property from ULID #3, 16 of the ERU's are allocated for completion of Horizon West subdivision. In addition I am submitting a letter from the Public Works Director, Wes Hill, who recommends approval of the additional ERU's.

The City of Gig Harbor adopted, in accordance with GMA and County Concurrence, a map establishing an Urban/Rural line for the Gig Harbor area. This boundary has been superimposed on the attached exhibits which illustrates the 56 lots of the subdivision lie outside the boundary, and the approved sewer service are in accordance with the original agreement for servicing these lots. The additional 16 ERU's will service those lots lying "within" the City of Gig Harbor's Urban area, and allow for completion of subdivision.

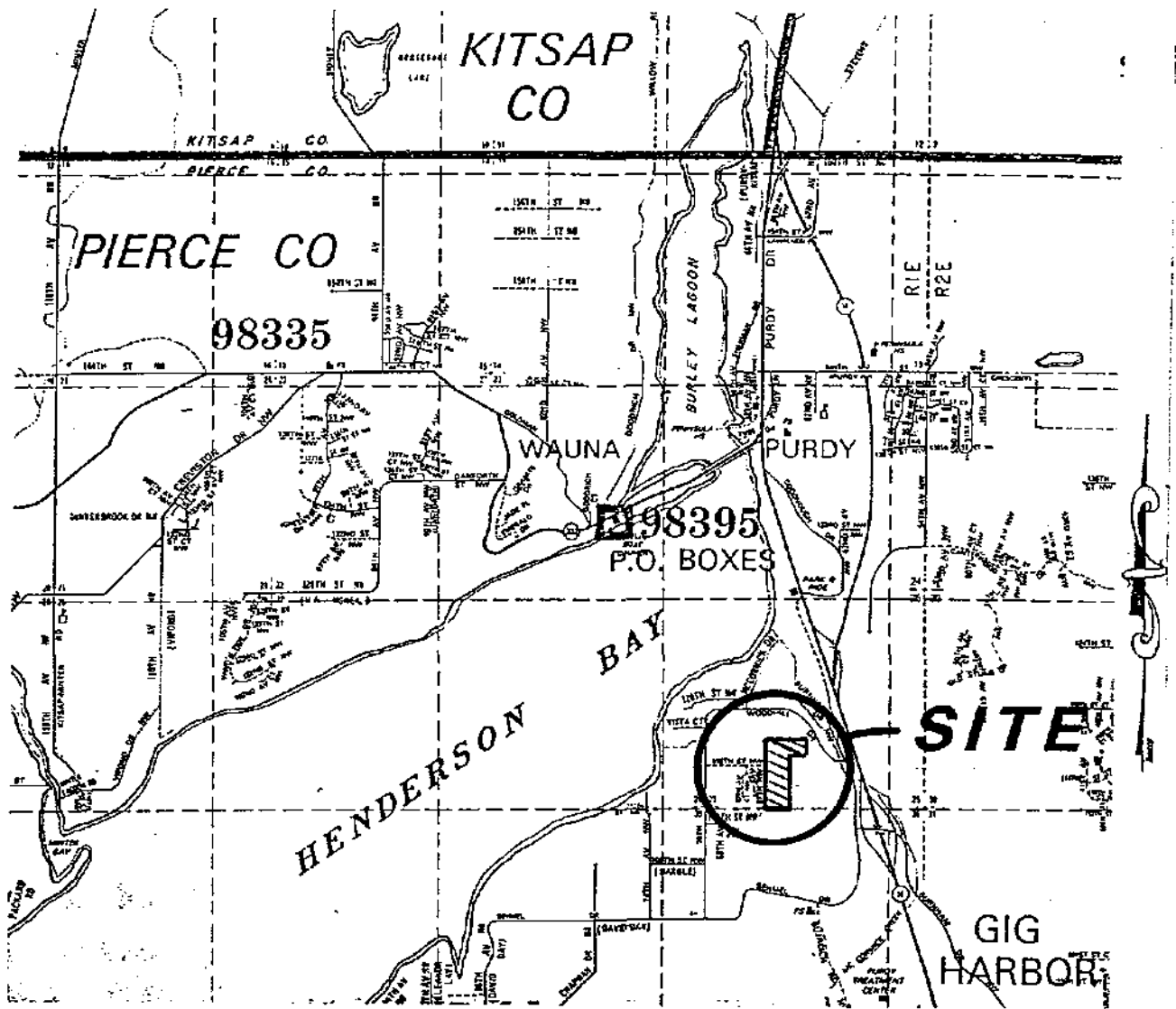
If I can be of any further assistance, or if you need additional copies of the exhibits or information we have in our files, please do not hesitate to contact me. As you know this has been a long process since 1994, therefore I am hopeful to be on the first City Council Meeting in September 1997.

Sincerely,
ACTIVE CONSTRUCTION, INC.


Walter H. Smith
President
WHS/smh
ERUD26.WHS



HORIZON WEST SUBDIVISION

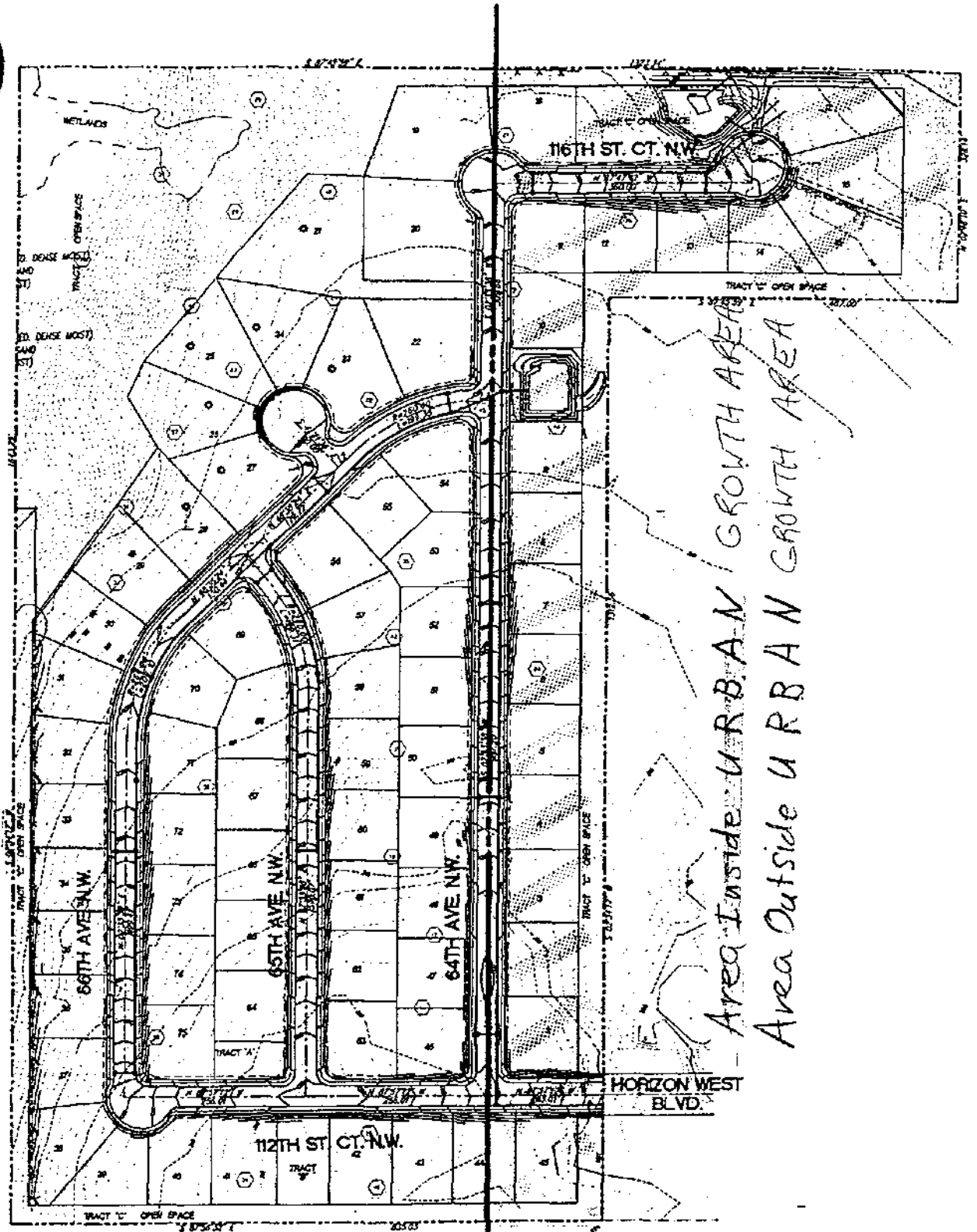
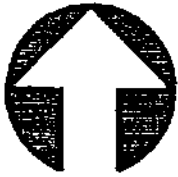


VICINITY MAP

SCALE: 1" = 400'

HORIZON WEST

A PORTION OF THE WEST 1/2 OF THE S.E. 1/4 OF SEC. 25, T 22 N, R 1 E, W.M.,
PIERCE COUNTY, WASHINGTON



Area Inside URBAN GROWTH AREA
Area Outside URBAN GROWTH AREA

56 LOTS

19 LOTS

RURAL
PIERCE COUNTY

URBAN
CITY OF GIG HARBOR

WHEN RECORDED RETURN TO:
City of Gig Harbor
Administrative Assistant
3105 Judson Street
Gig Harbor, WA 98335

UTILITY EXTENSION, CAPACITY AGREEMENT
AND AGREEMENT WAIVING RIGHT TO PROTEST LID

THIS AGREEMENT is entered into on this ____ day of _____, 1997, between the City of Gig Harbor, Washington, hereinafter referred to as the "City", and Walter H. Smith, hereinafter referred to as "the Owner".

WHEREAS, the Owner is the owner of certain real property located in Pierce County which is legally described as set forth in Exhibit 'A' attached hereto and incorporated herein by this reference as though set forth in full, and

WHEREAS, the Owner's property is not currently within the City limits of the City, and

WHEREAS, the Owner desires to connect to the City water and sewer utility system, hereinafter referred to as "the utility," and is willing to allow connection only upon certain terms and conditions in accordance with Title 13 of the Gig Harbor Municipal code, as now enacted or hereinafter amended, NOW, THEREFORE,

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

1. Warranty of Title. The Owner warrants that he/she is the Owner of the property described in Exhibit 'A' and is authorized to enter into this Agreement.

2. Extension Authorized. The City hereby authorizes the Owner to extend service to Owner's property from the existing utility line on Bujacich Drive N.W.(street or right-of-way) at the following location:

THAT PORTION OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE WEST 825 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE WILLAMEETTE MERIDIAN, PIERCE COUNTY, WASHINGTON LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION; THENCE SOUTH 87

DEGREES 57' 12" EAST ALONG THE SOUTH LINE THEREOF 1988.34 FEET TO THE POINT OF BEGINNING; THENCE NORTH 2 DEGREES 33' 38" EAST 1641.19 FEET TO THE NORTH LINE OF THE AFOREMENTIONED SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE TERMINUS OF THIS LINE.

3. Costs. Owner will pay all costs of designing, engineering and constructing the extension. All construction shall be done to City standards and according to plans approved by the City's Public Works Director. Any and all costs incurred by the City in reviewing plans and inspecting construction shall be paid for by the Owner.

4. Sewer Capacity Commitment. The City agrees to provide to the Owner sewer utility service and hereby reserves to the Owner the right to discharge to the City's sewerage system (16 ERUs) 3696 gallons per day average flow. These capacity rights are allocated only to the Owner's system as herein described. Any addition to this system must first be approved by the City. Capacity rights acquired by the Owner pursuant to this agreement shall not constitute ownership by the Owner of any facilities comprising the City sewerage system. The City agrees to reserve to the Owner this capacity for a period of 36 months ending on Sept. 7, 2000 , provided this agreement is signed and payment for sewer capacity is commitment received within 45 days after City Council approval of extending sewer capacity to the Owner's property. Sewer capacity shall not be committed beyond a three year period.

5. Capacity Commitment Payment. The Owner agrees to pay the City the sum of \$4,272 to reserve the above specified time in accordance with the schedule set forth below.

Commitment period	Percent (%) of Connection Fee	
One year	Five percent	(5%)
Two years	Ten percent	(10%)
Three years	Fifteen percent	(15%)

In no event, however, shall the Owner pay the City less than five hundred dollars (\$500) for commitment for sewer reserve capacity. In the event the Owner has not made connection to the City's utility system by the date set forth above, such capacity commitment shall expire and the Owner shall forfeit one hundred percent (100%) of this capacity commitment payment to cover the City's administrative and related expenses.

In the event the Pierce County Boundary Review Board should not approve extension of the City's sewer system prior to the extension of the commitment period, the Owner shall be entitled to a full refund (without interest) from the City of the capacity agreement.

6. Extension of Commitment Period. In the event the Owner chooses to permanently reserve sewer capacity by paying the entire connection fee for the number of equivalent residential units desired to be reserved before the expiration date set forth above, the Owner shall be responsible for

paying each year for the sewer utility system's depreciation based on the following formula: (Owner's reserved capacity divided by the total plant capacity times the annual budgeted depreciation of the sewer facilities.)

7. Permits - Easements. Owner shall secure and obtain, at Owner's sole cost and expense any necessary permits, easements and licenses to construct the extension, including, but not limited to, all necessary easements, excavation permits, street use permits, or other permits required by state, county and city governmental departments including the Pierce County Public Works Department, Pierce County Environmental Health Department, State Department of Ecology, Pierce County Boundary Review Board, and City of Gig Harbor Public Works Department.

8. Turn Over of Capital Facilities. If the extension of utility service to Owner's property involves the construction of water or sewer main lines, pump stations, wells, and/or other city required capital facilities, the Owner agrees to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, the Owner will furnish to the City the following:

- A. As built plans or drawings in a form acceptable to the City Public Works Department;
- B. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved by the City Attorney;
- C. A bill of sale in a form approved by the City Attorney; and
- D. A bond or other suitable security in a form approved by the City Attorney and in an amount approved by the City Public Works Director, ensuring that the facilities will remain free from defects in workmanship and materials for a period of 2 year(s).

9. Connection Charges. The Owner agrees to pay the connection charges, in addition to any costs of construction as a condition of connecting to the City utility system at the rate schedules applicable at the time the Owner requests to actually connect his property to the system. Any commitment payment that has not been forfeited shall be applied to the City's connection charges. Should the Owner not initially connect 100% of the Sewer Capacity Commitment, the Capacity Commitment payment shall be credited on a pro-rated percentage basis to the connection charges as they are levied.

10. Service Charges. In addition to the charges for connection, the Owner agrees to pay for utility service rendered according to the rates for services applicable to properties outside the city limits as such rates exist, which is presently at 150% the rate charged to customers inside city limits, or as they may be hereafter amended or modified.

11. Annexation. Owner understands that annexation of the property described on Exhibit 'A' to the City will result in the following consequences:

- A. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- B. City of Gig Harbor ordinances, resolutions, rules and regulations will begin to apply to the property upon the effective date of annexation;
- C. Governmental services, such as police, fire and utility service, will be provided to the property by the City of Gig Harbor upon the effective date of annexation;
- D. The property may be required to assume all or any portion of the existing City of Gig Harbor indebtedness, and property tax rates and assessments applicable to the property may be different from those applicable prior to the effective date of annexation;
- E. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and
- F. All or any portion of the property may be annexed and the property may be annexed in conjunction with, or at the same time as, other property in the vicinity.

With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owner's decision to forego opposition to annexation of the property to the City of Gig Harbor, Owner agrees to sign a petition for annexation to the City of the property described on Exhibit A as provided in RCW 35.14.120, as it now exists or as it may hereafter be amended, at such time as the Owner is requested by the City to do so. The Owner also agrees and appoints the Mayor of the City as Owner's attorney-in-fact to execute an annexation petition on Owner's behalf in the event that Owner shall fail or refuse to do so and agrees that such signature shall constitute full authority from the Owner for annexation as if Owner had signed the petition himself. Owner further agrees not to litigate, challenge or in any manner contest, annexation to the City. This Agreement shall be deemed to be continuing, and if Owner's property is not annexed for whatever reason, including a decision by the City not to annex, Owner agrees to sign any and all subsequent petitions for annexations. In the event that any property described on Exhibit 'A' is subdivided into smaller lots, the purchasers of each subdivided lot shall be bound by the provisions of this paragraph.

12. Land Use. The Owner agrees that any development or redevelopment of the property described on Exhibit 'A' shall meet the following conditions after execution of Agreement:

- A. The use of the property will be restricted to uses allowed in the following City zoning district at the time of development or redevelopment: R-1

- B. The development or redevelopment of the property shall comply with all requirements of the City Comprehensive Land Use Plan, Zoning Code, Building Regulations, and City Public Works Standards for similar zoned development or redevelopment in effect in the City at the time of such development or redevelopment. The intent of this section is that future annexation of the property to the City of Gig Harbor shall result in a development which does conform to City standards. **In particular, the final plat shall show buffer areas as a covenant as per GHMC 17.78.060 B., attached hereto for reference as Exhibit 'B'.**
- C. The development or redevelopment of the property shall comply with the requirements of all Pierce County terms and conditions identified in the Office of the Pierce County Hearing Examiner Report and Decision SPR5-91 (attached as Exhibit 'C') and Office of the Pierce County Hearing Examiner Decision Re: Petition for Reconsideration SPR5-91 (attached as Exhibit 'D'). The city shall receive a copy of the final plat for SPR5-91 prior to connection. **Prior to connection, a Washington State Department of Transportation letter which confirms project approval with respect to SPR5-91 shall be submitted to the city, together with the final plat for the project which indicates all Washington State Department of Transportation project conditions, if any.**

13. Liens. The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above described property. If the extension is for sewer service, the lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.220 through RCW 35.67.280, all as now enacted or hereafter amended. If the extension is for water service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended.

14. Termination for Non-Compliance. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right to terminate utility service to the Owner's property in addition to any other remedies available to it.

15. Waiver of Right to Protest LID. Owner acknowledges that the entire property legally described in Exhibit 'A' would be specially benefited by the following improvements (specify):

None applicable.

Owner agrees to sign a petition for the formation of an LID or ULID for the specified improvements at such time as one is circulated and Owner hereby appoints the Mayor of the City as his attorney-in-fact to sign such a petition in the event Owner fails or refuses to do so.

With full understanding of Owner's right to protest formation of an LID or ULID to construct such improvements pursuant to RCW 35.43.180, Owner agrees to participate in any such LID or ULID and to waive his right to protest formation of the same. Owner shall retain the right to contest the

method of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provisions of this Agreement, this waiver of the right to protest shall only be valid for a period of ten (10) years from the date this Agreement is signed by the Owner.

16. Specific Enforcement. In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

17. Covenant. This agreement shall be recorded with the Pierce County Auditor and shall constitute a covenant running with the land described on Exhibit 'A', and shall be binding on the Owner, his/her heirs, successors and assigns. All costs of recording this Agreement with the Pierce County Auditor shall be borne by the Owner.

18. Attorney's Fees. In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other remedy provided by law or this agreement.

19. Severability. If any provision of this Agreement or its application to any circumstance is held invalid, the remainder of the Agreement or the application to other circumstances shall not be affected.

DATED this _____ day of _____, 1997.

CITY OF GIG HARBOR

Mayor Gretchen Wilbert

OWNER

Kalter H. Smith

Name:

Title:

ATTEST/AUTHENTICATED:

City Clerk, Molly Towslee

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

Signature

NOTARY PUBLIC for the State
of Washington, residing at

My commission expires _____

STATE OF WASHINGTON)
)ss:
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen A. Wilbert, and Mark E. Hoppen, are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they are authorized to execute the instrument and acknowledged it as the Mayor and City Administrator of the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signature

NOTARY PUBLIC for the State
of Washington, residing at

My commission expires _____

EXHIBIT 'A'

THAT PORTION OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE WEST 825 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE WILLAMEETTE MERIDIAN, PIERCE COUNTY, WASHINGTON LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION; THENCE SOUTH 87 DEGREES 57' 12" EAST ALONG THE SOUTH LINE THEREOF 1988.34 FEET TO THE **POINT OF BEGINNING**; THENCE NORTH 2 DEGREES 33' 38" EAST 1641.19 FEET TO THE NORTH LINE OF THE AFOREMENTIONED SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE TERMINUS OF THIS LINE.

EXHIBIT 'B'

17.78.060 Requirements for residential landscaping.

A. Perimeter Areas.

1. Notwithstanding other regulations found in this chapter, perimeter areas not covered with buildings, driveways and parking and loading areas shall be landscaped. The required width of perimeter areas to be landscaped shall be at least the depth of the required yard or setback area. Areas to be landscaped shall be covered with live plant materials which will ultimately cover 75 percent of the ground area, within three years. One deciduous tree a minimum of two-inch caliper or one six-foot evergreen or three shrubs which should attain a height of three and one-half feet within three years shall be provided for every 500 square feet of the area to be landscaped.

2. A minimum of 40 percent of the required plantings shall be evergreen trees a minimum of six feet in height for properties located within the boundaries of the height overlay district referenced in Chapter 17.62 GHMC. Trees shall be of a species that will ultimately grow to the height of the planned building. In the selection of trees and shrubs, consideration should be given to overall aesthetic impacts at maturity.

B. Buffer Areas. All residential plats shall have a minimum 25-foot buffer consisting of a dense vegetated screen, shall be required along the perimeters of the plat, and the buffer shall be established as a covenant on the final plat. The screening may be achieved through any one or a combination of the following methods:

1. A solid row of evergreen trees or shrubs;
2. A solid row of evergreen trees and shrubs be planted on an earthen berm;

3. A combination of trees or shrubs and fencing where the amount of fence does not exceed 50 percent of the lineal distance of the side to be buffered as well as other plant materials, planted so that the ground will be covered within three years;

4. Use of existing native vegetation which meets the definition of dense vegetative screen.

C. Parking Areas. Parking areas shall be landscaped subject to the standards for parking lots found in Chapter 17.72 GHMC. (Ord. 652 § 6, 1993; Ord. 573 § 2, 1990).

EXHIBIT 'C'

OFFICE OF THE PIERCE COUNTY HEARING EXAMINER
REPORT AND DECISION

SITE PLAN

REVIEW: Case No. SPR5-91
Preliminary Plat of Horizon West

ENVIRONMENTAL

APPEAL: Case No. AE16-92

APPLICANT: Walt Smith
11302 Burnham Drive N.W.
Gig Harbor, WA 98335

AGENT: Geoff Moore
Pac-Tech Engineering, Inc.
2601 South 35th Street, Suite 200
Tacoma, WA 98405

ATTORNEY

FOR APPLICANT: Mary Urback and Joseph F. Quinn
Attorneys at Law
1900 First Interstate Plaza
1201 Pacific Ave.
Tacoma, WA 98402

APPELLANT: Peninsula Neighborhood Association
Attn: Tom Morfee
7903 26th Ave. N.W.
Gig Harbor, WA 98332

PROPOSAL (SITE PLAN REVIEW SPR5-91):

The applicant proposes to create a 78 lot, single family subdivision in a Residential Environment between 70th Ave. N.W. and Burnham Drive N.W. in the West 1/2 of the Southeast 1/4 of Section 25, Township 22 North, Range 1E, W.M.

APPEAL (AE16-92):

The Peninsula Neighborhood Association (Appellant) is appealing the Mitigated Determination of Nonsignificance issued by the Pierce County Environmental Official on July 9, 1992, for the Site Plan Review to create a 78 lot single-family subdivision, to be served by city sewers and public roads, on a 36.4 acre lot in the Residential Environment, between 70th Ave. N.W. and Burnham Drive NW in the West 1/2 of the Southeast 1/4 of Section 25, Township 22 North, Range 1E, W.M.

SUMMARY:

On December 17, 1992, the subject case was heard by the Pierce County Hearing Examiner. On March 18, 1993, the Examiner issued a Report and Decision, in which he granted the appeal of the Peninsula Neighborhood Association. The Examiner directed the applicant to: (1) provide for hydrological and stormwater drainage analysis design and plan; (2) redesign the buffer berm and drainage pipe along the western boundary of the plat; and (3) analyze and design the detention ponds to meet with County requirements.

The Examiner order that the hearing be continued until completion of (1) the drainage analysis and plan; (2) the design of the detention ponds; (3) the redesign of the buffer berm and drainage pipe on the western side of the plat; and (4) the reconfiguration of the lots. These items were to be presented for review by the Peninsula Neighborhood Association, and reviewed and approved by Pierce County Development Engineering.

PUBLIC HEARING:

A public hearing was held on November 12, 1993 at approximately 1:00 p.m. All parties wishing to testify were sworn in by the Examiner and the following Exhibits were submitted during the hearing and made a part of the records as follows:

- "Exhibit 59-A" - Pac-Tech storm drainage report;
- "Exhibit 59-B" - Pac-Tech storm drainage report;
- "Exhibit 59-C" - Pac-Tech storm drainage map;
- "Exhibit 60-A" - PNA review of storm drainage plan;
- "Exhibit 60-B" - Wessal's comments re: storm drainage plan;
- "Exhibit 61" - Letter from Lawrence R. Treleven;
- "Exhibit 62" - Department of Planning and Land Services report; dated 11/5/93;
- "Exhibit 62-A" - Affidavit of Posting;
- "Exhibit 62-B" - Affidavit of Publication;
- "Exhibit 62-C" - Letters from Hearing Examiner re: clarification of the Decision;
- "Exhibit 62-D" - Letter from Andy Greatwood re: storm drainage plans;
- "Exhibit 62-E" - Reply letter to Andy Greatwood from Ringlee re: storm drainage plans;
- "Exhibit 63" - Response letter from attorney Joseph Quinn;
- "Exhibit 64" - Summary of actions since public hearing;
- "Exhibit 67" - Opinion; qualifications; of Charles Couvrette professional engineer;
- "Exhibit 68" - Letter from PTI Communications;
- "Exhibit 69" - Copy of Real Estate Contract;
- "Exhibit 70" - Copy of plat plan;
- "Exhibit 71" - Copy of Statutory Warranty Deed;
- "Exhibit 72" - Applicant's memorandum re: continued hearing;

- "Exhibit 73" - Letter from Active Construction;
(dated 10/20/93);
- "Exhibit 74" - Letter from PNA; (dated 11/12/93);
- "Exhibit 75" - Memo from Lenore Marken; environmental
biologist; (dated 11/10/93);

PUBLIC HEARING:

Mike Erkkinen, of the Department of Planning and Land Services, took the stand and briefly outlined the history of the proposal and referenced the December 17, 1992 Hearing and the March 18, 1993 Decision and the items which were in his report, attached hereto and marked as Exhibits 62-62E. Mr. Erkkinen stated that the applicant had presented the new storm water drainage design, including the detention pond and drainage system, and that the plan had been presented to Pierce County and that Pierce County had approved same. He testified that under the new proposal the 25 foot buffer on the west side border of the proposed plat was to be left undisturbed and there would be no drainage system of any kind installed or any ditching.

Mr. Walt Smith took the stand and introduced himself as the applicant and then introduced his representative, Mr. Joseph F. Quinn.

Mr. Quinn took the stand and stated that he had prepared and submitted a hearing memorandum and stated that he would call witnesses through the presentation and then gave an introduction to the proposal. The opening statement outlined the position of the applicant. He discussed the approach to the surface water and the ground water and discussed the MDS and that the environmental official was correct, except that the Hearing Examiner found solely that the storm drainage issue needed to be further examined. He stated there were no new issues and there should not be any objections to any other issues such as sanitary sewer, traffic, water supply, wildlife or habitat. He reviewed the necessary witnesses and then he discussed the drainage in reference to the western boundary. He cited Exhibit 59-A and the drainage on Lot 30-38, and that because of the objection of Henderson Bay Heights, they have removed the proposed swale and they intend to leave the buffer undisturbed and to redirect any increase in drainage away from the Henderson Bay Heights subdivision. He then framed the basic issues to be addressed by the witnesses. There was a drainage impact on surrounding properties or lack thereof on Marble and McCormick Creek and that the witnesses would be discussing and outlining the designs for the retention and detention ponds to remove any impact.

Mr. Sean Comfort, engineer with Pac-Tech Engineering, took the stand, and submitted Exhibit 64, a review of the history of the project, including outlining the old detention pond. He stated that the County regulations prefer retention pond and infiltration. He testified that Geo-Engineers did the soil logs and the systems have been redesigned based upon the rate of infiltration. He submitted Exhibit 65, which is a cross-section of the elevation to show the flow of water. Exhibit 59-A shows three roads and the

storm drainage system on the public right-of-way for the purpose of collecting the storm drainage and the direction of same to the retention pond. Exhibit 65 shows each road is a barrier to stop the runoff to the west and that Lots 30-38 runoff will flow naturally to the west, and the remainder will be directed toward the retention ponds. The storm drainage basin he reviewed and stated that the field information has been tested and collected and it was not just from the County information. He discussed the changing and the features of the new design and referenced Exhibit 64. He discussed the property to the north of the plat and that a liner has been suggested to prevent any runoff of same in that direction. He stated that Lot 21-30 runoff will flow to a 100 year detention pond. A percolation system will be designed for each lot. In reference to the westerly portion and specifically Marble Creek, the only runoff to the west would be from Lots 21-30 and Lot 30-38 solely from the landscaping. They are not adding any more water to the 12" culvert on 115th Street and the runoff to the detention/retention ponds from the three road and from the houses reduces the water in the westerly direction to Henderson Bay Heights. In reference to McCormick Creek he discussed the detention and the release by the disbursal trench to the north. He submitted Exhibit 66, outlining Woodhill Drive and that County Surface Water Management has approved the reduced release rate. Exhibit 59-A, he discussed that additional storm drainage plans for each lot will have to be done to insure proper control of the drainage. He referenced that the County had approved the retention pond and that the County can maintain the retention pond using a "camel" machine to remove the silt from the pond.

Mr. Quinn asked what would be the effect of the swale.

Mr. Comfort answered that it would reduce the water to 115th Street.

Mr. Morfee asked what effect if the property was annexed to Gig Harbor.

Mr. Comfort answered that they had not reviewed the plan with Gig Harbor.

Mr. Chuck Couvrette, a professional engineer, and consulting geo-technical Engineer took the stand, and discussed Exhibit 66 and in the testing pits, he found till layers and he looked at the seepage to the north, the east and the west, and discussed the elevation of the plat at the top of the hill and made flow calculations from the detention pond and he concluded that no additional water would reach any of the drainage areas. There is no deep seepage from the test pits and that the wetlands will not be affected.

Mr. Quinn asked questions concerning the wetlands, and will the retention change same.

Mr. Couvrette answered no.

Mr. Quinn asked the direction of the seepage existing on the site.

Mr. Couvrette answered that it seeps to the northwest.

Mr. Quinn then asked whether the size of the plat large enough to handle the additional seepage.

Mr. Couvrette answered "yes".

Mr. Quinn asked whether the water would have any effect on Marble and McCormick Creeks.

Mr. Couvrette answered "no."

Mr. Quinn then submitted Exhibit 68 and 69, in reference to Ron Hendry's ownership of the property on the west side of the proposed plat.

Exhibit 70 the assessors map was introduced. Exhibit 71 was introduced, a copy of the Deed. Again in reference to Exhibit 69, that Mr. Hendry had a 30 foot easement, and Exhibit 71 showed an easement of 30 feet from Dan Morikawa, for a total of 60 foot easement.

He then referenced that Exhibit 59-A shows the easements.

Mr. Robert Cole then asked Mr. Quinn a question as to who owns the 30 feet and Mr. Quinn answered that Mr. Cole owns the 30 feet on 115th.

Mr. Quinn submitted Exhibit 72, his memorandum, and stated that same addressed the Hearing Examiner's concern for this hearing. Mr. Quinn gave the summary of the plans and the western boundary and the elimination of the drainage swale and the moving of the detention pond and moving the retention pond. He stated that the plat is not abnormal and that all the raised questions have been answered, that the drainage plan is complete and the final planning has been done at this stage, instead of the final. He stated Mr. Walt Smith's willingness to help solve some of the problems with the water. He has helped with the Henderson Bay detention pond problem and has agreed to submit funds for same. He stated that the proposed plan will have no impact on the wetlands and that there all but minor problems with water existing, but that all the major water problems have been solved. There is no supercharge or drying up of the aquifer. The change in the designs meets the County requirements.

Mr. Tom Morfee, representative of Peninsula Neighborhood Association, took the stand and testified that there has been a lot of progress on the drainage plan and that the new plan will provide and protect downstreams more than the first and second approach. He discussed the west impact on the Henderson Bay homeowners and submitted Exhibit 73. He stated that Mr. Cole will testify and Mr. Wessell will testify concerning the downstream impact on McCormick Creek and that said creek has salmon and coho runs and the dry season lower stream flows and the retention pond will interfere. He then discussed that Doris Small, of the Department of Fisheries, wanted to review the plans and that the State Department of Fisheries engineers wanted to review the plan. Mr. Morfee requested the public record remain open to allow the Department of Fisheries to review and comment thereon. Mr. Comfort had sent the plan a week before the hearing but they had not had a chance to review and comment.

Mr. Erkkinen testified that the water biologist of the County does review the plans and that the wetland biologist wants to review the plan and assure that the drainage balance is maintained between the water sheds and the percolation trenches are hard to

maintain. The buffer on the west side is a good solution with a fence to stop trespassers into the buffer. The Gig Harbor Peninsula regulations should be reviewed to assure compliance. The \$10,000.00 offer by Active Construction should be made a part of the conditions.

Mr. David Ringlee, President of the homeowners of Henderson Bay Heights, testified that they have been negotiating with Active Construction, concerning the 25' buffer and that it is the best control of water runoff. A barrier or fence on the east side of the buffer would assure protection. He discussed the groundwater flow and that the water does flow into Henderson Bay Heights. During construction the removal of trees on the proposed plat will increase the flow of water. He discussed the condition that a curtain that drains ten feet deep on the east side of the buffer to divert water during construction be required. They have been working with Active Construction Company and the applicant to solve the problems.

Mr. Ken Manning testified that he has a salmon hatchery on McCormick Creek, and he discussed the history of Highway 16. He stated that there are no ponds at the Swede Hill interchange. He stated that the Canterwood pond caused a reduced water flow in the Creek but an increase of storm drainage water. He testified that urban development increases the flow of water into streams and erosion of salmon habitat. He stated that McCormick Creek has suffered because of the tremendous amount of storm water now flowing to the creek. He submitted Exhibit 75 in reference to this problem.

Mr. Quinn asked where his hatchery was located.

Mr. Manning's answered that the hatchery was located east of the northwest corner of Horizon West plat.

Mr. Cole took the stand and stated that he had met with Mr. Walt Smith relative to the drainage. He stated that the design plans are in progress to solve the drainage plans. The 12" culvert drains onto his property and that he gets all the water. The water from Horizon West can be a problem, and stated that Mr. Ringlee's plan during construction is good and it should be worked out.

Mr. Andy Greatwood took the stand and identified himself as the County Developmental Engineer for the Gig Harbor/Peninsula area. He stated that the plans were good conceptual plans and the wetland problems would be solved. A couple of items still remained for final design and can be accomplished. There must be a balance between the two water sheds and that can be solved. All the other problems, in the opinion of the developmental engineer, had been addressed.

Mr. Morfee asked how does balance get to be part of conditions.

Mr. Greatwood answered that diverting water from water sheds is his control and he will require a balance and it is in the developmental engineering requirements. The Hearing Examiner can require the balance and it must be approved by the County.

Mr. Comfort again took the stand and he agreed with Mr. Greatwood on balance and issues will have to be solved. In reference to Mr. Ringlee to meet construction problems they plan to build three trenches where the roads are to be constructed and to line them with straw. Final plans will be designed and provided to address the problem.

Mr. Quinn again took the stand. The applicant is negotiating with the Henderson Bay Heights homeowners to help solve problems. For comments from the Department of Fisheries, he agreed to keep the record open till next Friday. In reference to Wessell's letter, the reduction of water in the streams is unfounded. He then discussed that with the new plans they are not interfering with the groundwater flow. That Ms. Marken, wetland biologist in the DNS in 1992, reviewed the wetlands and wetlands were not going to be bothered. Only one issue remained, the drainage, not wetlands. The county has already reviewed and approved. We object to County and the wetlands biology requirement. In reference to the fence, it was o.k. on the east side of the buffer, as part of the construction plan. Gig Harbor has no plans for annexation and Horizon West has no need to submit plans to them. In reference to Mr. Ringlee's comments, Smith wants to solve the problem, and agrees to keep working on it. He concluded by requesting the approval of the plan.

Mr. Erkkinen took the stand and testified that the County wetlands biologist has the authority to review and they have concerns about the supercharge of the wetlands. They have in the past required construction barriers in reference to the east side of the buffer.

Mr. Ringlee questioned Mr. Couvrette regarding the cementing in the holes.

Mr. Couvrette answered by drawing a diagram on the board and explaining the soil till and the minimal amount of drainage.

Mr. Ringlee then asked what is the soil over the septic systems or are they on top.

Mr. Couvrette testified that trenching wouldn't do any good.

Mr. Ringlee then discussed that the fence should be permanent along the buffer and that no agreements have been reached with Active Construction. He stated that negotiations are in progress but that no agreement has yet been accomplished. He then discussed the surface water and that the priority was the drainage to the west.

Mr. Quinn again took the stand, and stated that the lots on the west side would be first hooked up to the sewer and there would be no drainage from septic tanks to the west. He stated that they could not agree to a permanent fence on the east side of the buffer and that a temporary construction fence would be o.k.

Mr. Morfee discussed that the water balance is important and that the wetlands review was done on a different wetlands plan and the County should have reviewed and approved this. He stated in regard to the fisheries issue that it was not feasible to be done within a week and there needs to be more time. He then discussed the curtain drain and that it is critical to the issues and needs to be reviewed.

Mr. Greatwood stated that the wetlands biologist should review the plans. In reference to the drain on the west, water has to go somewhere and hoped it could be worked out. He further testified that a temporary fence along with buffer was a good idea.

The record was kept open until November 30, 1993, for comments from the Fisheries Department.

The following exhibits were received by the Hearing Examiner after the hearing, and made a part of the record as follows:

- "Exhibit 76" - Letter from Dept. of Fisheries; (dated 11/30/93);
- "Exhibit 77" - Letter from attorney Joseph Quinn; (dated 12/7/93);
- "Exhibit 78" - Letter from Dept. of Planning and Land Services (dated 12/14/93);
- "Exhibit 79" - Letter from Dept. of Planning and Land Services (dated 12/15/93);
- "Exhibit 80" - Letter from PMA (dated 12/15/93);
- "Exhibit 81" - Letter from attorney Joseph Quinn (dated 12/17/93).

No one spoke further and the Hearing Examiner took the matter under advisement.

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

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. The Examiner has heard the testimony, viewed the property and taken this matter under advisement.
2. The applicant presented a preliminary plat to create a 78 lot, single family subdivision in a Residential Environment between 70th Ave. N.W. and Burnham Drive N.W. in the West 1/2 of the Southeast 1/4 of Section 25, Township 22 North, Range 1E, W.M.
3. On December 17, 1992, the proposed preliminary plat was heard by the Pierce County Hearing Examiner and on March 18, 1993 the Examiner issued a Report and Decision in which he granted the appeal of the Peninsula Neighborhood Association. The Examiner directed the applicant to:
 - a. To provide for hydrological and storm water drainage analysis, design and plan;
 - b. To redesign the buffer berm and drainage pipe along the western boundary of the plat;
 - c. Analyze and design the detention ponds to meet with County requirements.

4. The Hearing Examiner determined in his Conclusions that the evidence as submitted on the December 17, 1992 Hearing on the site plan review and the preliminary plat showed that adequate planning preparation and design had been submitted to allow approval of the site plan review and preliminary plat, except for the drainage plan and the location of the drainage pipe and the realignment of the lots in the plat and the requirements of redesign of the berm. The Examiner further found that the proposed subdivision was an acceptable use of the site and was compatible with surrounding land uses and in conformance with the Developmental Regulations of the Gig Harbor Peninsula and the Comprehensive Plan and that the proposed density is well within the allowable density requirements of the County Plan.

5. The Hearing Examiner ordered that the December 17, 1992 Hearing and the preliminary plat be continued until the completion of the drainage analysis and plan, the design of the detention ponds, the redesign of the buffer, and reconfiguration of the lots. After presentation of said plans they were to be submitted for review by the Peninsula Neighborhood Association and the Pierce County Developmental Engineering, and reset for hearing.

6. The applicant did do a drainage analysis and did submit a new drainage plan and submitted same with the Peninsula Neighborhood Association and the Pierce County Developmental Engineering and the Planning and Land Services Department of Pierce County.

7. The drainage plan and analysis moved and redesigned both the retention ponds and the detention ponds and provided for infiltration pipes and catch basins on the streets to assist in maintaining the present flow of drainage from the site.

8. The new drainage plan removed the swale on the 25' berm on the west side of the plan adjoining the Henderson Bay Heights subdivision and provided to maintain said berm in its natural state to assist in the control of the drainage to the west.

9. The plan also redesigned the location of the lots in the plat to allow for the relocation of the retention and detention ponds.

10. The matter came on for public hearing on November 12, 1993 and the storm drainage plan and report and map were admitted under Exhibits 59-A, 59-B, and 59-C, and provided for the details of the above amendments and analysis. The applicant presented a general detail of the new drainage plan that the plan envisioned the filtration of the drainage instead of to the west under the old plan, to split it to the west and to the north and to McCormick Creek and a portion of the plan to the west and Marble Creek.

11. The evidence as submitted by a soil expert was that the proposed plan would not increase the runoff from the site, nor would there be a decrease in the amount of water in the two aquifers. The applicant and the neighbors to the west have engaged in discussions to correct the drainage problem in Henderson Bay Heights and to control the drainage of water from the proposed Horizon West so as not to increase any flow of drainage water through the drainage system from Henderson Bay Heights subdivision to 115th and Marble Creek. The proposed design is to retain the west 25' berm in its natural state and to allow whatever naturally flows to the west to remain. A construction fence was suggested by all parties and concurred by the Planning staff to assure no intrusion into the 25' berm.

12. The County analysis of the proposed drainage plan would require, on final plans, equal balance of runoff from the Horizon West site to assure no increase in flow to the west and wetlands and Marble Creek and to the north and northeast and to McCormick Creek.

13. The owners on McCormick and Marble Creek want and need protection from changing the water flows to prevent flooding and to prevent interference with the use of the creek(s) for hatchery purpose and other purposes.

14. The drainage water from this site must be balanced and the control of the design and the installation is under the County Developmental Engineers control, including the wetlands biologist.

15. There is sufficient planning and design and information to assure that the storm water runoff generated by the proposal will be controlled and disbursed within the requirements of the County's Regulations and in such a manner as to protect the public health and safety from increase of runoff, flooding, and at the same time protect the water aquifer.

16. The Department of Fisheries reviewed the drainage plan and did not make or file any objections to the drainage plan, based on adverse impacts, they only suggested a basin wide study. The cost of same to this applicant would be unreasonable and would not be required by County Regulations.

17. The applicant has agreed to improve the drainage facilities on 115th Street, has agreed to work with the residents to the west, including the Henderson Bay Heights homeowners, and individual owners on the north and south of 115th Street, and has agreed to fund improvements with a donation of \$10,000.00.

18. The developer agrees to retain the 25' buffer on the west side of the plat in an attempt to alleviate the water problems to the west, and agrees to construct a temporary construction fence on the west side of the plat - but on the east side of the 25' barrier, to help control any intrusions into the buffer area.

19. The proposed plat with the amended drainage plans is in conformance and in compliance with the Regulations of the Gig Harbor Plan and the County Regulations and will be of benefit to the general public and meets all the environmental requirements of the County Regulations.

**FROM THE FOREGOING FINDINGS OF FACT THE HEARING EXAMINER
MAKES THE FOLLOWING:**

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this appeal.

2. There was sufficient redesign and information submitted by the applicant on the amended drainage plan to assure compliance with the environmental requirements of Pierce County, to assure that the site plan review and the preliminary plat shows that adequate planning preparations and design had been submitted to allow approval of the site plan review and preliminary plat.

3. The proposed subdivision is an acceptable use of the site and is compatible with surrounding land uses and in conformance with the Developmental Regulations of Gig Harbor Peninsula and the Comprehensive Plan and the proposed density is within the allowable density requirements of the County.

4. In all respects the preliminary plat of Horizon West is in conformance with the County Regulations and with the conditions attached hereinafter, can be developed with a final plat that assures protection of the public from any detrimental environmental effects, including the control of the runoff from the site.

**BASED ON THE FOREGOING CONCLUSIONS,
THE HEARING EXAMINER MAKES THE FOLLOWING:**

DECISION:

The appeal by the Peninsula Neighborhood Association of the Mitigated Declaration of Nonsignificance and the conditions therein and the environmental objections thereto be and the same are hereby denied, and the Mitigated Declaration of Nonsignificance with the new drainage design, plan, and study is hereby approved.

The request for approval of the Preliminary Plat of Horizon West to create a 78 lot, single family subdivision in a Residential Environment between 70th Ave. N.W. and Burnham Drive N.W. in the West 1/2 of the Southeast 1/4 of Section 25, Township 22 North, Range 1E, W.M., be and the same is hereby approved subject to the following terms and conditions:

1. A final plat for this proposal shall be submitted to the Pierce County Hearing Examiner for approval and signature within three (3) years of the effective date of the Hearing Examiner's decision on the preliminary plat, subject to the conditions for one year time extensions as outlined in Sec. 67.02.130 of the Pierce County Subdivision Code.
2. The following note shall be placed on the face of the final plat:

"Individual lot site coverage shall not exceed the maximum allowable in the Residential Environment of 35%, per Section 18.50.250.A of the Development Regulation for the Gig Harbor Peninsula."
3. A final storm drainage plan designed by a professional engineer per Ordinance 86-60 must be submitted for review and approval to the Development Engineering Section. The installation of the storm drainage facilities shall follow Ordinance 86-60 and/or Ordinance 85-1645. An analysis of the existing downstream drainage system is required, if not already done to the satisfaction of the Developmental Engineers of the County, and shall include any hydraulic structures to its downstream discharge point from the proposed project.

4. A field survey shall be conducted prior to any on-site grading to establish natural undeveloped contours. Pierce County or U.S.G.S. topographic mapping must be verified and supplemented with additional field topographic information, when necessary, to provide accurate depiction of the property. Contour intervals shall be every five feet. All elevations shall reference Pierce County or U.S.C.&G.S. benchmarks if available within one-half mile (Ordinances 86-60 and 85-164S)
5. The applicant shall maintain the necessary facilities on site to prevent debris, dust, and mud from accumulating on the County right-of-way during construction.
6. This project is subject to the Grading, Filling, and Clearing Ordinance No. 87-109, and a permit must be obtained. Before project approval, there is a \$50.00 application fee and an additional permit fee based on the quantity of grading done or impervious area created.
7. A temporary erosion and sedimentation control plan, done in accordance with Ordinance 86-60, is required. This plan must show methods of preventing erosion and sedimentation to adjacent properties/natural drainage courses/sensitive areas/existing storm drainage systems.
8. Soil conditions on Lots 63 through 66, 22 through 24, 47 through 50, and 16 through 18, required that a slope stability study be conducted by a professional engineer with experience in soils geology to determine foundation requirements, building setbacks, erosion control, and vegetation retention methods. This report shall be made a part of the conditions of approval. The geotechnical engineer shall have reviewed and approved the road and storm plans prior to submittal to Development Engineering. The geotechnical engineer shall also make recommendations as to the location of the proposed storm ponds.
9. All proposed accesses must be accurately depicted on the applicable plan and submitted to the Development Engineering Section for review and approval and must conform to the Pierce County Road Approach Control Ordinance. The following information must be provided on the plans: distance from the proposed approach to the nearest side street, approach or intersection (on the opposite side of the street), two spot elevations at the edge of the existing pavement, measured distance from right-of-way line to existing edge of pavement, any above ground utilities within 50 feet of the approach and all applicable approach dimensions. Road approach permits (\$50.00 fee) and construction standards must be obtained from the Pierce County Development Center.

10. The length of the cul-de-sac, from 66th Ave. NW to 116th St. Ct. NW, exceeds the maximum 600-foot length required by the Road Standards and must be reconfigured or a variance approved.
11. Access to the proposed project shall be by way of a County road constructed to (current) Pierce County standards.
12. All work in Pierce County right-of-way or roads to be dedicated to Pierce County must be constructed to Pierce County standards or a financial guarantee submitted to assure their construction. All roads shall be constructed in accordance with the Pierce County Road Standards Ordinance.
13. Road names must be coordinated with the Pierce County Building Department.
14. All lots must access off internal plat roads.
15. The proposed project has a direct impact on the Washington State Department of Transportation's road system. A site plan has been sent to the State. All requirements of the State must be incorporated into the project design. If applicable, an access permit must be obtained from the State prior to project approval by Pierce County.
16. Landscaping and final grading must provide adequate entering sight distances at all access locations in accordance with the Pierce County Road Approach Control Ordinance.
17. All fences, pillars, signs, structures, etc., must be located on private property and must not impair entering sight distance to the County road.
18. This project appears to create a significant impact to the County road system and there is no safety concern within the project's impact area. Therefore, per Section 2.06 of the Off-Site Road Improvement Regulations, Ordinance No. 87-83, a no-protest R.I.D. Covenant will be required on this project.
19. Development proposals which are to utilize on-site sewage disposal must meet the requirements of WAC 246-272 (The State Board of Health On-Site Sewage System Regulations) and Pierce County Board of Health Resolution 87-900 (The Rules and Regulations of the Tacoma-Pierce County Board of Health, On-Site Sewage Disposal). Failure to comply with these regulations could cause significant environmental impacts.
20. Prior to approval of the water supply for this development, a Certificate of Water Availability and Washington Department of Health approval of the water system facilities are required per WAC 246-290 and Pierce County Ordinance 86-11684.

21. The water facilities to serve this development must be constructed or bonded for construction prior to final subdivision approval.
22. All grading and filling of land must utilize only clean fill, i.e., dirt or gravel. All other materials, including waste concrete and asphalt, are considered to be solid waste and permit approval must be obtained through the Tacoma-Pierce County Health Department prior to filling.
23. The minimum amount of water necessary to satisfy the fire flow requirements shall be 500 gallons per minute at 20 psi for a period of 30 minutes from any hydrant serving this project. (Pierce County Code, Sec. 15.40.030(F) Ord. #86-108)
24. Fire hydrants shall be installed; a hydrant shall be located within 350 feet of the center of all lots. Hydrant spacing shall not exceed 700 feet. (Pierce County Code, Section 15.40.060 (I) Ord. #86-108) No hydrant shall be closer than 50 feet to any building. (NFPA Fire Protection Handbook, Sec. 17-49)
25. Hydrant flow test results and water system "As Built" plans (when required) shall be submitted to and approved by the Office of Fire Prevention and Arson Control prior to issuance of building permits. Pierce County Code, Section 15.40.050 (Ord. 86-108)
26. Prior to preliminary and final plat approval, requirements of Minimum Standards for Fire Flows, Water Mains and Fire Hydrants, Pierce County Code, Sec. 15.40.050 - Procedure for Compliance (Ord. #86-108) shall be met.
27. Minimum requirements for driveway and/or street width and gradient must be complied with. All private roads in excess of 150 feet shall have a gradient of 12% or less for graveled surfaces, or 15% or less for paved roadway surfaces. All private roads in excess of 150 feet shall have an approved turnaround installed at the end of the access road. The outside turning radius shall be not less than 45 feet with an inside turning radius of not less than 20 feet. A 20-foot wide designated one-way access may be allowed. A 24-foot roadway driving surface shall be installed and maintained. A fire access road shall extend to within 150 feet of any portion of any building/area on the site. Uniform Fire Code, Section 10.207 (P.C. Code Chapter 15.12)
28. The buffer along the west property line shall be no less than 25 feet at any given point.
29. The buffer along the east property line be no less than 35 feet at any given point.
30. Due to the very small lot size, additional area shall be reserved for recreational purposes for the use and enjoyment of the residents within the subdivision.

31. The following note shall appear on the face of the final plat:

"No logging, clearing, grading or filling shall be conducted on the property until such time as erosion control and storm water drainage plans have been approved by the Development Engineering Section. Subsequent to said approval, tree removal, clearing, grading and filling shall be limited to those areas reasonably necessary to construct roads and utilities, and to clear building envelopes. This restriction shall not be read to prohibit or limit tree removal or vegetation clearing by lot purchasers where applicable."

32. The following note shall be placed on the face of the final plat:

"The open space areas, appearing on this plat shall be developed in accordance with the Development Regulations for the Gig Harbor Peninsula. No clearing, grading, fill or construction of any kind will be allowed within these tracts area except for the removal of diseased or dangerous trees and the placement of underground utility lines and supplemental landscaping. A diseased tree shall be defined as one that has a strong likelihood of infecting other trees or brush in the area or becoming dangerous as a result of the disease, as determined by an expert approved by Pierce County. A dangerous tree shall be any tree which, in the opinion of an expert approved by Pierce County (such as, but not limited to, an experienced landscaper), has a strong likelihood of falling in the event of a 60 mph wind."

33. The following note shall appear on the face of the final plat:

"The lots within this subdivision have been approved by Pierce County for single-family residential use only."

34. Utility easements shall be provided on the face of the final plat which are necessary to the provision of water, power, sewer, natural gas and mail delivery to the lots within the subdivision. The effected purveyors should be contacted prior to development of the final plat for their specific easement requirements.

35. The storm drainage plan required by Condition No. 3 herein, shall provide for a water balance between the water sheds and the plan must be designed and maintained to provide for the water balance and the plan must be submitted to the Development Engineers and the County wetlands biologist and must be reviewed and approved by the County prior to the final plan approval.

36. The applicant shall continue to work with the Henderson Bay Heights homeowners and the other property owners to the north and south of 115th Street to alleviate the drainage problems on the Marble Creek watershed, including, but not limited to, the oversizing and the redesigning and replacement of the undersized culvert at 115th Street and the redesign and improvement of the retention pond at Henderson Bay Heights and the donation of \$10,000.00 to the project.
37. The 25' buffer on the west side of the plat shall remain in a natural state and not be interfered with and no swale or other drainage pipe shall be installed therein. On the east side of the 25' buffer a temporary construction fence shall be installed prior to construction to control any accidental or other intrusions into the buffer area to the end of assuring no increased runoff during construction and before the drainage system is installed in the plat.

DATED this 9th day of February, 1994.

By 
Keith D. McGoffin
Deputy Hearing Examiner

EXHIBIT 'D'

OFFICE OF THE PIERCE COUNTY HEARING EXAMINER
DECISION RE: PETITION FOR RECONSIDERATION

SITE PLAN

REVIEW: Case No. SPR5-91
Preliminary Plat of Horizon West

ENVIRONMENTAL

APPEAL: Case No. AE16-92

APPLICANT:

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Gig Harbor, WA 98335

AGENT:

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Pac-Tech Engineering, Inc.
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ATTORNEY

FOR APPLICANT: Mary Urback and Joseph F. Quinn
Attorneys at Law
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Tacoma, WA 98402

APPELLANT:

Peninsula Neighborhood Association
Attn: Tom Morfee
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Gig Harbor, WA 98332

BACKGROUND:

SITE PLAN REVIEW SPR5-91

The applicant proposes to create a 78 lot, single family subdivision in a Residential Environment between 70th Ave. N.W. and Burnham Drive N.W. in the West 1/2 of the Southeast 1/4 of Section 25, Township 22 North, Range 1E, W.M.

APPEAL (AE16-92)

The Peninsula Neighborhood Association (Appellant) is appealing the Mitigated Determination of Nonsignificance issued by the Pierce County Environmental Official on July 9, 1992, for the Site Plan Review to create a 78 lot single-family subdivision, to be served by city sewers and public roads, on a 36.4 acre lot in the Residential Environment, between 70th Ave. N.W. and Burnham Drive NW in the West 1/2 of the Southeast 1/4 of Section 25, Township 22 North, Range 1E, W.M.

SUMMARY:

On December 17, 1992, the subject case was heard by the Pierce County Hearing Examiner. On March 18, 1993, the Examiner issued a Report and Decision, in which he granted the appeal of the Peninsula Neighborhood Association. The Examiner directed the applicant to: (1) provide for hydrological and stormwater drainage analysis design and plan; (2) redesign the buffer berm and drainage pipe along the western boundary of the plat; and (3) analyze and design the detention ponds to meet with County requirements.

The Examiner ordered that the hearing be continued until completion of (1) the drainage analysis and plan; (2) the design of the detention ponds; (3) the redesign of the buffer berm and drainage pipe on the western side of the plat; and (4) the reconfiguration of the lots. These items were to be presented for review by the Peninsula Neighborhood Association, and reviewed and approved by Pierce County Development Engineering.

After a public hearing held on November 12, 1993 and after review of all documentation, the Hearing Examiner issued a Decision on February 9, 1994. Within the time allotted a Petition for Reconsideration was filed by Joseph F. Quinn, attorney for the applicant, on February 22, 1994. Said Petition for Reconsideration requested amendments and clarification of conditions of the Decision of the Hearing Examiner, dated February 9, 1994.

The Hearing Examiner, on March 1, 1994, forwarded the application to the parties of record and granted fourteen (14) within which to comment or answer the several sections of the Petition for Reconsideration.

The Examiner received on or about the 13th day of March, 1994, comments from David R. Ringlee, from Henderson Bay Heights subdivision, for and on behalf of the Henderson Bay Heights homeowners, attached hereto and marked as Exhibit 76.

The Examiner received on or about the 14th day of March, 1994, comments from Tom Morfee, executive director of Peninsula Neighborhood Association, attached hereto and marked as Exhibit 77.

The Examiner received on or about the 23rd day of March, 1994, a memorandum from the Planning and Land Services Developmental Engineering Department of Pierce County, attached hereto and marked as Exhibit 78.

The Examiner received on or about the 28th day of March, 1994, comments from the Planning and Land Services Department of Pierce County, attached hereto and marked as Exhibit 79.

REQUESTED ACTION:

The Request for Reconsideration is divided into six (6) separate paragraphs, addressing different conditions of the Decision of February 9, 1994. The Examiner will outline each of the requested amendments or clarifications of conditions, and the comments thereto from the respective responding parties, marked as stated above as Exhibits 76 - 78.

1. The applicant objected to Condition No. 10 in reference to the cul-de-sac from 666 Ave. N.W. to 116th Street Ct. N.W., and by the condition the Hearing Examiner required it must be reconfigured or a variance approved. Submitted with the request for reconsideration were revised drawings which are attached to the Petition for Reconsideration, showing the reconfiguration of the cul-de-sac, with the statement that it would meet the current standards of roadway design.

Comments:

1(a) Mr. Ringlee had no drawings to review and left the decision up to the Planning and Land Services Department, and Developmental Engineering and the Hearing Examiner.

- 1(b) The Peninsula Neighborhood Association - no comment.
- 1(c) The Planning and Land Services Department referred to Andy Greatwood's comments from Developmental Engineering.
- 1(d) The Developmental Engineering Department comments by Mr. Andy Greatwood stated that he had not reviewed the drawings, but that if the design meets the County standard no variance would be required.

2. The applicant desires Condition No. 15 be eliminated, which requires the State Department of Transportation to review the project.

Comments:

- 2(a) Mr. Ringlee requested no change as the project will have a direct effect upon the state highway.
- 2(b) The Peninsula Neighborhood Association - no comment.
- 2(c) The Planning and Land Services Department referred to Andy Greatwood's comments from Developmental Engineering.
- 3(d) The Developmental Engineering comments by Mr. Andy Greatwood stated that there is nothing further required and the correspondence has already been sent to the Department of Transportation.

3. The applicant desires that Condition No. 30 be eliminated, and submits that two recreational areas are sufficient.

Comments:

- 3(a) Mr. Ringlee stated that the recreational areas are important and should be designed and located outside the buffer area.
- 3(b) The Peninsula Neighborhood Association - no comment.
- 3(c) The Planning and Land Services Department referred to their testimony at the hearing which stated that three recreational areas were required: one north, one in the middle of the site, and one to the south. Planning and Land Services Department requested that Condition No. 30 remain unchanged.
- 3(d) The Developmental Engineering - no comments, referred to the Planning and Land Services Department comments.

4. Applicant requests amendment to Condition No. 31 to allow logging on approval at the time of approval of the clearing, erosion and sediment control plan by the Developmental Engineering Department.

- 4(a) Mr. Ringlee opposed said request.
- 4(b) The Peninsula Neighborhood Association opposed said request submitting that Condition No. 30 is a standard condition in the Gig Harbor Peninsula area decisions.
- 4(c) The Planning and Land Services Department referred to Andy Greatwood's comments of the Developmental Engineering.
- 4(d) The Developmental Engineering opposed said request because of already substantial public involvement and the request does not appear reasonable to approach the request at that stage.

5. The applicant asked for clarification of Condition No. 35 and requested that the condition be limited so that the wetlands biologist would only be reviewing in reference to water balance.

Comments:

- 5(a) Mr. Ringlee stated that this condition was of the utmost importance because of the surface water drainage problem, and requested there be no modification of the condition.
- 5(b) The Peninsula Neighborhood Association - no comment.
- 5(c) The Planning and Land Services Department commented that the water balance report should include surface water, as the rerouting of surface water away from the wetlands will impact the water hydrology of the site. The comments indicate that there is no need for a comprehensive review by the wetlands biologist but that the drainage plan be reviewed in regard to the water balance. They commented that wanted a proviso that the drainage plan provides an explanation of the water balance and includes the necessary calculations which show that the project will maintain the water balance. Based upon that they will be able to review the water balance as an element of the drainage plan.
- 5(d) The Developmental Engineering referred to comments submitted by the Planning and Land Services Department.

6. The applicant requested limiting the wording in Condition No. 36 in relation to the project of working with the neighbors.

Comments:

- 6(a) Mr. Ringlee agrees to define "the project".
- 6(b) The Peninsula Neighborhood Association deferred to Mr. Ringlee's comments.

- 6(c) The Planning and Land Services Department submitted that they had no objection to the present condition or as suggested by the applicant.
- 6(d) The Developmental Engineering deferred to the decision of the Hearing Examiner.

ADDITIONAL FINDINGS:

The Hearing Examiner, in review of the Petition for Reconsideration, finds that several of the conditions of the Decision of the February 9, 1994, need be clarified so that all parties are fully cognizant of the requirements of the preliminary plat process. The Examiner is fully knowledgeable of the continual public involvement by the neighbors in the review process and is further aware that this public involvement and cooperation between the applicant and the public will continue.

DECISION:

Based upon the six (6) requested conditions for amendment, review or clarification, the Examiner makes the following decision in reference to each of the items.

1. Condition No. 10. The applicant has submitted a set of plans in compliance with the condition and if the redesign meets the County standards and is approved by the Developmental Engineering Department, no further action on the part of the applicant will be necessary. No change in Condition No. 10 will be ordered.
2. Condition No. 15. The applicant desires the Department of Transportation requirement be eliminated. The Developmental Engineering Department indicates that no further action need be taken with the State Department of Transportation and that should clarify the issue. No change in Condition No. 15 will be ordered.
3. Condition No. 30. The applicant desires the limiting of Condition No. 30 requiring three recreational areas, stating that two areas are sufficient. The Hearing Examiner, in review of his notes of the hearing and the report of the Planning staff presentation, indicates that there was a recommendation for three separate recreational areas. The smaller size lots in this subdivision and the location of the plat in the surrounding area dictates a need for three recreational sites. No change in Condition No. 30 will be ordered.
4. Condition No. 31. The applicants requests amendment of Condition No. 31 to allow logging, on approval, at the time of clearing and erosion and sedimentation control plan review and approval by the Developmental Engineering. The public involvement at all stages of the hearings and review process stressed a finding of fact that removal of trees and brush should be carefully monitored

to protect the surrounding down-slope properties. The Developmental Engineering Department has indicated a preference not to allow the logging at that requested time. No change in Condition No. 31 will be ordered.

5. Condition No. 35. The applicant's request for limitation of Condition No. 35 for the wetlands biologist's review. One of the most important issues involved in this project has been the hydrological, surface and subsurface water problems with the site. The comments from the County Planning Department and the Developmental Engineering Department, make it clear as to their desires for review and that the drainage plan needs to provide calculations which show that the project will maintain the water balance and shall include both the ground water and the surface water, so that the Developmental Engineering Department shall be able to review the water balance as a part and parcel of the drainage plan. No change in Condition No. 35 will be ordered.
6. Condition No. 36. The applicant requests clarification of the applicant's commitment to the neighboring homeowners during the project. The Hearing Examiner has previously recognizes and again recognizes the cooperation between the applicant and the neighbors to solve an obvious surface and ground water problem on the west side down-slope property from the site and the requested changes by the applicant in the wording of Condition No. 36 not only furthers the cooperation between the parties but does define and limit the responsibility of the applicant in accordance with the intent of the Hearing Examiner's Decision and Condition No. 36. Therefore, it is hereby


ORDERED, that Condition No. 36 be amended to read as follows:

"The applicant shall continue to work with the Henderson Bay Heights homeowners and the other owners of property abutting 115th Street to alleviate existing drainage problems within the Marble Creek watershed at the 115th Street culvert near 70th Ave., and at the Henderson Bay Heights retention pond. The scope for the project includes, but is not limited to, replacement of the undersized culvert at 115th Street and 70th Ave. N.W. and improvement of the retention pond at Henderson Bay Heights subdivision. The applicant shall donate a maximum sum of \$10,000.00, or provide a performance bond, applicable to the construction of the aforesaid project aimed at alleviating the existing drainage problems.

it is further

ORDERED, that all other conditions of the Decision dated February 9, 1994, is affirmed and ratified.

DATED this 18th day of April, 1994.

BY 
Keith D. McGoffin
Deputy Hearing Examiner

TRANSMITTED this 18th day of April, 1994, to the following:

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11522 70th Avenue NW
Gig Harbor, WA 98335

Mr. and Mrs. R.W. Engen
12015 McCormick Drive NW
Gig Harbor, WA 98332

DeAnna and John Miller
11413 67th Avenue NW
Gig Harbor, WA 98332

Roger and Shirley Pennington
10701 70th Avenue NW
Gig Harbor, WA 98332

Charles and Mary Alice Vaughn
7219 85th Street NW
Gig Harbor, WA 98332

Peninsula Advisory Commission
c/o Bill Pierce
5801 28th Ave. NW
Gig Harbor, WA 98335

Peninsula Advisory Commission
c/o Joe Myers
11106 35th Ave. NW
Gig Harbor, WA 98335

PIERCE COUNTY PLANNING
PIERCE COUNTY DEVELOPMENT ENGINEERING
PIERCE COUNTY BUILDING DIVISIONS
PIERCE COUNTY UTILITIES
TACOMA PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL

Case No. SPR5-91/AE16-92/Horizon
West

NOTICE

Pursuant to Pierce County Code, this decision becomes final and conclusive on May 2, 1994, unless:

1. **Appeal of Examiner's Decision:** The final decision by the Examiner on:

1. Any land use matter within his jurisdiction other than a decision on the appeal of a decision of the Pierce County Environmental Official pursuant to the State Environmental Policy Act (SEPA) may be appealed to the Council by any aggrieved person directly affected by the Examiner's decision. Said appeal procedure is as follows:

- (a) The appellant must file written notice of appeal with the Department of Planning and Land Services on forms provided by the Development Center with an appeal fee as required by the Department not later than 4:30 p.m. on May 2, 1994.

- (b) Provided that if the Examiner was requested to reconsider the decision, then the appeal must be filed within ten (10) working days of the mailing of the Examiner's final order or decision on the reconsideration report. The notice of appeal shall concisely specify such error and/or issue which the Council is asked to consider on appeal.

2. An appeal of a decision of the Pierce County Environmental Official pursuant to the State Environmental Policy Act (SEPA) must be filed with a court of competent jurisdiction in accordance with the procedures and timeframes set forth in RCW 43.21c.080.

NOTE: In an effort to avoid confusion at the time of filing an appeal, please attach this page to the appeal.



CITY OF GIG HARBOR

3105 JUDSON STREET, GIG HARBOR, WA 98335

TREASURER'S RECEIPT

36380

West Smith Sunrise Enterprises

RECEIVED FROM *Admin. Filing Fee (UECA's)*
FOR *Harbor West*

DATE *9-2-97*

FUND	DEPT.	B/SUB	ELEM	CB	DESCRIPTION	AMOUNT
<i>001</i>		<i>341</i>	<i>100</i>			
TOTAL						<i>100-</i>

SUNRISE ENTERPRISES
P. O. BOX 1272 ANX
GIG HARBOR, WA 98335

19-57-147
1250
0047200191
DATE 8/26/97 3056

PAY TO THE ORDER OF City of Gig Harbor \$ 100⁰⁰

One hundred & no/100 DOLLARS

KeyBank National Association
Gig Harbor, Washington 98335
1-800-KEY2YOU

MEMO _____ Glenn H. Smith

⑆ 125000574⑆ 0047200191⑆ 3056



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

CITY OF GIG HARBOR - UTILITIES SERVICE APPLICATION

Application No. _____, Parcel No. Horizon West Plat, Date 8/26/97

Applicant Walter H. Smith, Phone # 253-851-4696

Mailing Address P.O. Box 191 Gig Harbor, WA 98335

STORM WATER CALCULATION:

Impervious Area (Sq.Ft.)	Calculation	Units

Connection/Service ADDRESS OR LOCATION: _____
 Subdivision _____, Lot No. _____
 Date of Hook-Up _____, Meter No. _____, Size _____, Rate _____
 Account No. _____, Meter Location _____

WATER SYSTEM HOOK-UP & METER INSTALLATION CHARGES:

(X)	Meter Size	Capacity Factor(s)	Hook-Up Fee (Inside City Limits)	Hook-Up Fee (Outside City)	Meter Charge	Total Fees
	3/4"	1	\$1,255.00	\$1,850.00	\$450.00	\$
	1"	1.67	\$2,090.00	\$3,075.00	\$555.00	\$
	1-1/2"	3.33	\$4,180.00	\$6,135.00	(2) \$1,130.00	\$
	2"	5.33	\$6,690.00	\$9,820.00	(2) \$1,260.00	\$
	Over 2"	(3)	(3)\$	(3)\$	(3) \$	\$

WATER SYSTEM HOOK-UP & METER INSTALLATION CHARGE: \$ _____

OTHER CHARGES: (See Note 2)

Street Boring	\$ 10.00 / Foot	\$
Open Street Cut	\$ 20.00 / Foot	\$
Refundable As-Built Plan Deposit		\$
		\$
		\$

- Notes: (1) If project is outside the city limits, the hook-up fee is (1.5) times that shown above.
 (2) Time & Material Plus 10%
 (3) Negotiable

BASIC SEWER SYSTEM CONNECTION FEE:

Zone A	Zone B, C, D	Other	# Of ERU'S *	Total Fee
\$ 725.00	\$ 1,780.00	\$ 2,500.00	16	\$ 28,480.00

* Equivalent Residential Unit Calculation for non-residential service:

Residential (ERU's per One unit per Resident) (16) = 16
 Class of Service Conversion rate for appropriate unit (sq. ft., seats, students, etc.) Number of units Equivalent ERU's

SPECIAL CHARGES:

Check (X)	Type of Fee (1)	Fee
	Encroachment Permit Application & Fee	\$ 15.00
	Sewer Stub Inspection Fee	\$ 125.00
	House Stub Inspection Fee (\$25 in city / \$37.50 out)	\$
	As-Built Plans Deposit (Refundable)	\$ 150.00
	Late Comers Agreement Fee	\$

Note: (1) Single Family Residence only (See Public Works Department for Multi-Family and Commercial)

TOTAL SEWER SYSTEM FEES PAID:

\$ _____

TOTAL FEES PAID WITH THIS APPLICATION:

\$ _____

Application is hereby made by the undersigned property owner or his agent for all water and/or sewer service required or used for any purpose at the above property address for which I agree to pay in advance and in accordance with existing ordinances and regulations of the city. Following estimated charges, the exact charges will be determined and are payable immediately upon completion of the installation.

I further agree that all rates and charges for water, sewer and/or storm service to the above property shall be paid in accordance with the existing ordinances and regulations of the city or any ordinances or regulations adopted hereafter. I agree to comply with the water, sewer and storm drainage service existing ordinances/regulations of the city or any such ordinances/regulations adopted hereafter.

I understand that the city will use all reasonable effort to maintain uninterrupted service, but reserves the right to terminate the water and/or sewer service at any time without notice for repairs, extensions, non payment of rates or any other appropriate reason and assumes no liability for any damage as a result of interruption of service from any cause whatsoever.

I understand that the city shall maintain ownership in such water meters installed by the city and the city shall be responsible for providing reasonable and normal maintenance to such meters. Damage to meters, boxes, and fittings will be repaired by the city's public works department. The cost of such repair work shall be borne by the contractor or the owner of the property.

Dalter H Smith 8-26-97
 Applicant's Signature Date

TO BE COMPLETED BY STAFF ONLY:

Receipt No.	Fees Paid	Date	Received By

REVIEWED BY:

Building Official	P.W. Inspector	P.W. Supervisor	Finance Technician



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: FIRST READING OF ORDINANCE - ADULT ENTERTAINMENT LICENSING
DATE: SEPTEMBER 3, 1997

INFORMATION/BACKGROUND

In December of 1996, Council passed an ordinance amending Chapter 17 of the Gig Harbor Municipal Code restricting adult entertainment facilities to locate in certain areas of the City. The attached licensing ordinance is the second stage in the regulation of adult entertainment facilities. A comprehensive compilation of materials supporting the adoption of the licensing ordinance is available with the City Clerk for review. This information includes the administrative record developed during the adoption of the adult entertainment zoning ordinance.

The licensing ordinance, unlike the zoning ordinance, does not need to be reviewed by the Planning Commission.

POLICY CONSIDERATIONS

This ordinance and supporting information has been reviewed by the Police Department, Planning Department and the City Clerk to develop the licensing applications and fees. A resolution adopting these fees will follow adoption of this ordinance.

RECOMMENDATION

Move to approve this ordinance regulating the licensing of adult entertainment at its second reading.

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ADDING A NEW CHAPTER 5.10 TO THE GIG HARBOR MUNICIPAL CODE ENTITLED "LICENSING AND OPERATION OF ADULT ENTERTAINMENT FACILITIES" PROVIDING FOR THE LICENSING AND REGULATION OF ADULT ENTERTAINMENT FACILITIES, PROVIDING FOR THE LICENSING AND REGULATION OF THE MANAGERS AND ENTERTAINERS OF SUCH BUSINESSES, AND ESTABLISHING MISDEMEANOR OFFENSES AND CIVIL PENALTIES FOR VIOLATIONS OF THIS ORDINANCE.

WHEREAS, on April 8, 1996, the City of Gig Harbor ("City") held a public hearing, adopted findings of fact and approved Ordinance No. 718, establishing a one-year moratorium on the siting and operation of adult entertainment facilities with the intent to adopt zoning and licensing regulations for such businesses; and

WHEREAS, on December 12, 1996, the City held a public hearing, adopted findings of fact and approved Ordinance No. 743, regulating the location of adult entertainment facilities within the City; and

WHEREAS, the City is hereby adopting certain licensing and operational regulations governing adult entertainment facilities in order to mitigate and reduce unacceptable adverse secondary effects associated with and caused by adult entertainment facilities; and

WHEREAS, the City Council takes notice of and specifically relies upon the experiences of and studies utilized by other cities and counties in combating the negative secondary effects of various types of adult entertainment facilities; and

WHEREAS, based upon the public testimony and other information presented on this subject to the Planning Commission and City Council during the adoption of Ordinance No. 743, as well as additional evidence presented to the City Council in conjunction with the adoption of this ordinance, the City Council finds that the adoption of licensing and operational standards is necessary to protect the health, safety and welfare of its citizens; and

WHEREAS, there are important and substantial governmental interests providing a constitutional basis for the reasonable regulation of the time, place and manner under which adult entertainment facilities operate; and

1 **WHEREAS**, it is the intent of this ordinance to enact time, place and manner
2 regulations which address the compelling interests of the City in mitigating the adverse
3 secondary effects of adult entertainment facilities; and

4
5 **WHEREAS**, it is not the intent of this ordinance to unreasonably suppress any speech
6 activities protected by the First Amendment or Article I, Section 5 of the Washington State
7 Constitution, but to enact regulations which address the deleterious secondary effects of adult
8 entertainment facilities, as well as the health problems associated with such businesses; and

9
10 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR,**
11 **WASHINGTON, DO ORDAIN AS FOLLOWS:**

12
13 **Section 1. Purpose And Intent.** It is the purpose of this ordinance to establish licensing
14 requirements and operational standards for adult entertainment facilities to promote the health,
15 safety, and general welfare of the citizens of the City of Gig Harbor. It is not the intent of the
16 City Council that it should be the purpose or effect of this ordinance to impose a limitation or
17 restriction on the content of any communicative materials, including sexually-oriented
18 materials. Similarly, it is not the intent of the City Council that it should be the effect of this
19 ordinance to restrict or deny access by adults to sexually-oriented materials protected by the
20 State or Federal Constitutions, or to deny access by the distributors and exhibitors of sexually-
21 oriented materials to their intended market. Finally, it is not the intent of the City Council to
22 condone or legitimize the distribution of obscene materials.

23
24 **Section 2. Findings of Fact.** Based upon a wide range of evidence presented to the Gig
25 Harbor City Council, including but not limited to studies, publications, articles, case law and
26 other materials submitted to and reviewed and considered by the City Council and City staff,
27 the City Council makes the following findings:

- 28
29 A. The City Council may rely on the experiences and studies of other cities,
30 counties and organizations in assessing the need for licensing and regulating the
31 operation of adult entertainment facilities.
32
33 B. The City Council takes notice of the studies and experiences of other cities and
34 counties in combating the specific adverse impacts of adult entertainment
35 facilities.
36
37 C. The City Council finds that the protection and preservation of public health,
38 safety and welfare requires establishment of this ordinance.
39
40 D. Regulation of adult entertainment facilities should be developed to prevent
41 deterioration and degradation of the vitality of the community before the
42 problem exists, rather than in response to an existing problem.

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- E. There are important and substantial government interests providing a constitutional basis for the reasonable regulation of the time, place, and manner under which adult entertainment facilities can operate.
- F. Certain conduct occurring on the premises of adult entertainment facilities creates secondary impacts that are detrimental to the public health, safety and general welfare of the citizens of the City, and therefore such conduct must be regulated as provided herein.
- G. Regulation of adult entertainment facilities through licensing and operational standards is necessary because, in the absence of such regulation, significant criminal and unlawful activity has historically and regularly occurred. This history of criminal and unlawful activity includes prostitution, illegal employment of minors, narcotics and alcoholic beverage law violations, breaches of the peace, tax evasion and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants.
- H. The criminal and unlawful activities described in this ordinance occur, in the absence of regulation, regardless of whether the adult entertainment is presented in conjunction with the sale of alcoholic beverages.
- I. Adult entertainment facilities are increasingly associated with ongoing prostitution, disruptive conduct and other unlawful and criminal activity. Such uses and businesses are currently not subject to effective regulation and constitute an immediate threat to the public peace, health and safety.
- J. Due to the connection between prostitution and adult entertainment facilities, there is concern over sexually-transmitted diseases which is a legitimate health concern of the City and thus requires regulation of adult entertainment facilities in order to protect the health, safety and well-being of the public.
- K. Hidden ownership interests for the purpose of skimming profits and avoiding payment of taxes have historically occurred in adult entertainment facilities in the absence of regulation. These hidden ownership interests have historically been held by organized and white collar criminal elements. In order for the City to effectively protect the public health, safety, morals and general welfare of its citizens and effectively allocate its law enforcement resources, it is important that the City be fully apprised of the actual ownership of adult entertainment facilities, and the identities and backgrounds of persons responsible for management and control of adult entertainment facilities.

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- L. The law enforcement resources available for responding to problems associated with or created by adult entertainment facilities are limited and are best conserved by licensing and regulating the operations of adult entertainment facilities.
- M. In order to ensure that all conditions and regulations of this ordinance are met, the City has established a reasonable time period for review of all license applications for adult entertainment facilities.
- N. Regulation of adult entertainment facilities is necessary to prevent public nuisances including moral nuisances.
- O. Proximity between entertainers and patrons during adult entertainment performances has proven to facilitate unlawful sexual contact, prostitution, narcotics transactions, and other related crimes; the City Council therefore finds it necessary to impose separation requirements between entertainers and patrons.
- P. A lack of lighting in adult entertainment facilities has proven to facilitate unlawful sexual contact, prostitution, and other related crimes; the City Council therefore finds it necessary to impose minimum lighting requirements within adult entertainment facilities to increase visibility for law enforcement purposes.
- Q. It is necessary to license managers of adult entertainment facilities so there will, at all times, be an individual responsible for the overall operation of the establishment, including the actions of entertainers and other employees.
- R. It is necessary to license entertainers in adult entertainment facilities to prevent the exploitation of minors, to ensure that each entertainer is an adult, and to ensure that each entertainer has not assumed a false name, which would make regulation of the entertainers difficult or impossible.
- S. The mandatory disclosure provisions required by this ordinance advance several legitimate goals. They protect minors, assure the correct identification of persons working in adult entertainment facilities, enable the City to deploy law enforcement resources effectively, and detect and discourage the involvement of organized crime in the adult entertainment industry.
- T. It is necessary to regulate the manner in which adult entertainers receive tips or gratuities; the City has a substantial interest in preventing prostitution and narcotics transactions in adult entertainment facilities.

- 1 U. The application fees required by this ordinance are nominal fees necessary to
- 2 defray the costs of processing the application and to help defray the substantial
- 3 expenses incurred by the City in regulating adult entertainment facilities.
- 4
- 5 V. Restricting the hours of operation is necessary to prevent the flow of patrons
- 6 from bars and taverns to adult entertainment facilities.
- 7
- 8 W. It is not the intent of this ordinance to unconstitutionally suppress or censor any
- 9 expressive activities protected by the First Amendment of the United States
- 10 Constitution or Article I, Section 5 of the Washington State Constitution, but
- 11 rather to enact content-neutral time, place, and manner regulations designed to
- 12 mitigate the deleterious secondary effects associated with and caused by adult
- 13 entertainment facilities.
- 14

15 **Section 3. New Chapter.** A new chapter 5.10 entitled "Licensing and Operation of Adult
 16 Entertainment Facilities" is hereby added to Title 5 (Business Licenses and Regulations) of the
 17 Gig Harbor Municipal Code ("GHMC") to read as follows:

18
 19 **Chapter 5.10 Licensing and Operation of Adult Entertainment Facilities**

20
 21 **PART A: GENERALLY**

- 22
- 23 **5.10.010 Purpose**
- 24 **5.10.020 Scope**
- 25 **5.10.030 Definitions**
- 26 **5.10.040 Penalties**
- 27 **5.10.050 Nuisance**
- 28 **5.10.060 Activities Not Prohibited**
- 29

30 **PART B: LICENSING REQUIREMENTS**

- 31
- 32 **5.10.070 License Required**
- 33 **5.10.080 Application for Adult Entertainment Business License**
- 34 **5.10.090 Application for Manager's or Entertainer's License**
- 35 **5.10.100 Initial Investigation**
- 36 **5.10.110 Issuance and Denial of Licenses**
- 37 **5.10.120 Renewal of Licenses**
- 38 **5.10.130 Nontransferability of Licenses**
- 39 **5.10.140 Suspension and Revocation of Licenses**
- 40 **5.10.150 Appeal of Denial, Suspension, or Revocation of License**
- 41 **5.10.160 Inspections and Public Health and Safety Suspensions**
- 42 **5.10.170 Recordkeeping Requirements and Monthly Reports**

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5.10.180 License Requirement for Existing Adult Entertainment Facilities

PART C: OPERATIONAL REQUIREMENTS

5.10.190 Regulations Applicable to All Adult Entertainment Facilities

5.10.200 Regulations Specifically Applicable to Adult Cabarets

5.10.210 Regulations Specifically Applicable to Adult Arcades

PART A: GENERALLY

5.10.010 Purpose. It is the intended purpose of this chapter to recognize the importance and benefits of freedom of expression to a democratic society. Experience has shown, however, that adult entertainment facilities, as defined herein, are detrimental to the public health, safety and welfare. Adult entertainment facilities are historically linked with organized crime, prostitution, narcotics, and other unlawful and criminal activity. These activities often lead to the development of public nuisances, including moral nuisances. Therefore, the licensing and operation of adult entertainment facilities should be regulated and monitored through the system of licensing and operating regulations contained in this chapter.

5.10.020 Scope. This chapter governs the licensing and operation of all adult entertainment facilities within the City. The location and siting of adult entertainment facilities is governed by the zoning regulations contained in Chapter 17.58 of the Gig Harbor Municipal Code. All adult entertainment facilities shall satisfy the requirements of both this chapter and Chapter 17.58 of the Gig Harbor Municipal Code.

5.10.030 Definitions.

For the purposes of this chapter, certain terms and words are defined as follows:

- A. "Adult arcade" means a commercial establishment containing individual viewing areas or booths, where, for any form of consideration, including a membership fee, one or more still or motion picture projectors, slide projectors, or other similar image producing machines are used to show films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas.
- B. "Adult cabaret" means a nightclub, bar, restaurant, tavern, or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features adult entertainment.

1 C. "Adult entertainment" means:
2

- 3 1. Any exhibition, performance or dance conducted in an adult
4 entertainment facility where such exhibition, performance or dance is
5 distinguished or characterized by a predominant emphasis on matters
6 depicting, describing, or simulating any specified sexual activities or any
7 specified anatomical areas; or
8
9 2. Any exhibition, performance or dance intended to sexually stimulate any
10 member of the public and conducted in an adult entertainment facility
11 where such exhibition, performance or dance is performed for, arranged
12 with, or engaged in with fewer than all patrons in the adult entertainment
13 facility at that time, with separate consideration paid, either directly or
14 indirectly, for such performance, exhibition or dance. For purposes of
15 example and not limitation, such exhibitions, performances or dances are
16 commonly referred to as table dancing, couch dancing, taxi dancing, lap
17 dancing, private dancing or straddle dancing.
18

19 D. "Adult entertainment business license" means a license issued by the City Clerk
20 under this chapter to the owner or operator of an adult entertainment facility.
21

22 E. "Adult entertainment facility" means a commercial establishment defined herein
23 as an adult arcade, adult cabaret, adult motel, adult motion picture theater, or
24 adult retail store.
25

26 F. "Adult motel" means a hotel, motel, or similar commercial establishment
27 which:
28

- 29 1. Offers sleeping accommodations to the public for any form of
30 consideration and provides patrons with closed-circuit television
31 transmissions, films, motion pictures, video cassettes, slides, or
32 other visual representations that are distinguished or characterized
33 by a predominant emphasis on matters depicting, describing, or
34 simulating any specified sexual activities or any specified
35 anatomical areas, and that has a sign visible from a public right of
36 way that advertises the availability of this type of sexually-
37 oriented materials; or
38
39 2. Offers a sleeping room for rent for a period of time that is less than ten
40 (10) hours; or
41

1 3. Allows a tenant or occupant of a sleeping room to sub-rent the
2 room for a period of time that is less than ten (10) hours.
3

4 G. "Adult motion picture theater" means an enclosed commercial establishment
5 where, for any form of consideration, motion pictures, films, video cassettes,
6 slides, or other similar visual representations are regularly shown that are
7 distinguished or characterized by a predominant emphasis on matters depicting,
8 describing, or simulating any specified sexual activities or any specified
9 anatomical areas.
10

11 H. "Adult retail store" means a commercial establishment such as a bookstore,
12 video store, or novelty shop which as its principal business purpose offers for
13 sale or rent, for any form of consideration, any one or more of the following:
14

15 1. Books, magazines, periodicals or other printed materials, or
16 photographs, films, motion pictures, video cassettes, slides, or
17 other visual representations that are distinguished or characterized
18 by a predominant emphasis on matters depicting, describing, or
19 simulating any specified sexual activities or any specified
20 anatomical areas; or
21

22 2. Instruments, devices, or paraphernalia designed for use in
23 connection with any specified sexual activities.
24

25 For the purpose of this definition, the term "principal business purpose" shall
26 mean the business purpose that constitutes fifty (50) percent or more of the stock
27 in trade of a particular business establishment. The stock in trade of a particular
28 business establishment shall be determined by examining either: (i) the retail
29 dollar value of all sexually oriented materials compared to the retail dollar value
30 of all non-sexually oriented materials readily available for purchase, rental,
31 view, or use by patrons of the establishment, excluding inventory located in any
32 portion of the premises not regularly open to patrons; or (ii) the total volume of
33 shelf space and display area reserved for sexually oriented materials compared
34 to the total volume of shelf space and display area reserved for non-sexually
35 oriented materials.
36

37 I. "Applicant" means a person or persons applying for a license under this chapter.
38

39 J. "City" means the City of Gig Harbor, Washington.
40

41 K. "Employee" means any person, including a manager, assistant manager and
42 entertainer, who works in or renders any services directly related to the

1 operation of any adult entertainment facility, whether or not such person is paid
2 compensation by the owner or operator of the adult entertainment facility.

3
4 L. "Entertainer" means any person who provides live adult entertainment in an
5 adult entertainment facility during which the person exposes any specified
6 anatomical areas or performs any specified sexual activities, whether or not the
7 person is an employee of the adult entertainment facility, and whether or not a
8 fee is charged or accepted for such entertainment.

9
10 M. "Entertainer's license" means a license issued by the City Clerk under this
11 chapter to an entertainer.

12
13 N. "Licensee" means a person or persons in whose name a license to operate an
14 adult entertainment facility has been issued under this chapter, as well as the
15 individual listed as an applicant on the application for a license, and in the case
16 of a manager, assistant manager or entertainer, a person in whose name a
17 license has been issued authorizing employment or entertainment in an adult
18 entertainment facility.

19
20 O. "Manager" means any person who manages, directs, or administers the affairs
21 or conduct of a portion of the activity within an adult entertainment facility,
22 including assistant managers working with or under the direction of a manager
23 to carry out such purposes.

24
25 P. "Manager's license" means a license issued by the City Clerk under this chapter
26 to a manager or assistant manager of an adult entertainment facility.

27
28 Q. "Nude" means the appearance of less than complete and opaque covering of the
29 human anus, human male genitals, human female genitals, or the areola or
30 nipple of the human female breast. The opaque covering shall be made of
31 material or fabric, but shall not include any liquid substance, including mud,
32 water, lotion, whipping cream, or other similar substances that are easily broken
33 down or removed and do not offer the covering intended for an opaque
34 covering.

35
36 R. "Owner or operator" means any person who owns, operates, or has a significant
37 interest in an adult entertainment facility, with significant interest being based
38 on responsibility for management of the business. Where an adult entertainment
39 facility is owned or operated by a partnership, then each partner shall be deemed
40 an owner or operator of the business. Where an adult entertainment facility is
41 owned or operated by a corporation, including a limited liability organization,
42 then each officer, director and principal stockholder shall be deemed an owner

1 or operator of the business. For the purposes of this chapter, a principal
2 stockholder is a person who owns or controls twenty percent (20%) or greater
3 interest in an adult entertainment facility.
4

5 S. "Person" means an individual, association, corporation, firm, estate, joint
6 venture, partnership, proprietorship, or other legal entity.
7

8 T. "Sexually-oriented materials" means any books, magazines, periodicals or other
9 printed materials, or any photographs, films, motion pictures, video cassettes,
10 slides, or other visual representations that are distinguished or characterized by
11 a predominant emphasis on matters depicting, describing, or simulating any
12 specified sexual activities or any specified anatomical areas. The term "sexually
13 oriented materials" includes any instruments, devices, or paraphernalia designed
14 for use in connection with any specified sexual activities.
15

16 U. "Specified anatomical areas" means and includes any of the following:
17

18 1. The human male genitals in a discernibly turgid state, even if completely
19 and opaquely covered; or
20

21 2. Less than completely and opaquely covered human genitals, pubic
22 region, anus, buttocks, or female breast below the top of the areola.
23

24 V. "Specified criminal offense" means an offense for prostitution or promotion of
25 prostitution, sale or distribution of obscenity, sale or display of materials
26 harmful to minors, public lewdness, indecent exposure, or transactions
27 involving controlled substances (as that term is defined in Chapter 69.50 RCW)
28 for which:
29

30 1. Less than two years have elapsed since the date of conviction or the date
31 of release from confinement imposed for the conviction, whichever is
32 later, if the conviction is of a misdemeanor offense; or
33

34 2. Less than five years have elapsed since the date of conviction or the date
35 of release from confinement imposed for the conviction, whichever is
36 later, if the conviction is of a felony offense; or
37

38 3. Less than five years have elapsed since the date of the last conviction or
39 the date of release from confinement imposed for the last conviction,
40 whichever is later, if the convictions are of two or more misdemeanor
41 offenses occurring within a twenty-four month period.
42

- 1 W. "Specified sexual activities" means and includes any of the following:
2
3 1. Sexual intercourse within its ordinary meaning, occurring upon any
4 penetration, however slight; or
5
6 2. Any penetration of the vagina or anus, however slight, by any object; or
7
8 3. Any contact between persons involving the sex organs of one person and
9 the mouth or anus of another; or
10
11 4. Masturbation, manual or instrumental, of oneself or of one person by
12 another; or
13
14 5. Touching of the sex organs or anus, whether clothed or unclothed, of
15 oneself or of one person by another.
16

17 **5.10.040 Penalties.**

- 18
19 A. Criminal Penalty. In addition to any other penalty provided in this chapter or
20 by law, any person who violates any provision of this chapter shall be guilty of
21 a misdemeanor and shall be subject to a criminal penalty pursuant to RCW
22 9A.20.021(3).
23
24 B. Civil Penalty. In addition to any other penalty provided in this chapter or by
25 law, any person who violates any provision of this chapter shall be subject to a
26 civil penalty pursuant to GHMC 1.16.010(D).
27
28 C. Separate Offense. Each day during any portion of which a violation of any
29 provision of this chapter is committed or is permitted is a separate offense.
30

31 **5.10.050 Nuisance.**

- 32
33 A. Public Nuisance. Any adult entertainment facility operated, conducted, or
34 maintained in violation of this chapter or any law of the City of Gig Harbor
35 shall be deemed a public nuisance, and all remedies given by law for the
36 prevention and abatement of public nuisances shall apply regardless of any other
37 remedy.
38
39 B. Moral Nuisance. Any adult entertainment facility operated, conducted, or
40 maintained contrary to the provisions of Chapter 7.48A RCW shall be deemed a
41 moral nuisance, and all remedies given by law for the prevention and abatement
42 of moral nuisances shall apply regardless of any other remedy.

1 **5.10.060 Activities Not Prohibited.**

- 2
- 3 A. This chapter shall not be construed to restrict or prohibit the following activities
- 4 or products: (a) plays, operas, musicals or other dramatic works that are not
- 5 obscene; (b) classes, seminars, or lectures which are held for a serious scientific
- 6 or educational purpose and that are not obscene; and (c) exhibitions,
- 7 performances, expressions or dances that are not obscene.
- 8
- 9 B. The provisions of this chapter are not intended to and do not prohibit the
- 10 simulation of sexual acts which are part of non-obscene expression.
- 11
- 12 C. Whether or not activity is obscene shall be judged by consideration of the
- 13 following factors:
- 14
- 15 1. Whether the average person, applying contemporary community
- 16 standards, would find that the activity taken as a whole appeals to the
- 17 prurient interest in sex; and
- 18
- 19 2. Whether the activity depicts or describes sexual conduct in a patently
- 20 offensive way, as measured against community standards, and as
- 21 described in RCW 7.48A.010(2)(b); and
- 22
- 23 3. Whether the activity taken as a whole lacks serious literary, artistic,
- 24 political or scientific value.
- 25

26 **PART B: LICENSING REQUIREMENTS**

27

28 **5.10.070 License Required.**

- 29
- 30 A. It is unlawful for any person to operate an adult entertainment facility unless that
- 31 person is the holder of a valid adult entertainment business license issued by the
- 32 City Clerk under this chapter.
- 33
- 34 B. It is unlawful for any person to work as a manager in an adult entertainment
- 35 facility unless that person is the holder of a valid manager's license issued by
- 36 the City Clerk under this chapter.
- 37
- 38 C. It is unlawful for any person to work or perform as an entertainer in an adult
- 39 entertainment facility unless that person is the holder of a valid entertainer's
- 40 license issued by the City Clerk under this chapter.
- 41

1 D. It is unlawful for any manager or entertainer to knowingly work in or about, or
2 to knowingly perform any service or entertainment directly related to the
3 operation of an adult entertainment facility which is not licensed under this
4 chapter.
5

6 **5.10.080 Application for Adult Entertainment Business License.**
7

8 A. No person shall operate an adult entertainment facility within the City of Gig
9 Harbor without a valid adult entertainment business license issued by the City
10 Clerk.
11

12 B. Each person qualifying as an owner or operator of the proposed adult
13 entertainment facility shall submit a separate application. Each applicant shall
14 be separately qualified under this chapter.
15

16 C. All applications shall be submitted to the City Clerk on a form supplied by the
17 City and shall contain or be accompanied by all of the following information and
18 documents:
19

20 1. The date of the application.
21

22 2. The legal name, any previous names, any aliases, any driver's license
23 number, any social security number, and the date of birth of the
24 applicant.
25

26 3. If the applicant is a partner in a partnership, the applicant shall state the
27 complete name of the partnership, state whether the partnership is
28 general or limited, and state the legal names of all partners.
29

30 4. If the applicant is an officer, director, or principal stockholder of a
31 corporation, including a limited liability organization, the applicant shall
32 state the complete name of the corporation, state the date of its
33 incorporation, state the name of the registered corporate agent, state the
34 address of the registered office for service of process, and provide
35 evidence that the corporation is in good standing under the laws of the
36 State of Washington.
37

38 5. A description of the principal activities and services to be offered by the
39 proposed adult entertainment facility, including a summary of the types
40 of adult entertainment and sexually-oriented materials to be offered for
41 sale or rent by the proposed adult entertainment facility.

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6. A description of the principal activities and services to be rendered by the applicant with respect to the proposed adult entertainment facility.
7. A statement whether the applicant has been convicted of a specified criminal offense, and if so, the date, place, and jurisdiction of each specified criminal offense.
8. A statement whether the applicant holds any license issued under this chapter or under a similar ordinance from another city or county, and if so, the operating names and locations of the other licensed businesses.
9. A statement whether the applicant has had a previous license issued under this chapter denied, suspended, or revoked, and if so, the name and location of the adult entertainment facility for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.
10. A statement whether the applicant has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that has had a previous license under this chapter denied, suspended, or revoked, and if so, the name and location of the adult entertainment facility for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.
11. The proposed location of the adult entertainment facility, including a legal description of the property, street address, and telephone numbers, if any.
12. The present mailing and residential address of the applicant.
13. Two (2) two-inch by two-inch color photographs of the applicant, taken within six (6) months of the date of the application, showing the full face of the applicant. The photographs shall be provided at the expense of the applicant.
14. Two sets of fingerprints of the applicant, on a form approved by the City of Gig Harbor Police Department.
15. A sketch or diagram showing the configuration of the premises, including a statement of total floor space to be occupied by the adult entertainment facility. The sketch or diagram shall be drawn to a designated scale to an accuracy of plus or minus six (6) inches.

1 16. Authorization for the City, its agents, and employees to seek information
2 to confirm any statements or other information set forth in the
3 application.
4

5 D. Each applicant shall verify under penalty of perjury that the information
6 contained in the application is true to the best of his or her knowledge.
7

8 E. An application shall be deemed complete upon receipt of all the information and
9 documents requested by this section. Where necessary to determine compliance
10 with this chapter, the City Clerk may request information or clarification in
11 addition to that provided in a complete application.
12

13 F. If any person or entity acquires, subsequent to the issuance of an adult
14 entertainment business license, a significant interest in the licensed adult
15 entertainment facility, notice of such acquisition shall be provided in writing to
16 the City Clerk within twenty-one (21) calendar days following such acquisition
17 and the person acquiring the interest shall submit a complete application to the
18 City Clerk pursuant to GHMC 5.10.080 within forty-five (45) calendar days of
19 acquiring such interest.
20

21 G. Each adult entertainment business license application shall be accompanied by a
22 non-refundable application fee of five hundred dollars (\$500.00).
23

24 **5.10.090 Application for Manager's or Entertainer's License.**
25

26 A. No person shall work or perform as a manager or entertainer at an adult
27 entertainment facility without a valid manager's or entertainer's license issued
28 by the City Clerk.
29

30 B. All applications shall be submitted to the City Clerk on a form supplied by the
31 City and shall contain or be accompanied by all of the following information and
32 documents:
33

34 1. The date of the application.
35

36 2. The legal name, any previous names, any aliases, any driver's license
37 number, any social security number, and the date of birth of the
38 applicant.
39

40 3. Documentation that the applicant has attained the age of eighteen years.
41 Any of the following shall be accepted as documentation of age:
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- a. A valid driver's license issued by any state bearing the applicant's photograph and date of birth;
 - b. A valid identification card issued by any state bearing the applicant's photograph and date of birth;
 - c. An official passport issued by the United States of America;
 - d. An immigration card issued by the United States of America; or
 - e. Any other form of identification that the City Clerk determines to be acceptable.
- 4. The height, weight, hair and eye color of the applicant.
 - 5. The present mailing and residential address of the applicant.
 - 6. The name and address of the adult entertainment facility at which the applicant will work or perform.
 - 7. A description of the principal activities or services to be rendered by the applicant at the adult entertainment facility.
 - 8. Two (2) two-inch by two-inch color photographs of the applicant, taken within six (6) months of the date of the application, showing the full face of the applicant. The photographs shall be provided at the expense of the applicant.
 - 9. Two sets of fingerprints of the applicant, on a form approved by the City of Gig Harbor Police Department.
 - 10. A statement whether the applicant has been convicted of a specified criminal offense, and if so, the date, place, and jurisdiction of each specified criminal offense.
 - 11. A statement whether the applicant holds any license issued under this chapter or under a similar ordinance from another city or county, and if so, the operating names and locations of the other licensed businesses.
 - 12. A statement whether the applicant has had a previous license issued under this chapter denied, suspended, or revoked, and if so, the name and location of the adult entertainment facility for which the license was

1 denied, suspended, or revoked, as well as the date of the denial,
2 suspension, or revocation.
3

4 13. Authorization for the City, its agents, and employees to seek information
5 to confirm any statements or other information set forth in the
6 application.
7

8 C. The applicant shall verify under penalty of perjury that the information
9 contained in the application is true to the best of his or her knowledge.
10

11 D. An application shall be deemed complete upon receipt of all the information and
12 documents requested by this section. Where necessary to determine compliance
13 with this chapter, the City Clerk may request information or clarification in
14 addition to that provided in a complete application.
15

16 E. Each manager's and entertainer's license application shall be accompanied by a
17 non-refundable application fee of one hundred dollars (\$100.00).
18

19 **5.10.100 Initial Investigation.**
20

21 A. Upon receipt of a complete adult entertainment business application and filing
22 fee, the City Clerk shall stamp the application as received and shall send
23 photocopies of the application to the departments or agencies responsible for the
24 enforcement of public safety, health, fire, and building codes and laws. Each
25 interested department or agency shall conduct an investigation of the application
26 and the proposed adult entertainment facility within twenty (20) calendar days of
27 receipt of the application by the City Clerk, unless circumstances support
28 extending the investigation. If the investigation is extended, the City Clerk shall
29 inform the applicant of the extension and the reasons therefor. The extension
30 shall not exceed ten (10) additional calendar days from the original expiration of
31 the twenty (20) day time period stated above. At the conclusion of its
32 investigation, each interested department or agency shall recommend approval
33 or disapproval of the application by so indicating on the photocopy of the
34 application. After indicating its approval or disapproval, each interested
35 department or agency shall immediately return the photocopy of the application
36 to the City Clerk. In the event the proposed adult entertainment facility is in a
37 state of construction at the time of the inspection, then each interested
38 department or agency shall make a preliminary determination of approval or
39 disapproval based on the drawings submitted in the application. Any adult
40 entertainment business license approved prior to final construction of the adult
41 entertainment facility shall contain a condition that the adult entertainment
42 facility may not open for business until the facility has been inspected and

1 determined to be in compliance with applicable laws and regulations and
2 substantially conforms with the drawings submitted with the application.
3

- 4 B. In the event an interested department or agency recommends disapproval, the
5 department or agency recommending disapproval shall state the basis for the
6 disapproval in writing. A department or agency shall recommend disapproval
7 of an application if it finds that the proposed adult entertainment facility will
8 violate any provision of any statute, code, ordinance, regulation, or other law in
9 effect in the City.
10

11 **5.10.110 Issuance and Denial of Licenses.**
12

13 A. Issuance of Adult Entertainment Business License.
14

- 15 1. The City Clerk shall grant or deny an application for an adult
16 entertainment business license within thirty (30) calendar days from the
17 date a complete application is filed unless a ten (10) day extension is
18 granted as provided in GHMC 5.10.100(A) in which case the City Clerk
19 shall grant or deny an application for an adult entertainment business
20 license within forty (40) calendar days from the date a complete
21 application is filed.
22
- 23 2. The City Clerk shall issue an adult entertainment business license unless
24 one or more of the criteria set forth in GHMC 5.10.110(C)(1) is present.
25
- 26 3. An adult entertainment business license, if granted, shall state on its face
27 the name of the person or persons to whom it is granted, the expiration
28 date, and the name and address of the adult entertainment facility. An
29 adult entertainment business license shall be posted in a conspicuous
30 place, at or near the entrance to the adult entertainment facility.
31
- 32 4. An adult entertainment business license shall be valid for one year from
33 the date of issuance.
34

35 B. Issuance of Manager's or Entertainer's License.
36

- 37 1. The City Clerk shall grant or deny an application for a manager's or
38 entertainer's license within fifteen (15) calendar days from the date of its
39 proper filing.
40
- 41 2. An applicant for a manager's or entertainer's license shall be issued a
42 temporary license upon receipt of a complete license application and fee.

1 Said temporary license shall automatically expire on the fifteenth day
2 following the filing of the complete application and fee, unless the City
3 Clerk has failed to approve or deny the license application in which case
4 the temporary license shall be valid until the City Clerk approves or
5 denies the application, or until the final determination of any appeal from
6 a denial of the application. In no event may the City Clerk extend the
7 application review time for more than an additional twenty (20) days.
8

- 9 3. The City Clerk shall issue a manager's or entertainer's license unless one
10 or more of the criteria set forth in GHMC 5.10.110(C)(1) is present.
11
12 4. A manager's or entertainer's license, if granted, shall state on its face the
13 name of the person to whom it is granted, the expiration date, and the
14 name and address of the adult entertainment facility at which the
15 manager or entertainer will work or perform. Each manager and
16 entertainer shall ensure that his or her license is posted in a conspicuous
17 place, at or near the entrance to the adult entertainment facility, at all
18 times the manager or entertainer is working or performing in the adult
19 entertainment facility.
20
21 5. A manager's or entertainer's license shall be valid for one year from the
22 date of issuance.
23

24 C. Denial of License Application.
25

- 26 1. The City Clerk shall deny a license application if it is demonstrated by a
27 preponderance of the evidence that one or more of the following findings
28 is true:
29
30 a. The premises to be used for the proposed adult entertainment
31 facility are not in compliance with applicable laws and
32 ordinances.
33
34 b. An applicant is under eighteen (18) years of age.
35
36 c. An applicant has failed to provide information required by this
37 chapter or has falsely answered a question or request for
38 information on the application form.
39
40 d. An application fee required by this chapter has not been paid.
41

- 1 2. In the event the City Clerk denies an application, the City Clerk shall do
2 so in writing, and shall state the specific reasons therefor, including
3 applicable laws.
4
5 3. Denial of a license application is subject to appeal as set forth in GHMC
6 5.10.150.
7

8 **5.10.120 Renewal of Licenses.**
9

- 10 A. A licensee may apply for renewal of an adult entertainment business license
11 issued under this chapter. An application for renewal shall contain the
12 information and documents required in GHMC 5.10.080 and shall be
13 accompanied by a non-refundable application fee of one hundred dollars
14 (\$100.00).
15
16 B. A licensee may apply for renewal of a manager's or entertainer's license issued
17 under this chapter. An application for renewal shall contain the information and
18 documents required in GHMC 5.10.090 and shall be accompanied by a non-
19 refundable application fee of one hundred dollars (\$100.00).
20
21 C. Application for renewal of an adult entertainment business license shall be made
22 within forty (40) calendar days before the expiration date of the currently valid
23 license.
24
25 D. Application for renewal of a manager's or entertainer's license shall be made
26 within fifteen (15) calendar days before the expiration date of the currently valid
27 license.
28
29 E. An application for a renewal license shall be issued or denied according to the
30 requirements of GHMC 5.10.110.
31
32 F. Denial of a renewal license is subject to appeal as set forth in GHMC 5.10.150.

1 **5.10.130 Nontransferability of Licenses.**

- 2
- 3 A. Adult Entertainment Business License. The holder of an adult entertainment
4 business license issued pursuant to this chapter shall not assign or transfer the
5 license to another person, except that a transfer may be made to the surviving
6 spouse of a deceased licensee if the transferor and transferee were maintaining a
7 marital community and the license was issued in the name of one or both of
8 them.
- 9
- 10 B. Manager's or Entertainer's License. The holder of a manager's or entertainer's
11 license issued pursuant to this chapter shall not assign or transfer the license to
12 another person.

13

14 **5.10.140 Suspension and Revocation of Licenses.**

- 15
- 16 A. The City Clerk may, subject to this chapter, suspend or revoke any license
17 issued pursuant to this chapter. In the event a license is suspended or revoked,
18 all rights of the licensee under this chapter are then suspended or terminated, as
19 the case may be.
- 20
- 21 B. Upon receipt of notice of the suspension or revocation of an adult entertainment
22 business license or manager's license or entertainer's license, the licensee shall
23 without delay deliver such license to the City Clerk. In the case of a
24 suspension, the City Clerk shall return the license to the licensee at the
25 expiration of the suspension period.
- 26
- 27 C. Suspension of License. The City Clerk shall suspend a license for a period not
28 to exceed thirty (30) calendar days if the City Clerk determines that:
- 29
- 30 1. The licensee has refused to allow an inspection of the adult entertainment
31 facility as required by GHMC 5.10.160; or
- 32
- 33 2. The licensee has not submitted a timely monthly report as required by
34 GHMC 5.10.170(B); or
- 35
- 36 3. The licensee has been convicted of a specified criminal offense
37 committed on the premises of the adult entertainment facility for which
38 he or she is licensed within the time periods provided in GHMC
39 5.10.030(V); or
- 40
- 41 4. The licensee has violated any applicable requirement of this chapter.
- 42

1 D. Revocation of License.

- 2
- 3 1. The City Clerk shall revoke a license if the City Clerk determines that:
- 4
- 5 a. The licensee has given false information in the material submitted
- 6 during the application process; or
- 7
- 8 b. The licensee has knowingly operated an adult entertainment
- 9 facility during a period of time when the adult entertainment
- 10 business license of the adult entertainment facility was suspended;
- 11 or
- 12
- 13 c. The licensee has knowingly acted as a manager of an adult
- 14 entertainment facility during a period of time when the licensee's
- 15 manager's license was suspended; or
- 16
- 17 d. The licensee has knowingly acted as an entertainer at an adult
- 18 entertainment facility during a period of time when the licensee's
- 19 entertainer's license was suspended; or
- 20
- 21 e. A cause of suspension in GHMC 5.10.140(C) occurs and the
- 22 license has been suspended within the preceding twelve months.
- 23
- 24 2. In the event the City Clerk revokes a license, the revocation shall
- 25 continue for one year, and the licensee shall not be issued an adult
- 26 entertainment business license, manager's license, or entertainer's
- 27 license for one year from the date the revocation becomes effective. If,
- 28 after revocation, the City Clerk finds that the basis for the revocation has
- 29 been corrected or abated, the applicant may be granted a license if at
- 30 least ninety (90) calendar days have elapsed since the date of revocation
- 31 became effective.
- 32

33 **5.10.150 Appeal of Denial, Suspension, or Revocation of License.**

- 34
- 35 A. In the event the City Clerk denies, suspends or revokes a license issued under
- 36 this chapter, the City Clerk shall notify the applicant or licensee in writing of
- 37 the decision at least ten (10) calendar days prior to the effective date of any such
- 38 denial, suspension, or revocation. The notice shall describe the grounds for
- 39 such denial, suspension or revocation and shall inform the applicant or licensee
- 40 of his or her right to appeal to the City Hearing Examiner within ten (10)
- 41 calendar days of the date of the written decision by filing a written notice of
- 42 appeal with the City Clerk containing a statement of the specific reasons for the

1 appeal and a statement of the relief requested. The notice shall be served either
2 in person or by mailing a copy of the notice by certified mail, postage prepaid,
3 return receipt requested, to the applicant or licensee at his or her last known
4 address.
5

6 B. If a licensee timely appeals a decision of the City Clerk, then the licensee may
7 continue to engage in the activity for which the license was issued pending the
8 decision of the City Hearing Examiner, unless the license was suspended or
9 revoked based on a threat of immediate serious injury to public health or safety
10 pursuant to GHMC 5.10.160(B).
11

12 C. Within ten (10) calendar days of receiving a timely appeal, the City Clerk shall
13 forward the administrative record of the licensing decision to the City Hearing
14 Examiner.
15

16 D. In the event an applicant or licensee timely appeals the denial, suspension, or
17 revocation of a license issued under this chapter, the City Hearing Examiner
18 shall hold a hearing on the appeal within twenty (20) calendar days from receipt
19 of the appeal. Written notice of the date, time, and place of the scheduled
20 hearing shall be given to the applicant by the City Clerk at least five (5) calendar
21 days prior to the hearing.
22

23 E. The City Hearing Examiner shall uphold the decision of the City Clerk unless it
24 finds the decision is not supported by substantial evidence in the administrative
25 record.
26

27 F. The City Hearing Examiner shall issue a written decision within ten (10)
28 calendar days of hearing the appeal. The decision shall be served either in
29 person or by mailing a copy of the decision by certified mail, postage prepaid,
30 return receipt requested, to the applicant or licensee at his or her last known
31 address. The decision of the City Hearing Examiner shall constitute the final
32 administrative decision of the City and may be appealed to superior court within
33 ten (10) calendar days. The applicant or licensee shall be responsible for the
34 costs of preparing the administrative record for judicial review. If a licensee
35 timely appeals a decision of the City Hearing Examiner, then the licensee may
36 continue to engage in the activity for which the license was issued pending the
37 decision of the court, unless the license was suspended or revoked based on a
38 threat of immediate serious injury to public health or safety pursuant to GHMC
39 5.10.160(B).
40

41 **5.10.160 Inspections and Public Health and Safety Suspensions.**
42

1 A. An applicant or licensee shall permit representatives of the police department,
2 health department, and other state and local government agencies to inspect the
3 premises of the adult entertainment facility, at any time the adult entertainment
4 facility is open for business, for the purpose of insuring compliance with all
5 applicable statutes, codes, ordinances, regulations, and laws.
6

7 B. Where a condition exists upon the premises of an adult entertainment facility
8 that constitutes a threat of immediate serious injury to public health or safety,
9 the City Clerk or any other City official may immediately suspend any license
10 issued under this chapter by issuing a notice setting forth the facts that constitute
11 a threat of immediate serious injury to public health or safety, and informing the
12 licensee of the right to appeal the suspension to the City Hearing Examiner
13 under the appeal provisions set forth in GHMC 5.10.150.
14

15 **5.10.170 Recordkeeping Requirements and Monthly Reports.**
16

17 A. Each adult entertainment facility licensed under this chapter shall maintain and
18 retain for a period of two (2) years from the date of termination of employment,
19 the names, addresses, and ages of all persons employed or otherwise retained as
20 managers and entertainers.
21

22 B. Each adult entertainment facility licensed under this chapter shall file a monthly
23 report with the City Clerk including the names, addresses, and ages of all
24 persons employed or otherwise retained as managers and entertainers.
25

26 **5.10.180 License Requirement for Existing Adult Entertainment Facilities.**
27

28 Any adult entertainment facility in existence prior to the effective date of this ordinance
29 shall be deemed to be operating under a temporary adult entertainment business license.
30 Within forty-five (45) calendar days of the effective date of this ordinance, such adult
31 entertainment facility shall submit a complete adult entertainment business license
32 application and license fee pursuant to GHMC 5.10.080 to the City Clerk. The license
33 application shall be issued or denied in accordance with the requirements of this
34 chapter. The adult entertainment facility shall be permitted to continue to engage in the
35 activities specified in the adult entertainment business license application pursuant to
36 GHMC 5.10.080(C)(5) pending the decision of the City Clerk.
37

38 **PART C: OPERATIONAL REQUIREMENTS**
39

40 **5.10.190 Regulations Applicable to All Adult Entertainment Facilities.** All adult
41 entertainment facilities shall comply with the following regulations:
42

- 1 A. Manager on Premises. A licensed manager shall be on duty at the adult
2 entertainment facility at all times the adult entertainment facility is open for
3 business. The manager shall be stationed at a location within the adult
4 entertainment facility where he or she shall have an unobstructed view of all
5 public portions of the adult entertainment facility.
6
- 7 B. Hours of Operation. Adult entertainment facilities, except adult motels, shall
8 not be operated or otherwise open to the public between the hours of 2:00 a.m.
9 and 10:00 a.m.
10
- 11 C. Admission to Minors Prohibited. Admission to adult entertainment facilities,
12 except adult motels, shall be restricted to persons of the age of eighteen (18)
13 years or more. The age of all patrons shall be verified at the time of entry by an
14 employee of the adult entertainment facility.
15

16 **5.10.200 Regulations Specifically Applicable to Adult Cabarets.**

- 17
- 18 A. General. An adult cabaret shall satisfy the zoning requirements contained in
19 Chapter 17.58 of the Gig Harbor Municipal Code, the general requirements in
20 Part A of this chapter, the licensing requirements in Part B of this chapter, the
21 general operational requirements in GHMC 5.10.190, and the specific
22 operational requirements applicable to adult cabarets contained in this section.
23
- 24 B. Separation of Nude Entertainers From Patrons. No entertainer shall appear
25 nude except on a stage or platform at least twenty-four (24) inches in elevation
26 above the level of the patron seating areas. The stage shall be separated by a
27 distance of at least eight (8) feet from all areas of the premises to which patrons
28 have access. A continuous fixed-barrier railing, of sufficient construction to
29 prevent encroachment by patrons onto the stage, at least three (3) feet in height
30 and located at least eight (8) feet from all points of the stage, shall separate the
31 stage from all patron areas.
32
- 33 C. General Separation of Entertainers From Patrons. No entertainer shall conduct
34 any dance, performance, or exhibition in or about the adult cabaret unless that
35 dance, performance, or exhibition is performed at a torso-to-torso distance of no
36 less than four feet from the patron for whom the dance, performance, or
37 exhibition is intended.
38
- 39 D. Managers. The licensed manager on duty shall not be an entertainer. There
40 shall be one manager on duty for every stage operating on the premises. No
41 manager shall knowingly permit an employee or entertainer to violate any
42 provision of this section.

- 1 E. Tips. No entertainer shall allow a member of the public to place a tip or
2 gratuity directly upon his or her body or into his or her clothing.
3
- 4 F. Maintenance. All public areas of the adult cabaret shall be maintained in a clean
5 and sanitary condition.
6
- 7 G. Lighting. A minimum lighting level of 30 lux semi-cylindrical measured at
8 thirty (30) inches from the floor or ten (10) foot centers shall be provided and
9 equally distributed in and about the public portions of the adult cabaret,
10 including the patron seating areas, so that all objects are plainly visible at all
11 times.
12
- 13 H. Visibility From Outside the Adult Cabaret. No activity or entertainment
14 occurring at or in the adult cabaret, nor any photograph, drawing, sketch or
15 other pictorial or graphic representation of any specified sexual activities or
16 specified anatomical areas, shall be visible at any time from outside the adult
17 cabaret.
18
- 19 I. Prohibited Activities.
- 20
- 21 1. No manager, entertainer or employee shall perform or simulate any
22 sexual activities specified in GHMC 5.10.030(W) or RCW
23 7.48A.010(2)(b).
24
- 25 2. No manager, entertainer or employee shall expose to view any
26 anatomical areas specified in GHMC 5.10.030(U) except upon a stage or
27 platform as set forth in GHMC 5.10.200(B).
28
- 29 J. Sign. A sign at least two (2) feet by two (2) feet, with letters at least one (1)
30 inch high, shall be conspicuously and permanently posted at or near the entrance
31 to the adult entertainment facility which states the following:
32

33 THIS ADULT CABARET IS REGULATED BY THE CITY OF
34 GIG HARBOR. ENTERTAINERS ARE NOT PERMITTED TO
35 ENGAGE IN ANY TYPE OF SEXUAL ACTIVITY AND ARE
36 NOT PERMITTED TO APPEAR NUDE EXCEPT ON STAGE.
37 ENTERTAINERS IN THE SEATING AREAS OF THE ADULT
38 CABARET ARE NOT ALLOWED TO DANCE WITHIN
39 FOUR FEET OF ANY CUSTOMER. TIPS AND GRATUITIES
40 MAY NOT BE PLACED ON THE BODY OR IN THE
41 CLOTHING OF ANY ENTERTAINER.

1 **5.10.210 Regulations Specifically Applicable to Adult Arcades.**
2

3 A. General. An adult arcade shall satisfy the zoning requirements contained in
4 Chapter 17.58 of the Gig Harbor Municipal Code, the general requirements in
5 Part A of this chapter, the licensing requirements in Part B of this chapter, the
6 general operational requirements in GHMC 5.10.190, and the specific
7 operational requirements applicable to adult arcades contained in this section.
8

9 B. Physical Layout.

- 10
- 11 1. Each viewing booth shall be visible from a manager's station and shall
12 not be obscured by any curtain, door, wall or other enclosure. As used
13 in this section "viewing booth" means the area where a patron or
14 customer would be positioned while watching a film, video or other
15 photographic reproduction.
16
 - 17 2. No steps or risers shall be allowed in any viewing booth.
18
 - 19 3. No viewing booth shall have more than one stool or seat. In order to
20 prevent obscuring the occupant of a viewing booth from view, no stool
21 for seating within a viewing booth shall have any seat back or sides.
22
 - 23 4. No viewing booth shall have any holes or openings in its walls other than
24 ventilation holes. All ventilation holes shall be located one foot from the
25 top of the booth walls or one foot from the bottom of the booth walls.
26 All ventilation holes shall be covered with a permanently affixed
27 ventilation cover.
28

29 C. Maintenance. All viewing booths shall be maintained in a clean and sanitary
30 condition.
31

32 D. Lighting. A minimum lighting level of 30 lux semi-cylindrical measured at
33 thirty (30) inches from the floor or ten (10) foot centers shall be provided and
34 equally distributed in and about the public portions of the adult arcade,
35 including the viewing booths, so that all objects are plainly visible at all times.
36

37 E. Limit on Number of Persons Within a Viewing Booth. No licensee or employee
38 shall permit more than one person to occupy a viewing booth at any given time.
39

40 F. Prohibited Activities. No licensee or employee shall knowingly permit a patron
41 to perform any sexual activity specified in GHMC 5.10.030(W) or RCW
42 7.48A.010(2)(b) within a viewing booth.

1 G. Sign. A sign at least two (2) feet by two (2) feet, with letters at least one (1)
2 inch high, shall be conspicuously and permanently posted at or near the entrance
3 to the adult entertainment facility which states the following:
4

5 THIS ADULT ARCADE IS REGULATED BY THE CITY OF
6 GIG HARBOR. IT IS UNLAWFUL TO PERFORM SEXUAL
7 ACTS WITHIN A VIEWING BOOTH, AND IT IS
8 UNLAWFUL FOR MORE THAN ONE PERSON TO OCCUPY
9 A VIEWING BOOTH AT ANY GIVEN TIME.
10

11 H. Visibility From Outside the Adult Arcade. No activity or entertainment
12 occurring at or in an adult arcade, nor any photograph, drawing, sketch or other
13 pictorial or graphic representation of any specified sexual activities or specified
14 anatomical areas shall be visible at any time from outside the adult arcade.
15

16 **Section 4. Limitations of Liability.** None of the provisions of this ordinance are
17 intended to create a cause of action or provide the basis for a claim against the City, its
18 officials, or employees for the performance or the failure to perform a duty or obligation
19 running to a specific individual or specific individuals. Any duty or obligation created herein
20 is intended to be a general duty or obligation running in favor of the general public.
21

22 **Section 5. Severability.** If any portion of this ordinance as now or hereafter amended, or its
23 application to any person or circumstance is held invalid or unconstitutional, such adjudication
24 shall not affect the validity of the ordinance as a whole, or any section, provision, or part
25 thereof not adjudged to be invalid or unconstitutional, and its application to other persons or
26 circumstances shall not be affected.
27

28 **Section 6. Conflicting Ordinances Repealed.** Any ordinance or regulation in conflict with
29 this ordinance is hereby repealed.
30

31 **Section 7. Effective Date.** This ordinance or a summary thereof consisting of the title and
32 penalty section shall be published in the official newspaper of the City, and shall take effect
33 and be in full force five (5) calendar days after publication.
34

35 PASSED by the City Council and APPROVED by the Mayor this ____ day of _____, 1997.
36

37 APPROVED:
38
39

40 _____
41 MAYOR, GRETCHEN WILBERT
42

1 ATTEST/AUTHENTICATED:
2
3
4 _____
5 CITY CLERK, MOLLY TOWSLEE
6
7 APPROVED AS TO FORM:
8
9
10 _____
11 CITY ATTORNEY, CAROL MORRIS
12
13 FILED WITH THE CITY CLERK: 8/28/97
14 PASSED BY THE CITY COUNCIL:
15 PUBLISHED:
16 EFFECTIVE DATE:
17 ORDINANCE NO.

Exhibit 'A'

ADULT ENTERTAINMENT INDEX OF INFORMATION

- A. Two police videotapes.
- B. Memo to Planning Commission - Secondary Land Use Impacts 9/26/96;
- C. Page 7 - Memo to the Redmond Planning Commission - Regulations 4/10/96;
- D. City of Kent - Study on The Land Use Impacts of Adult Uses;
- F. Agenda - GH Planning Commission Meeting - Worksession on A.E. 8/1/96;
- G. City of Los Angeles Dept. of City Planning - Study of the Effects of the Concentration of Adult Entertainment Establishments 6/77;
- H. The City of Bellevue licensing ordinance;
- I. Relevant state court decisions;
- J. Relevant studies prepared by other cities and counties;
 - 1. Commission on Obscenity and Pornography - Minnesota, 9/70;
 - 2. Zoning Controls for Adult-Only Theaters - Seattle, 3/76;
 - 3. Study of the Effects of the Concentration of Adult Entertainment Establishments - Los Angeles, 6/77
 - 4. Smut Shop Outlets - Cleveland, 8/77;
 - 5. Adult Business Study - Phoenix, 3/79;
 - 6. Adult Use Zoning Study - Kent, 11/82;
 - 7. Adult Entertainment Businesses - Indianapolis, 2/84;
 - 8. Materials from Bothell Planning Commission Meeting - Bothell, 7/84;
 - 9. Adult Entertainment Businesses/Survey of Real Estate Appraisers - Oklahoma City, 3/86;
 - 10. Report on Adult Oriented Businesses - Austin City, 5/86;
 - 11. Study on the Need to Regulate the Location of Adult Entertainment Uses - Analysis and Recommendations - Bellevue, 9/87;
 - 12. Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses - Minnesota, 6/89;
 - 13. Director's Report Concerning Regulating the Location of Adult Entertainment Uses - Seattle, 8/89;
 - 14. Adult Entertainment Land Use Analysis Final Report - Lynnwood, 4/90;
 - 15. Adult Entertainment Code Amendments - Federal Way, 8/95;
 - 16. Report of the Adult Entertainment Zoning Committee - Snohomish County, 5/96;
 - 17. Regulation of Sexually Oriented Businesses - Texas, 7/96.



Date of Application:	
<input type="checkbox"/>	NEW - \$500 Fee
<input type="checkbox"/>	RENEWAL - \$200 Fee

City of Gig Harbor
Adult Entertainment Business License Application

Non-Refundable Fee Must Accompany Application - No License shall be issued to anyone under the age of 21 (18 where NO alcoholic beverages are served)

BUSINESS NAME: _____ BUSINESS PHONE: _____

BUSINESS STREET ADDRESS: _____

MAILING ADDRESS: _____

UBI - WA. STATE TAX ID #: _____

ALL owners, partners, corporate officers, directors, and principal stockholders (persons who own 20% or greater interest) are considered applicants and must fill out and sign an individual Personal Information form which is attached and incorporated herein by this reference. Each applicant shall be separately qualified. Additional forms can be obtained from the City Clerk's Office, phone (253) 851-8136.

Indicate ownership status:

- 1) **Individual** *(fill out and sign the Personal Information form)*
 Legal Name: _____

- 2) **Partnership** _____ General _____ Limited
(all partners must fill out and sign a Personal Information form)
 - a) Complete Name of Partnership: _____
 - b) Legal Names of all Partners: _____

- 3) **Corporation**
 - a) Corporation Name _____ b) Incorporation Date _____
 - c) Registered Agent _____
 - d) Registered Agent Address _____
 - e) Attach evidence that the corporation is in good standing under the laws of the State of Washington.
 - f) State legal names & titles of all officers, directors, and principal stockholders of the Corporation *(all officers, directors, & principal stockholders must fill out and sign a Personal Information form)*

Legal Name	Title	Legal Name	Title
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Do you, or any of the partners or corporate officers, hold any other licenses under this chapter or any other similar adult entertainment or sexually oriented business ordinance (including motion picture theaters, panoramas, escort services or massage parlors) from the City or another city, county or state?

YES _____ NO _____

If YES, please list the names and addresses of all other licensed businesses (use additional sheets if necessary)

<u>Name</u>	<u>Address</u>	<u>City, State, Zip</u>	<u>Phone</u>	<u>Description of Business</u>
-------------	----------------	-------------------------	--------------	--------------------------------

Have you or this entity, in previously operating in this or another city, county or state, had an adult entertainment business license denied, revoked or suspended within the last four (4) years? YES _____ NO _____
If YES, describe the reason for the denial, suspension or revocation, the activity or occupation of the applicant subsequent to such action, suspension or revocation. Also include the name and location of the sexually-oriented business for which the permit or license was denied, suspended, or revoked, the entity denying the same, as well as the date of the denial, suspension, or revocation:

Attach the following documents with this application:

- 1) Two (2) two-inch by two-inch color photographs of each individual, partner, officer, director and principal stockholder listed in this application and its attachments, taken within six (6) months of the date of the application, showing the full face of the applicant. (The photographs shall be provided at the expense of the applicant.)
- 2) Two complete sets of fingerprints of each individual, partner, officer, director, and principal stockholder, on a form approved by the Gig Harbor Police Department.
- 3) A copy of the establishment's legal description, including the name and address of each owner and lessee. Scale drawing or diagram showing the configuration of the premises for the proposed adult entertainment establishment, including a statement of the total floor space occupied by the business, and marked dimensions of the interior of the premises. Performance areas, seating areas, manager's office and stations, restrooms and service areas shall be clearly marked on the drawing, including the building plans which demonstrate conformance with the City's current zoning code. Any remodeling of a building structure is subject to the permitting and plan review process.

The City of Gig Harbor, its agents and employees are hereby authorized to seek information to confirm any statements or other information set forth in this application and its attachments.

If any person or entity acquires, subsequent to the issuance of an Adult Entertainment Business License, a significant interest in the licensed adult entertainment facility, notice of such acquisition shall be provided in writing to the City Clerk within twenty-one (21) calendar days following such acquisition and the person acquiring the interest shall submit a complete application to the City Clerk pursuant to GHMC Section 5.25 .080 within forty-five (45) calendar days of acquiring such interest.

Chapter 5.25 of the City of Gig Harbor Municipal Code (GHMC) governs the licensing and operation of all adult entertainment facilities within the City of Gig Harbor. The location and siting of adult entertainment facilities is governed by the zoning regulations contained in the Gig Harbor Zoning Code. All adult entertainment facilities shall satisfy the requirements of both Chapter 5.25 and the Gig Harbor Zoning Code.

I hereby certify, under penalty of perjury, that the information contained in this application and its attachments is true and complete to the best of my knowledge.

Signature: _____

Date: _____

Printed Name: _____

Business Phone: _____

Title: _____

Home Phone: _____

FOR OFFICE USE ONLY

Planning: _____ Date: _____

Building: _____ Date: _____

Police: _____ Date: _____

Administration: _____ Date: _____

Approved: _____ Date: _____
Mayor

Denied/Date: _____ Revoked/Date: _____ Suspended/Date: _____

Fee Rec'd: _____ Treasurer's Receipt #: _____

Date Application Rc'vd: _____ Utility Acct.#: _____

ADULT ENTERTAINMENT BUSINESS LICENSE APPLICATION PERSONAL INFORMATION

(Complete one form for each owner, partner, corporate officer or others holding a significant interest in the management or operation of this business):

FULL NAME: _____ TITLE: _____

ALIASES OR OTHER NAMES (INCLUDING MAIDEN): _____

SOCIAL SECURITY NUMBER: _____ - _____ - _____ DATE OF BIRTH: _____ / _____ / _____

DRIVERS LICENSE NUMBER: _____ STATE: _____ EXP. DATE: _____

RESIDENTIAL ADDRESS: _____

BUSINESS PHONE: _____ HOME PHONE: _____

INTEREST IN BUSINESS: _____

Criminal History: Please list any and all criminal convictions or forfeitures within five (5) years immediately preceding the date of this application (other than parking or minor traffic infractions)

<u>Date of Conviction</u>	<u>Nature of Conviction</u>	<u>Name and Location of Court</u>	<u>Disposition</u>
---------------------------	-----------------------------	-----------------------------------	--------------------

Business, Occupation & Employment History: Provide your business, occupation or employment history for the past three years (continue on additional sheet if necessary):

<u>Name of Business</u>	<u>Dates</u>	<u>Nature of Business, Occupation or Employment</u>
-------------------------	--------------	---

Photographs. Attach two 2" x 2" color photographs (passport quality) of this owner, partner, corporate officer or interested party. Photographs must have been taken within six months of the date of this application and show only the full face.

Fingerprints. Attach two complete sets of fingerprints, on a form approved by the Gig Harbor Police Department, for this owner, partner, corporate officer or interested party.



City of Gig Harbor
Adult Entertainment Manager or Entertainer Application

(Note: No license shall be issued to anyone under the age of 21 (18 where no alcoholic beverages are served))

Original License Renewal For calendar year 19
Date of first business activity in Gig Harbor
Adult Entertainment Manager License \$100
Adult Cabaret Entertainer License \$100

Applicant Name: (Last, First, Middle) Alias: (Maiden or other names)
Stage or Nicknames: SS#:
Employer Name: Home Address:
Address:
Telephone: Telephone:
Date of Birth:
Place of Birth:
Description: Height: Weight: Hair: Eyes:

Other cities resided in during the last five (5) years: (if more than one, please list on back of this form)

From (month/year) to (month/year) City State

Driver's License#, State: Other Photo I.D. - type and #:

Description of principal activities or services to be rendered:

Table with 3 columns: Intended place(s) of business, Business Name, Address, Telephone

Have you been convicted of a crime (other than traffic citations) in the last ten (10) years? Yes No
If yes, please explain on the back of this form. (Include Date, Charge, Action Taken and Location)
(Note: A conviction does not automatically disqualify applicant)

Are there any formal criminal charges pending against you? Yes No
If yes, please explain on back of this form. (Include Charge and Location)

NOTE: FAILURE TO PROVIDE INFORMATION REQUIRED WILL CONSTITUTE AN INCOMPLETE APPLICATION WHICH WILL NOT BE PROCESSED.

I UNDERSTAND THAT FILING A FALSE APPLICATION IS GROUNDS FOR DENIAL OR REVOCATION OF THIS LICENSE. As applicant, I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signature Date

Required documentation to accompany this application:

- a) Fingerprints - two sets on a form approved by the Gig Harbor Police Department.
b) Photographs. Attach two 2"x 2" color photographs (passport style). Photographs must have been taken within six months of the date of this application and show only the full face.

Other cities resided in during the last five (5) years:

From / / to / / _____ City _____ State _____
(month/year) (month/year)

From / / to / / _____ City _____ State _____
(month/year) (month/year)

From / / to / / _____ City _____ State _____
(month/year) (month/year)

Have you been convicted of a crime (other than traffic citations) in the last ten (10) years?

Date: _____

Charge: _____

Action Taken: _____

Location: _____

Date: _____

Charge: _____

Action Taken: _____

Location: _____

Date: _____

Charge: _____

Action Taken: _____

Location: _____

Are there any formal criminal charges pending against you?

Charge: _____

Location: _____

Charge: _____

Location: _____



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: ROSEDALE STREET IMPROVEMENTS – PROJECT PROSPECTUS AND
LOCAL AGENCY AGREEMENT
DATE: SEPTEMBER 3, 1997

INTRODUCTION/BACKGROUND

The December 1994 Transportation Plan element of the City's Comprehensive Plan identified rehabilitation of Rosedale Street between Harborview Drive and Skansie Avenue, and the addition of curbs, gutters, and a sidewalk on one side as a high priority. The Plan recommended that the Rosedale Street – Stinson Avenue intersection be improved to provide "channelization, turning lanes and other improvements." Project costs were estimated at \$380,000.

Federal grant funding totaling \$569,000 was obtained under the Surface Transportation Program (STP) of the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA). The additional costs represented an increase in the project's length, including replacement of a structurally deficient asbestos-cement water line in the eastern portion of the project. Following discussion with Washington State Department of Transportation (WSDOT) TransAid staff, the project's length has been reduced to reflect updated cost information and federal-aid requirements. The current project limits are Harborview Drive on the east and approximately Shirley Avenue on the west. The change has been approved through the Puget Sound Regional Council, and is reflected in the 1997 Regional Transportation Improvement Program Amendment.

The planned improvements include reconstruction of the pavement section including nominal widening for a continuous bicycle lane on one side; limited parking on one side; curbs and gutters on both sides; a sidewalk and landscaped planter strip on one side; provisions for future lighting, and for signalization at Stinson Avenue; replacement of the existing asbestos-cement water line; and other improvements. The project also includes a contingent amount in the event that a portion of the existing sanitary sewer is determined deficient during the design process.

Federal funding under STP provides a maximum federal participation level for eligible costs of 86.5%. The amount approved for this project reflects limited funding availability, and will provide in excess of 73% of the estimated project construction costs. Obligation of authorized federal funding requires submittal of a completed Local Agency Federal Aid Prospectus, and execution of a Local Agency Agreement. Normally, construction funds would not be obligated until after design work is complete. However, since the federal-aid monies have been aggregated in construction, WSDOT TransAid staff has recommended that the City request the monies be obligated at this time.

MAYOR WILBERT AND CITY COUNCIL

SEPTEMBER 3, 1997

Page 2

POLICY CONSIDERATIONS

Federal-aid funding entails additional effort for staff. However, the supplemental funding allows the City to undertake projects which would otherwise need to be deferred. Transferring the nominal federal aid monies under preliminary engineering to construction will reduce some of the additional staff effort, and provide additional flexibility.

FISCAL CONSIDERATIONS

Funds for the project were included in the 1997 budget. Funding for completion of design and construction will need to be included in the 1998 budget. Federal-aid funding under STP allows reimbursement of a maximum 86.5% of eligible project costs. The Local Agency Agreement and Project Prospectus provide for reimbursement of approximately 73% of eligible construction costs based on the approved funding amount.

RECOMMENDATION

Staff recommends that Council move and approve execution of the Local Agency Agreement, and authorize the Mayor to sign the Local Agency Federal Aid Project Prospectus for the Rosedale Street Improvement project.



Local Agency Agreement

Agency Gig Harbor

Project No. _____

Address 3105 Judson Street

Agreement No. _____

Gig Harbor, WA 98335

For Headquarters WSDOT use only.

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) Office of Management and Budget Circulars A-102 and A-128, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line s, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name Rosedale Street Improvements Length 0.5 - miles

Termini Harborview Drive and Vicinity of Shirley Avenue

Description of Work Pavement reconstruction, and widening to provide concrete curb and gutter on both sides, storm sewer improvements, AC water main replacement, limited parking on one side, a bicycle lane and sidewalk on at least one side, planter strip, and illumination for Rosedale Street. The project will also include replacement of deficient sections of sanitary sewer on a non-participating basis.

Type of Work	Estimate of Funding		
	(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE			
a. Agency work	.....	.....	.....
b. Other _____	.....	.....	.....
c. State services	.....	.....	.....
d. Total PE cost estimate (a+b+c)	.....	.....	.....
Right of Way			
e. Agency work	.....	.....	.....
f. Other _____	.....	.....	.....
g. State services	.....	.....	.....
h. Total R/W cost estimate (e+f+g)	.....	.....	.....
Construction			
i. Contract	746,000	198,997	547,003
j. Other Non-Participating: San. Sew.	.....	20,000	.....
k. Other _____	.....	.....	.....
l. Other _____	.....	.....	.....
m. Total contract costs (i+j+k+l)	746,000	218,997	547,003
Construction Engineering			
n. Agency	25,000	6,669	18,331
o. Other _____	.....	.....	.....
p. State forces	5,000	1,337	3,666
q. Total construction engineering (n+o+p)	30,000	8,003	21,997
r. Total construction cost Estimate (m+q)	776,000	207,000	569,000
s. Total cost estimate of the project (d+h+r)	776,000	207,000	569,000

*Federal participation in construction engineering (q) is limited to 15 percent of the total contract costs (line m, column 3).

The federal aid participation rate in this project will be determined by the Federal Government. The parties expect that it will be 86.5% percent; however, it is understood that the rate may vary. The Local Agency agrees that this agreement is entered into without relying upon any representation by the state made outside of this contract, or contained herein, as to what the federal participation rate will be. It further agrees that it will not condition any future actions with respect to the project covered by this agreement upon past, current, or future representations as to the federal participation rate. The dollar amount of federal participation cannot exceed the amount shown in line s, column 3. All costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Construction Method of Financing

(check method selected)

State Aid and Award

- Method A — Advance Payment — Agency share of total construction cost (based on contract award)
- Method B — Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of \$ _____ at \$ _____ per month for _____ months

Local Force or Local Aid and Award

- Method C — Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on _____, 19____, Resolution/Ordinance No. _____.

Agency Official

By _____
 Gretchen A. Wilbert
 Mayor

Washington State Department of Transportation

By _____
 Assistant Secretary for TransAid

Date Executed _____

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final

payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering up to and including approval.
2. Preparation of plans, specifications, and estimates.
3. Right of way acquisition.
4. Project construction.

In the event that right of way acquisition, or actual construction of the road, for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section VIII).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accord with the Intermodal Surface Transportation Efficiency Act 1991, Title 23, United States Code, as amended, and Office of Management and Budget circulars A-102 and A-128. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

1. Preliminary Engineering, Right of Way Acquisition, and Audit Costs

The Agency will pay for Agency incurred costs on the project. Following such payments, vouchers shall be submitted to the State in the format prescribed by the State, in quadruplicate, not more than one per month. The State will reimburse the Agency up to the



Prefix	Route	()	Date	April 28, 1997
Federal Aid Project Number	STPUS	3320	Federal Employer Tax ID Number	91-6001435
Local Agency Project Number				

Agency	City of gig harbor	Federal Program Title	<input type="checkbox"/> 20.204 <input checked="" type="checkbox"/> 20.205 <input type="checkbox"/> 20.206 <input type="checkbox"/> 20.209 <input type="checkbox"/> Other
Project Title	Rosedale Street Improvements		
Project Termini From	Harborview Drive	To	within 200 ft. of Shirley Ave.
From: m.p.	To: m.p.	Length of Project	Award Type
0.00	0.50	0.5 miles	<input checked="" type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad
Federal Agency	City Number	County Number	County Name
<input checked="" type="checkbox"/> FHWA <input type="checkbox"/> Others	0490	27	Pierce
WSDOT Region	Congressional District	Legislative Districts	Urban Area Number
Olympic	7	26	29
			TMA / MPO / RTPO
			PSRC

Phase	Total Estimated Cost (Nearest Dollar)	Local Agency Funding (Nearest Dollar)	Federal Funds (Nearest Dollar)	Percent Federal Funds	Obligation Date Month Year
P.E.	---	---	---		
RAW	0	0	0		
Const.	776,000	207,000	569,000	73.3	03 '98
Total	776,000	207,000	569,000		

Description of Existing Facility (Existing Design and Present Condition)

Roadway Width 28 ft. to 36 ft. Number of Lanes 2

Rosedale Street is a main east-west arterial street serving both city residents and visitors, and linking the central business district and waterfront area on the east with the city high school and an elementary school, recreational center, employment district and residential areas to the west. The existing pavement is in fair to poor condition, with limited pedestrian facilities. Storm drainage improvements are needed due to inadequate ditches and storm sewer lines. A shallow, 40 year old AC water main is too close to the surface to withstand construction and will need to be replaced.

Description of Proposed Work

New Construction 3-R 2-R Roadway Width 28 ft. to 36 ft. Number of Lanes 2

The project will reconstruct the existing roadway to provide increased width for a bicycle lane (north side), and limited on-street parking, a structural pavement section, curbs and gutters on both sides, and a sidewalk with landscaped parking strip on the south side. The project also includes storm drainage improvements, and replacement of a structurally deficient AC water line. The project will also include replacement of deficient sections of sanitary sewer main as a non-participating item.

Local Agency Contact Person	Title	Phone
Wes Hill, P.E.	Public Works Director	253-851-8145
Mailing Address	City	State
3105 Judson Street	Gig Harbor	WA
		Zip Code
		98335

Design Approval (CA Agencies Only)	By _____	Approving Authority
	Title _____	Date _____

Agency Gig Harbor	Project Title Rosedale Street Improvements	Date 4/29/97
----------------------	---	-----------------

Geometric Design Data						
Description	Through Route			Crossroad		
Federal Functional Classification	<input checked="" type="checkbox"/> Urban	<input type="checkbox"/> Principal Arterial	<input type="checkbox"/> Minor Arterial	<input checked="" type="checkbox"/> Urban	<input type="checkbox"/> Principal Arterial	<input type="checkbox"/> Minor Arterial
	<input type="checkbox"/> Rural	<input type="checkbox"/> Collector	<input type="checkbox"/> Major Collector	<input type="checkbox"/> Rural	<input type="checkbox"/> Collector	<input type="checkbox"/> Major Collector
		<input type="checkbox"/> Minor Collector	<input type="checkbox"/> Access Street/Road		<input type="checkbox"/> Minor Collector	<input type="checkbox"/> Access Street/Road
Terrain	<input type="checkbox"/> Flat	<input checked="" type="checkbox"/> Roll	<input type="checkbox"/> Mountain	<input checked="" type="checkbox"/> Flat	<input type="checkbox"/> Roll	<input type="checkbox"/> Mountain
Posted Speed	25			25		
Design Speed	30			35		
Existing ADT	'96 3,100	'94 5,500		'96 8,100	'94 6,100	
Design Year ADT	N/A			N/A		
Design Year	N/A			N/A		
Design Hourly Volume (DHV)	N/A			N/A		

Accident - 3 Year Experience						
Year	Property Damage Accidents	Injury Accidents		Fatal Accidents		Total Number of Accidents
		Number of Accidents	Number of Injuries	Number of Accidents	Number of Fatalities	
1993	3	1	1	0	0	4
1994	1	1	1	0	0	2
1995	1	0	0	0	0	1
Total Number of Accidents Attributable to Lack of having the Proposed Improvement						

Performance of Work		
Preliminary Engineering Will Be Performed By	Others 98 %	Agency 2 %
Construction Will Be Performed By	Contract 100 %	Agency 0 %

Environmental Classification	
<input checked="" type="checkbox"/> Final	<input type="checkbox"/> Preliminary
<input type="checkbox"/> Class I - Environmental Impact Statement (EIS)	<input checked="" type="checkbox"/> Class II - Categorically Excluded (CE)
<input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement	<input type="checkbox"/> Projects Not Requiring Documentation for FHWA Approval (23CFR 771.117(c))
<input type="checkbox"/> Class III - Environmental Assessment (EA)	<input checked="" type="checkbox"/> Projects Requiring Documentation Without Further FHWA Approval (FHWA/WS DOT MOU dated 2/90)
<input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement	<input type="checkbox"/> Projects that Require Documentation and FHWA Approval (Documented CE)

Environmental Considerations

Project will require a shoreline permit from the City, and a hydraulic project approval from the Washington State Dept. of Fisheries and Wildlife.

Agency Gig Harbor	Project Title Rosedale Street Improvements	Date 4/19/97
-----------------------------	--	------------------------

Right of Way

<input checked="" type="checkbox"/> No Right of Way Required * All construction required by the contract can be accomplished within the existing right of way.	<input type="checkbox"/> Right of Way Required <input type="checkbox"/> No Relocation	<input type="checkbox"/> Relocation Required
--	---	--

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

FAA Involvement
 Is any airport located within 3.2 kilometers (2 miles) of the proposed project? Yes No

Remarks

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Agency City of Gig Harbor

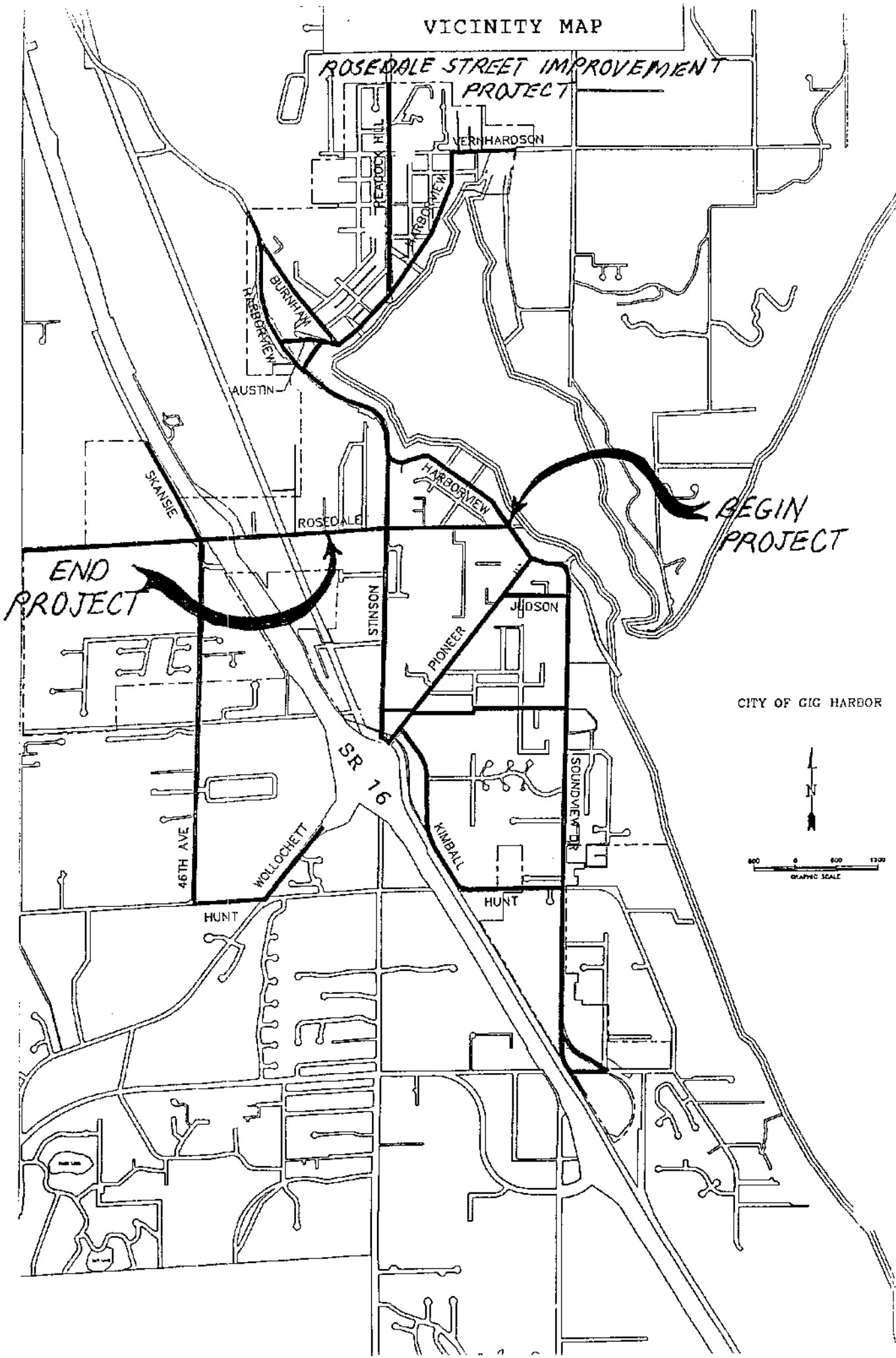
Date _____

By _____

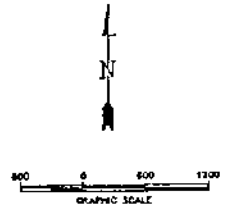
Mayor/Chairperson

VICINITY MAP

ROSEDALE STREET IMPROVEMENT PROJECT



CITY OF GIG HARBOR



Agency City of Gig Harbor
County No. 27
City No. 0490
MPO Puget Sound Regional Council

Hearing Date November 21, 1996
Adoption Date _____
Resolution No. _____

FUNCTIONAL CLASS (1)	PRIORITY NUMBER	PROJECT IDENTIFICATION A. FEDERAL AID NO. B. BRIDGE NO. C. PROJECT TITLE D. STREET/COUNTY ROAD NAME OR NUMBER E. TERMINAL BEGINNING AND END F. DESCRIBE WORK TO BE DONE	IMPROVEMENT TYPE(S)	STATUS	TOTAL LENGTH	UTILITY CODE(S)	PROJECT COSTS IN THOUSANDS OF DOLLARS								EXPENDITURE SCHEDULE (Local Agency)				FEDERALLY FUNDED PROJECTS ONLY	
							PROJECT PHASE	MONTH/YEAR PHASE STARTS	FUND SOURCE INFORMATION					1st	2nd	3rd	4th thru 6th	ENVR. TYPE	RAW REQ. DATE	
									FEDERAL FUND CODE	FEDERAL COST BY PHASE	RAP CAPP TIA JATA OTHER	STATE FUNDS	LOCAL FUNDS							TOTAL
3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21		
05	2	A) -, B) - C) EAST-WEST (BORGEN ROAD) CONSTRUCTION D) East-West Road E) Swede Hill Interchange (SR-18) to Peacock Hill Ave. F) Design full 5-lane section, construct 2- / 3-lane section, including curb, gutter, and sidewalk on one side, storm drainage, channelization, and provisions for installation of lighting & signalization.	01	F	1.27	CPS TGW	PE	01/97			120 (Pierce Co.)		72	192	192		350	EIS		
							RAW	01/97										CE		
							CONST	06/97		880		528	1,408	1,408		3,000	EA			
							TOTAL			1,000		600	1,600		3,350					
16	2	A) -, B) - C) ROSEDALE STREET IMPROVEMENTS D) Rosedale Street (3330) E) Harborview Drive to Shirley Avenue F) Minor widening to provide two thru lanes, curbs & gutters, parallel parking where feasible on at least one side, storm sewer improvements, bicycle lane & sidewalk on one side, channelization, & provisions for landscaping, lighting, & future signalization at Stinson Avenue.	03, 05, 06	F	0.48	CP TGW	PE	01/97	STP(U)	78			17	95	95			EIS		
							RAW											CE	NO	
							CONST	06/97	F	491		204	685	695				EA		
							TOTAL			569		221	790							
16	2	A) -, B) - C) KIMBALL DRIVE PARK & RIDE EXPANSION & RELATED TRAFFIC IMPROVEMENTS D) Pioneer Way (3324) E) Grandview Street to Stinson Avenue F) Exp. ex. Pierce Transit pk. & ride fac., restore pmnt., & install a transit ctr., incl. landscpp., lighting, rev'd pwr. poles, & storm drain system. Constr. new traf. signal at Pioneer Way & upgrade signals at Stinson Ave. & Grandview St. intersections w/ Kimball Dr., incl. signal interconn. & priority op., channelization, & overlay.	12, 21	F	0.08	PTW	PE	02/97	F	97	15 (Pierce Transit, F.D. #5, Dev.)		17	129	129			EIS		
							RAW											CE	YES	
							CONST	08/97	P	775	123	133	1,031	1,031				EA	12/96	
							TOTAL			872	138	150	1,160							
19	2	A) -, B) - C) BAYRIDGE AVENUE IMPROVEMENTS D) Bayridge Avenue E) Rosedale Street to Street End F) Reconstruction to eliminate failed pavement sections, including subdrainage system, and storm sewer. Project will be performed in conjunction with water main construction.	07	F	0.28	W	PE	01/97					20	20	20			EIS		
							RAW											CE		
							CONST	06/97				205	205	205				EA		
							TOTAL					225	225							

amount shown on the face of this agreement for those costs eligible for federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for the establishment, maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section VIII).

2. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A - The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B - The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C - The Agency may submit vouchers to the State in the format prescribed by the State, in quadruplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for the establishment, maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section VIII).

VII. Audit of Federal Aid Project

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Directive D27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and Office of Management and Budget Circular A-128.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section VIII).

VIII. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal

participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Assistant Secretary for TransAid.

IX. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

X. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

No liability shall attach to the State or Federal Government except as expressly provided herein.

XI. Nondiscrimination Provision

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

"DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES AS FOLLOWS:"

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Agency advising the said labor union or workers' representative of the contractor's commitments under this Section 11-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules and regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Federal Highway Administration and the Secretary of

Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The contractor will include the provisions of this Section 11-2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Agency, Washington State Department of Transportation, or Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor, he may request the United States to enter into such litigation to protect the interests of the United States.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

(1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.

(2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.

(3) To refrain from entering into any contract or contract modification subject to Executive Order, 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.

(4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

(a) Cancel, terminate, or suspend this agreement in whole or in part;

(b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and

(c) Refer the case to the Department of Justice for appropriate legal proceedings.

XII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 630, Subpart 305, as supplemented, relative

to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIII. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

(1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.

(2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.

(3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.

(4) The Secretary determines that such termination is in the best interests of the State.

XIV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XV. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Additional Provisions

Appendix 21.41

Prospectus Submittal Checklis

Local Agency: Gig Harbor Project Identification: Rosedale Street Improvement

Use this sheet as a cover sheet to the project prospectus package. Place an "X" in the right column to denote items included. If not applicable, state N/A. Include in the cover letter a comment explaining the action taken on each item as appropriate. Note later with an "L" if the information will be supplied at a future date.

Application:

1. Project Prospectus (Chapter 21.1)	X
2. Vicinity Map	X
3. Typical Roadway Section	X
4. Typical Bridge Section	N/A
5a. Local Agency Agreement (Chapter 22)	X
5b. Resolution No. _____, Dated: _____ (if required)	N/A
5c. TIP/STIP Inclusion (specific location, page number, chapter number, selected/limited to \$)	X

Supporting Data:

6. Safety Checklist — A Supplement to the Project Prospectus for 2-R and 3-R Projects (Appendix 41.71)	X
7. Photos of Railroad Crossing	N/A
8. Deviation Request and Deviation Analysis Form to Justify Request (reference Appendix 41.72)	X
9. Environmental Considerations (Chapter 24)	X
a. Class II Categorical Excluded (CE)	X
b. Class III Environmental Assessment (EA)	N/A
c. Class I Environmental Impact Statement (EIS)	N/A
d. SEPA Checklist	N/A
e. NEPA/SEPA/Section 404 Interagency Working Agreement	N/A
10. Hearing Notices (Chapter 43)	N/A
a. Transcript of Hearing	N/A
11. Location and Design Approval (Chapter 43)	X
12. Right-of-Way Requirements (Chapter 25)	N/A
a. Relocation Plan	N/A
b. Right-of-Way Plans	N/A
c. Right-of-Way Project Funding Estimate or True Cost Estimate	N/A
d. Request Right-of-Way Fund Authorization	N/A
13. Right-of-Way Certification (Chapter 25)	X
(see prospectus)	
14. Agreements/Easements with Railroads, Utilities, and Other Agencies (Chapter 32)	N/A
15. FAA Notification (FAA Form 7460-1) (Chapter 24)	N/A
16. Tied Bids (Chapter 44)	X
Ltr.	
17. Lobbying (Chapter 44)	N/A
a. Disclosure of Lobbying Activities	N/A

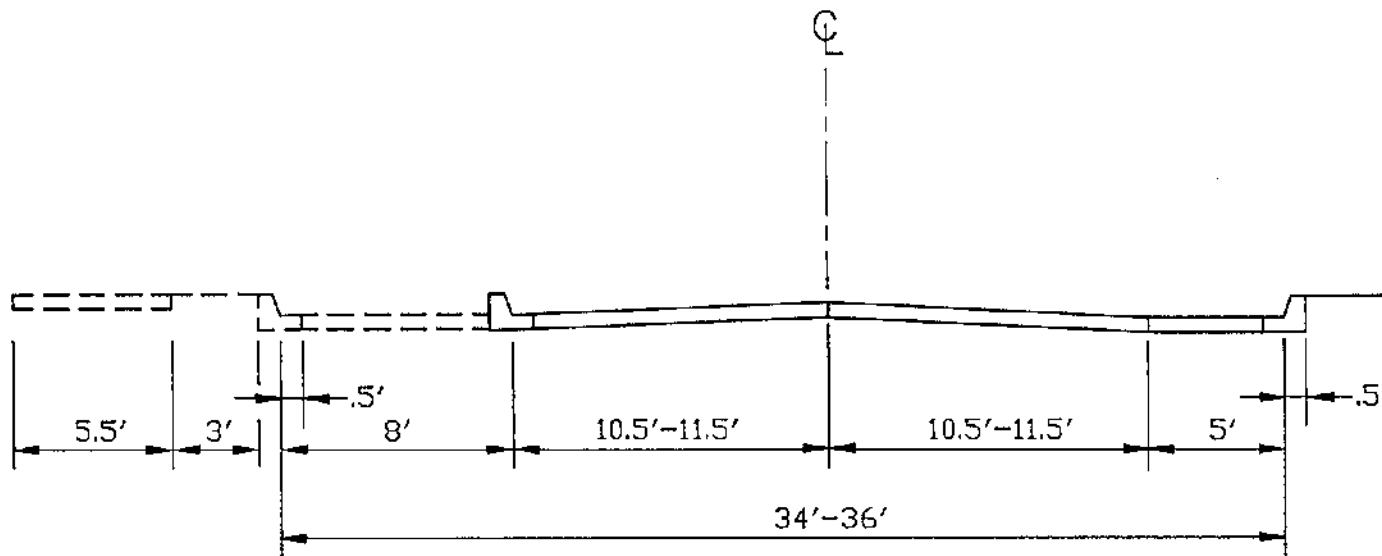
Incl. info from PSRC

Remarks:

The application package shall include:

1. **Project Prospectus**
To be included with original submittal and whenever there is a change in the scope of work or termini. For planning and TDM projects, use the Planning/TDM Prospectus Agreement.
2. **Vicinity Map**
A vicinity map of the project with the termini clearly marked must be submitted with the Project Prospectus. The map should be 212.5 mm (8.5 inches) by 275 mm (11 inches), or multiples of, and of a scale such that a reviewer can identify the project area in the field. Show the agency name, project title, project termini, north arrow, map scale, and nearest city or distance to the nearest city/town.
3. **Typical Roadway Section**
Attach a sketch of the proposed roadway section showing all data pertaining to the section, including side slopes and limits of right-of-way. Also indicate stationing and note any variations of the section throughout the stationing. If the design does not conform to the design standards (see Section 41.6), a request for deviation from these standards with complete justification is required.
4. **Typical Bridge Section
(If Necessary)**
Attach a sketch of the proposed bridge section showing all dimensions and type of construction and SWIBS #.

On bridge projects where approaches are to be included in the contract, include roadway section and length of the approaches. In cases where the structure consists of a main span and approach spans, the length of the approach spans should be indicated, if known.
5. **Local Agency Agreement**
This agreement is necessary on all projects involving federal funds and/or when state forces will be involved in the processing of projects. It must be submitted with the Project Prospectus. See Chapter 22 for instructions on completing the agreement. (Note: Not needed for planning and TDM projects.)
6. **Deviation Request**
See Section 41.72.
7. **Hearing Notices**
Chapters 24 and 43 outlines procedures for public hearings.
8. **Location and Design Approval**
For most projects, the Project Prospectus along with the data satisfying items 1 to 14 of this transmittal pavement design criteria and geometric design will be considered sufficient for the location and design report. For complicated projects requiring a more detailed location and design report, refer to Chapter 43.
9. **Right-of-Way Requirements**
 - a. No right-of-way required. Mark appropriate box on prospectus. This serves as the agency's right-of-way certification. (This replaces the no right-of-way certification.)
 - b. Right-of-way required. Mark appropriate box on prospectus and refer to Chapter 25 for further instructions.
10. **Right-of-Way Certification**
Required on all projects where right-of-way was acquired. Refer to Chapter 25 for further explanation.
11. **Agreements/Easements
With Railroads**
Refer to Chapter 32 for instructions.
12. **FAA Notification**
Check with the nearest FAA office if the project is within 3.2 km (2 miles) of an airport, if significant.



SCHEMATIC ROADWAY SECTION
ROSEDALE STREET

NO SCALE

**Safety Checklist — A Guideline
for 2-R and 3-R Projects**

Appendix 41.71

Project _____ ROSEDALE STREET IMPROVEMENTS _____
Number _____ Title _____
GIG HARBOR _____
Local Agency _____

The proposed project should be given a roadside hazard inventory to determine if the following elements exist within the project termini and if the scope of the project includes construction, elimination, modification, or protection of these elements:

Drainage Structures

Existing: cross culv. Proposed: enclosed storm drainage

Project includes mitering end sections: Yes: _____ No: _____

Comments: Project will eliminate open ditches and replace the
deficient storm drainage system.

Guardrail (Reviewed for Adequacy)

Comments: N/A

Signs, Signals, and Illumination Supports

Existing: stop/speed signs Proposed: Stop/Speed signs

Breakaway bases proposed: Yes: X No: _____

Comments: Illumination will be included.

Bridge Piers/Abutments

Protection Existing: N/A Protection Proposed: N/A

Comments: _____

Clear Zone (Reviewed for Adequacy)

Roadside Obstacles: N/A

Trees: *

Utility Poles: *

Ditch Cross-Sections: *

Protection Proposed: *Posted speed limit @ 25 mph with a 'urbed
section. Utility poles and trees will be 2 ft. behind
curbs.

Comments: _____

Horizontal Alignment (Reviewed for Adequacy)

Comments: straight alignment

Vertical Alignment (Reviewed for Adequacy)

Comments: Vertical curves at Bayridge to Shirley, and at the approach to Harborview Drive need revision for improved sight distance and to eliminate intrusion of rdwy. crown into travelled way on Harborview Drive.

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Sight Distance (Reviewed for Adequacy)

Comments: See vertical alignment

Pavement Structure (Reviewed for Adequacy)

Comments: Pavement section has minimal structural depth over a clay and glacial till subgrade.

Traffic Control Devices

Warranted: _____ Unwarranted: X

Comments: Provisions will be included for future signalization of the Stinson Avenue-Rosedale Street intersection.

Pedestrian/other signs may be added as determined during design.

Side Slopes (Reviewed for Adequacy)

Comments: Cut slopes between Bayridge and Shirley Avenues, and a fill slope on the north side of Rosedale Street approaching Harborview Drive will need to be stabilized.

3:P:LAG4



City of Gig Harbor. The "Maritime City."
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

SIX-YEAR TRANSPORTATION IMPROVEMENT PLAN NARRATIVE 1997-2002

1) EAST-WEST ROAD: Swede Hill Interchange to Peacock Hill Avenue

This project is an integral component of the Gig Harbor North annexation, and is intended to relieve existing traffic congestion on City streets serving the area north and east of the City, and provide access for development in the annexation area. An interlocal funding agreement has been executed with Pierce County, with right-of-way to be furnished by the landowners along the project route contingent on successful completion of the annexation process, including the appeal period. The roadway will be designed for an ultimate five-lane section from the Swede Hill Interchange to east of the future North-South Road. Anticipated features include a landscaped median and planter strips, architectural lighting, water, sanitary sewer, storm sewer, and a bicycle lane, curb, gutter, and sidewalk on each side. Initial construction will provide a two-lane section with left turn pockets, paved shoulders, and open ditch on at least one side. Anticipated additive alternates will include curb, gutter and sidewalk on one side, and provisions for lighting depending on the estimated construction costs and the bidding climate. Construction will be contingent on successful completion of the annexation process.

2) ROSEDALE STREET: Harborview Drive to Shirley Avenue

Improvements on this federally funded project include pavement reconstruction; and widening to provide concrete curb and gutter on both sides, storm sewer improvements, asbestos-cement water main replacement, parking on one side of the street where feasible, a bicycle lane and sidewalk on at least one side of the street, and provisions for or landscaping and architectural street lights.

3) KIMBALL DRIVE PARK & RIDE EXPANSION & RELATED TRAFFIC IMPROVEMENTS:

This project will approximately double the capacity, restore deteriorated pavement, and construct a pedestrian-transit center, landscape buffer, lighting, storm sewer system, and related improvements for the existing Pierce Transit Park and Ride facility (located on the west side of the 6400 to 6600 blocks of Kimball Drive). The project also includes a new traffic signal at the Pioneer Way-Kimball Drive intersection, signal replacement at the Grandview Street-Pioneer Way intersection, signal improvements at the Stinson Avenue-Pioneer Way intersection, signal interconnect for signal coordination, priority signal for emergency and transit vehicles, channelization, asbestos-cement water main replacement, and pavement restoration. Federal Aid, Pierce Transit, Fire District 5, and private funds are involved in this project. The City of Gig Harbor will be the lead agency for design, and construction contract inspection and administration for this project.

4) BAYRIDGE AVENUE: Rosedale Street to Street End

This project will replace the existing failing pavement with a structural pavement section, including subdrainage system. The work will be performed in stages, primarily in conjunction with installation of a water main to provide for an eventual looped connection with the water main on Shirley Avenue and fire flow in this area, and an enclosed storm drainage system.

5) VERNHARSDEN STREET: Peacock Hill Avenue to City Limits

This project includes minor widening, pavement restoration and/or overlay, storm sewer, curb, gutter, and sidewalk(s). The project will be performed in one or more stages in conjunction with construction of water main improvements as shown in the Comprehensive Water Plan.

6) JUDSON STREET: Pioneer Way to Soundview Drive

This project provides for reconstruction and possible realignment of the existing street to provide an aesthetic and "pedestrian-friendly" linkage between Pioneer Way and Soundview Drive. The project contemplates minor widening to provide for left-turn pockets or on-street parallel parking where feasible; curbs, gutters, and sidewalk on both sides; storm drainage and water main improvements; landscaped planter strips; and architectural lighting.

7) KIMBALL DRIVE: Pioneer Way to Hunt Street

This project involves reconstruction of Kimball Drive either in conjunction with, or as a follow-up to, the Kimball Drive Park and Ride Expansion and Related Traffic Improvements Project. Improvements would include modifications to provide a primarily three-lane section with bicycle lanes along the entire segment, parallel on-street parking where feasible, storm drainage improvements, full curb, gutter and sidewalk improvements on both sides, landscaped median and parking strips, and architectural street lights. Project design and construction will be contingent on obtaining grant funding to match local agency, and private funding from current development projects fronting Kimball Drive.

8) ROSEDALE STREET (Phase 2): SR-16 to City Limits (54th Ave. NW.)

This project will consist of reconstruction, overlay, and minor widening to provide a nominal two to three-lane section with bicycle lanes, curbs, gutters, and sidewalks on both sides of the street, storm sewer improvements, landscaping, architectural lighting, and related improvements. Improvements will include channelization, and provisions for future signalization at the Skansie Avenue-Rosedale Street intersection.

9) ROSEDALE STREET (Phase 3): Shirley Avenue to SR-16

Work on this project will include reconstruction, overlay, and minor widening to provide a two-lane section with parallel on-street parking where feasible and desired; storm drainage, sanitary sewer, and water main improvements; concrete curb and gutter on both sides; a bicycle lane and sidewalk on one side of the street, and provisions for or landscaping and architectural street lighting.

County : Pierce

Jurisdiction: GIG HARBOR

Project Number :GIG-2

Title : Rosedale Street Improvements

Phase	Programmed Year	Obligation Date	Funding Source	Federal Funds	State/Local Funds	Other Funds	Phase Total
P/E-Design	96	09/01/96	STP(U)	\$11	\$2	\$0	\$13
Construct	96	09/02/96	STP(U)	\$75	\$12	\$63	\$150

WSDOT PIN : Federal Aid Number : Totals: \$86 \$13 \$63 \$163

Functional Class: Minor Arterial - OVER 5,000

Improvement Type: Restoration and Rehabilitation

Location : Rosedale St.

From : SKANSIE AVENUE

To : HARBORVIEW DRIVE

Description :

The proposed project will reconstruct roadway. In addition, there will be curbs, gutters, and sidewalks on both sides of Rosedale Street along the entire length of project. A bicycle lane is also included as well as the pedestrian rest areas

Project Number :GIG-4

Title : Rosedale Street Improvements

Phase	Programmed Year	Obligation Date	Funding Source	Federal Funds	State/Local Funds	Other Funds	Phase Total
P/E-Design	97	02/01/96	Local	\$0	\$0	\$86	\$86
Construct	97	05/01/96	Local	\$0	\$0	\$13	\$13
Construct	97	05/02/96	STP(U)	\$483	\$75	\$32	\$591

WSDOT PIN : Federal Aid Number : Totals: \$483 \$75 \$131 \$690

Functional Class: Minor Arterial - OVER 5,000

Improvement Type: Restoration and Rehabilitation

Location : Rosedale St

From : Schoolhouse Avenue

To : Harborview Drive

Description :

Restoration and rehabilitation.

Attach mat 2

Safety Checklist — A Guideline for 2-R and 3-R Projects

Appendix 41.71

Project ROSEDALE STREET IMPROVEMENTS
Number _____ Title _____
GIG HARBOR
Local Agency _____

The proposed project should be given a roadside hazard inventory to determine if the following elements exist within the project termini and if the scope of the project includes construction, elimination, modification, or protection of these elements:

Drainage Structures

Existing: cross culv. Proposed: enclosed storm drainage

Project includes mitering end sections: Yes: _____ No: _____

Comments: Project will eliminate open ditches and replace the deficient storm drainage system.

Guardrail (Reviewed for Adequacy)

Comments: N/A

Signs, Signals, and Illumination Supports

Existing: stop/speed signs Proposed: Stop/Speed signs

Breakaway bases proposed: Yes: X No: _____

Comments: Illumination will be included.

Bridge Piers/Abutments

Protection Existing: N/A Protection Proposed: N/A

Comments: _____

Clear Zone (Reviewed for Adequacy)

Roadside Obstacles: N/A

Trees: *

Utility Poles: *

Ditch Cross-Sections: *

Protection Proposed: *Posted speed limit @ 25 mph with a 'urbed section. Utility poles and trees will be 2 ft. behind curbs.

Comments: _____

Horizontal Alignment (Reviewed for Adequacy)

Comments: straight alignment

Vertical Alignment (Reviewed for Adequacy)

Comments: Vertical curves at Bayridge to Shirley, and at the approach to Harborview Drive need revision for improved sight distance and to eliminate intrusion of rdwy. crown into travelled way on Harborview Drive.

Roadway Widths (Reviewed for Adequacy)

Comments: Additional width is needed for bicycle lane, limited on-street parking & a continuous sidewalk. Minor widening may be necessary for a left turn lane at Stinson Avenue (to be determined during design).

Sight Distance (Reviewed for Adequacy)

Comments: See vertical alignment

Pavement Structure (Reviewed for Adequacy)

Comments: Pavement section has minimal structural depth over a clay and glacial till subgrade.

Traffic Control Devices

Warranted: _____ Unwarranted: X

Comments: Provisions will be included for future signalization of the Stinson Avenue-Rosedale Street intersection.

Pedestrian/other signs may be added as determined during design.

Side Slopes (Reviewed for Adequacy)

Comments: Cut slopes between Bayridge and Shirley Avenues, and a fill slope on the north side of Rosedale Street approaching Harborview Drive will need to be stabilized.

3:P:LAG4

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3:P:LAG4



Local Agency Environmental Classification Summary

Part 1 Project Description					
Summary Type <input type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Final		Date Created 4/28/97		Date Revised	Revision Number
Federal Aid Project Number STPUS		Route 3320		Local Agency Project Number	
Agency Gig Harbor			Federal Program Title <input type="checkbox"/> 20.204 <input checked="" type="checkbox"/> 20.205 <input type="checkbox"/> 20.206 <input type="checkbox"/> 20.209 <input type="checkbox"/> Other		
Project Title Rosedale Street Improvements					
Begin MP 0.00		End MP 0.50		Miles 0.5	Township
KP		KP		KM	Range
County Pierce		Water Resource Inventory Area (WRIA) No. & Name 15			Within Puget Sound Basin? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Part 2 Permits and Approvals Required					
Yes	No	Permit or Approval	Yes	No	Permit or Approval
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Corps of Engineers <input type="checkbox"/> Sec. 10 <input type="checkbox"/> Sec. 404 <input type="checkbox"/> Nationwide Type _____ <input type="checkbox"/> Individual Permit No. _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Shoreline Permit
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Coast Guard	<input type="checkbox"/>	<input checked="" type="checkbox"/>	State Waste Discharge Permit
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Coastal Zone Management Certification	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Temp. Modification of Water Quality Standards
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Critical Area Ordinance (CAO) Permit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Section 4(f)/6(f): Wildlife Refuges, Recreation Areas, Historic Properties
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Flood Plain Development Permit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Water Rights Permit
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Forest Practice Act Permit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Water Quality Certification - Sec. 401 Issued by _____
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hydraulic Project Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Tribal Permit(s), (If any) _____ _____
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Local Building or Site Development Permits	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other Permits, including GMA (List): Design Review (Design Review Board - Aesthetics) _____ _____
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Local Clearing and Grading			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Natl. Historic Preservation Act - Section 106			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	(NPDES) Municipal Stormwater Discharge			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	National Pollutant Discharge Elimination System (NPDES) Baseline General for Construction <input type="checkbox"/> Stormwater Site Plan <input type="checkbox"/> Temp. Erosion Sediment Control Plan (TESC)			

Part 3 Environmental Classification	
NEPA	SEPA
<input type="checkbox"/> Class I - Environmental Impact Statement (EIS)	<input type="checkbox"/> Categorically exempt per WAC 197-11-800
<input checked="" type="checkbox"/> Class II - Categorically Excluded (CE) <input type="checkbox"/> Projects Not Requiring Documentation for FHWA Approval (LAG 24.22(a)) <input checked="" type="checkbox"/> Projects Requiring Documentation Without Further FHWA Approval (LAG 24.22(b)) <input type="checkbox"/> Projects Requiring Documentation and FHWA Approval (Documented CE) (LAG 24.22(c))	<input checked="" type="checkbox"/> Determination of Non-Significance (DNS) <input type="checkbox"/> Environmental Impact Statement (EIS)
<input type="checkbox"/> Class III - Environmental Assessment (EA)	<input type="checkbox"/> Other Actions: <input type="checkbox"/> Adoption <input type="checkbox"/> Addendum
<input type="checkbox"/> Supplemental EIS (SEIS)	

Part 4 Environmental Considerations

Will the project involve work in or affect any of the following? Identify proposed mitigation. Attach additional pages or supplemental information of necessary.

1. Air Quality Identify any anticipated air quality issues.

Is the project included in Metropolitan Transportation Plan? Yes No

Is the project located in an Air Quality Non-Attainment Area (for carbon monoxide, ozone, or PM10)? Yes No

Is the project exempt from Air Quality conformity requirements? Yes No

Pavement restoration & rehabilitation & bicycle & pedestrian facilities are categorically exempt from all regional air quality conformity requirements (re., 40 CFR part 51 as published in Nov. 24, 1993 Fed. Register)

2. Critical/Sensitive Areas Identify any known Critical or Sensitive Areas as designated by local Growth Management Act ordinances.

a. Aquifer Recharge Area, Wellhead Protection Area, or Sole Source Aquifer.

N/A

b. Geologically Hazardous Area

N/A

c. Habitat. List known species:

(1) Threatened/Endangered Species or Priority Habitat or Species. Indicate state or federal listing.

N/A

(2) General fish and wildlife habitat

N/A

d. Wetlands. Estimate impacted categories and acreage:

(1) Are wetlands present? Yes No

(2) Estimated area impacted: -- Acres

3. Cultural Resources/Historic Structures Identify any historic or archaeological resources.

N/A

4. Flood Plains or Ways

Is the project located in a 100-year flood plain? Yes No

If yes, is the project located in a 100-year floodway? Yes No

Will the project impact a 100-year flood plain? Yes No

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N/A

4. Flood Plains or Ways

Is the project located in a 100-year flood plain? Yes No

If yes, is the project located in a 100-year floodway? Yes No

Will the project impact a 100-year flood plain? Yes No

Part 4 Environmental Considerations - Continued

5. Hazardous and Problem Waste Identify potential sources and type.

Is the project likely to involve site clean-up? Yes No

6. Noise Identify potential sensitive receptors or previous mitigation commitments.

During construction, there will be short-term increases in noise level associated with construction activity.

7. Parks, Recreation Areas, Wildlife Refuges, Historic Properties, or Scenic Rivers/Byways, 4(f)/6(f) Lands. Identify.

N/A

8. Resource Lands Identify areas of impact.

a. Agricultural

N/A

b. Forest/Timber

N/A

c. Mineral

N/A

9. Rivers, Streams (Continuous, Intermittent), or Tidal Waters

a. Identify by name, proximity to project and Washington Stream Catalog Number.

Fisheries WA Stream No. _____ Ecology 305b Report No. _____

The project is within 200 l.f. of Gig Harbor, a tidal water. However no construction will occur within the tidal waters. A shoreline permit will be obtained through the City of Gig Harbor.

b. Identify stream crossing structures by type.

N/A

Part 4 Environmental Considerations Continued

10. Tribal Lands Identify.

N/A

11. Visual Quality

Will the project impact roadside classification or visual aspects? Yes No

Project will provide a more uniform and improved section, including planter strip and sidewalks for enhanced aesthetics.

12. Water Quality/Storm Water

Is the project likely to increase runoff or affect water quality? Yes No

Will the project include water quality/quantity treatment for the new pavement? Yes No

Will the project include water quality/quantity treatment for existing pavement? Yes No

Has a NPDES municipal general permit been issued for this WRIA? Yes No

Design will determine whether detention thresholds are met for project improvements.

13. Previous Environmental Commitments

Have previous environmental commitments been made in the project area? Yes No

Identify

14. Long-Term Maintenance Commitments

Are long-term maintenance commitments necessary for this project? Yes No

Identify

Part 5 Approval Signatures

Local Agency Approving Authority	Date	Regional TransAid Engineer / Asst. Secretary - TransAid	Date
Federal Highway Administration	Date	Completed By	
		Telephone _____	Fax _____

Part 4 Environmental Considerations - Continued

10. Tribal Lands Identify.

N/A

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Part 5 Approval Signatures

Local Agency Approving Authority	Date	Regional TransAid Engineer / Asst. Secretary - TransAid	Date
Federal Highway Administration	Date	Completed By	
		Telephone _____	Fax _____

RECEIVED

JUL 26 1997

Puget Sound Regional Council

PSRC

**CITY OF GIG HARBOR
PUBLIC WORKS DEPT.**

Phone (206) 464-7090 FAX (206) 587-4825 1011 Western Avenue Suite 500 Seattle, Washington 98104-1035

DATE: July 25, 1997

TO: Wes Hill, Gig Harbor

FAX: 1-253-853-5483

FROM: Dick Callahan, Regional Council

RE: PSRC Regional TIP Amendment, for Rosedale Street Improvements Project

NUMBER OF PAGES (including this cover sheet): 2

If you do not receive all the pages or if you receive this fax in error, please call 464-7090.

MESSAGE

The material you requested is attached. It is one page from my agency's Regional TIP Amendment 97-04, transmitted to WSDOT in a letter dated May 19, 1997. My understanding is this Regional TIP amendment was approved by the federal agencies in mid-June 1997.

If I may be of any further assistance, just call (206/464-6171).

Attachment

County : Pierce

Jurisdiction: GIG HARBOR

Project Number :GIG-2

Title : Rosedale Street Improvements

Phase	Programmed Year	Obligation Date	Funding Source	Federal Funds	State/Local Funds	Other Funds	Phase Total
P/E-Design	97	01/01/97	STP(U)	\$11	\$2	\$0	\$13
Construct	97	01/01/97	STP(U)	\$75	\$12	\$63	\$150

WSDOT PIN : Federal Aid Number : Totals: \$86 ^{\$134} \$63 \$163

Functional Class: Minor Arterial - OVER 5,000

Improvement Type: Restoration and Rehabilitation

Location :Rosedale St.

From : Approx. 200ft of Shirley Ave

To : Harborview Drive

Description :

The proposed project will reconstruct roadway. In addition, there will be curbs, gutters, and sidewalks on both sides of Rosedale Street along the entire length of project. A bicycle lane is also included as well as the pedestrian rest areas

Project Number :GIG-4

Title : Rosedale Street Improvements

Phase	Programmed Year	Obligation Date	Funding Source	Federal Funds	State/Local Funds	Other Funds	Phase Total
P/E-Design	97	02/01/96	Local	\$0	\$0	\$86	\$86
Construct	97	02/01/96	Local	\$0	\$0	\$13	\$13
Construct	97	01/01/97	STP(U)	\$483	\$75	\$32	\$591

WSDOT PIN : Federal Aid Number : Totals: \$483 \$75 \$131 \$690

Functional Class: Minor Arterial - OVER 5,000

Improvement Type: Restoration and Rehabilitation

Location :Rosedale St

From : Approx. 200ft of Shirley Ave.

To : Harborview Drive

Description :

Restoration and rehabilitation.

31

JUL 22 01 09:01 PM PUBLI SERVING FOR THE PEOPLE OF PIERCE COUNTY



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: ROSEDALE STREET IMPROVEMENTS – CONSULTANT SERVICES AGREEMENT
DATE: SEPTEMBER 3, 1997

INTRODUCTION/BACKGROUND

As noted in separate correspondence regarding this project, the December 1994 Transportation Plan element of the City's Comprehensive Plan identified rehabilitation of Rosedale Street between Harborview Drive and Skansie Avenue, and the addition of curbs, gutters, and a sidewalk on one side as a high priority. The Plan recommended that the Rosedale Street – Stinson Avenue intersection be improved to provide "channelization, turning lanes and other improvements."

The separate correspondence requests Council authorization to execute a Local Agency Agreement and submit a completed Federal Aid Project Prospectus for federal aid participation in construction costs for this project. The planned improvements include reconstruction of the pavement section including nominal widening for a continuous bicycle lane on one side; limited parking on one side; curbs and gutters on both sides; a sidewalk and landscaped planter strip on one side; provisions for future lighting, and for signalization at Stinson Avenue; replacement of the existing asbestos-cement water line; and other improvements. The project also includes a contingent amount in the event that a portion of the existing sanitary sewer is determined deficient during the design process.

Insufficient staff resources are available to perform the necessary survey, geotechnical, design and related work for development of this project. Accordingly, this Department advertised for consultant services, interviewed a short list of three firms, and tentatively selected the consulting engineering firm of Gray & Osborne, Inc., as the most qualified for the project, subject to Council confirmation and approval of the attached Standard Consultant Agreement. The Gray & Osborne design team has extensive roadway engineering, public involvement, and federal-aid project experience, and is familiar with the project area.

The proposed contract amount is well within the standard range of 15-percent of the estimated construction cost for design services, and includes survey work for the adjacent Bayridge Avenue water main replacement project. Optional tasks are included in the event that the engineering evaluation of the downstream storm sewer and sanitary sewer line within the project limits indicates the need for additional design work.

MAYOR WILBERT AND CITY COUNCIL

SEPTEMBER 3, 1997

Page 2

POLICY CONSIDERATIONS

TransAid, a Division in the Washington State Department of Transportation, administers the federal-aid funding program. Funding and local agency project management are contingent on maintaining Certified Agency status and conformance with the provisions of the Local Agency Guidelines (LAG) manual. While the City has obtained provisional certified agency status, critical project documents must be submitted to TransAid for their review. The LAG manual provides a standard form of consultant services contract to facilitate TransAid review.

FISCAL CONSIDERATIONS

Funds for the project were included in the 1997 budget and are available. Funding for completion of design and construction will need to be included in the 1998 budget.

RECOMMENDATION

Staff recommends that Council move and approve execution of the Standard Consultant Agreement with Gray & Osborne, Inc., in an amount not to exceed one-hundred four-thousand one-hundred eighty-three dollars and no cents (\$ 104,183.00).

STANDARD CONSULTANT AGREEMENT		CONSULTANT/ADDRESS/TELEPHONE		
AGREEMENT NUMBER FEDERAL AID NO.		Gray & Osborne, Inc. 701 Dexter Ave. N., Suite 200 Seattle, WA 98109 (206) 284-0860		
A G R E E M E N T T Y P E C H E C K O N E	<input type="checkbox"/> LUMP SUM LUMP SUM AMOUNT \$ _____	PROJECT TITLE AND WORK DESCRIPTION City of Gig Harbor Rosedale Street Improvements		
	<input type="checkbox"/> COST PLUS FIXED FEE OVERHEAD PROGRESS PAYMENT RATE <u>134</u> % OVERHEAD COST METHOD <input type="checkbox"/> ACTUAL COST NOT TO EXCEED _____ % <input type="checkbox"/> FIXED RATE _____ % FIXED FEE \$ <u>12,185.60</u>			
	<input type="checkbox"/> SPECIFIC RATES OF PAY <input type="checkbox"/> NEGOTIATED HOURLY RATE <input type="checkbox"/> PROVISIONAL HOURLY RATE	DBE PARTICIPATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <u>2.8</u> % WBE PARTICIPATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO _____ %		FEDERAL ID NO. OR S.S. NO. 91-0890718
	<input type="checkbox"/> COST PER UNIT OF WORK	Do you require a 1099 for IRS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		COMPLETION DATE
		MAXIMUM AMOUNT PAYABLE \$ <u>104,183.00</u>		

THIS AGREEMENT, made and entered into this _____ day of _____, between the Local Agency of City of Gig Harbor, Washington, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the AGENCY desires to accomplish the above referenced project, and

WHEREAS, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I

GENERAL DESCRIPTION OF WORK

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

II

SCOPE OF WORK

The Scope of Work and project level of effort for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT.

III

GENERAL REQUIREMENTS

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the AGENCY.

The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice – required shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "B" attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE) and Women Owned Business Enterprises (WBE) if required shall be shown in the heading of this AGREEMENT.

All reports, PS&E materials, and other data, furnished to the CONSULTANT by the AGENCY shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the AGENCY. Reuse by the AGENCY or by others acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

IV

TIME FOR BEGINNING AND COMPLETION

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY, in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

V

PAYMENT

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "C" attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

VI SUBCONTRACTING

The AGENCY permits subcontracts for those items of work as shown in Exhibit G to this Agreement.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit G, attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and subcontractor, any contract or any other relationship.

VII EMPLOYMENT

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered

employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

VIII NONDISCRIMINATION

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the AGENCY and further that the CONSULTANT shall be barred from performing any services for the AGENCY now or in the future unless a showing is made satisfactory to the AGENCY that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. COMPLIANCE WITH REGULATIONS: The CONSULTANT shall comply with the Regulations relative to nondiscrimination in the same manner as in Federal-assisted programs of the Department of Transportation, Title 49, Code of

Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this AGREEMENT. The consultant shall comply with the American Disabilities Act of 1992, as amended.

B. **NONDISCRIMINATION:** The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.

C. **SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

D. **INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AGENCY to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to

furnish this information the CONSULTANT shall so certify to the AGENCY, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

E. **SANCTIONS FOR NONCOMPLIANCE:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, the AGENCY shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
2. Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

F. **INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the AGENCY or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY to enter into such litigation to protect the interests of the AGENCY, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

G. **UNFAIR EMPLOYMENT PRACTICES:** The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O. 77-13 of the Governor of the State of Washington which prohibits unfair employment practices.

IX TERMINATION OF AGREEMENT

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit F for the type of AGREEMENT used.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination; the cost to the AGENCY of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without it or it's employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X CHANGES OF WORK

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI DISPUTES

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to de novo judicial review.

XII VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in the county the AGENCY is located in. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in the county in which the AGENCY is located in.

XIII LEGAL RELATIONS AND INSURANCE

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE, and their officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided

that nothing herein shall require a CONSULTANT to indemnify the AGENCY and the STATE against and hold harmless the AGENCY and the STATE from claims, demands or suits based solely upon the conduct of the AGENCY and the STATE, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the AGENCY and the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the AGENCY and the STATE of defending such claims and suits, etc. shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The CONSULTANT recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. General commercial liability insurance in an amount not less than a single limit of one million and 00/100 Dollars (\$1,000,000.00) for bodily injury, including death and property damage per occurrence.

Excepting the Worker's Compensation insurance and any professional liability insurance secured by the CONSULTANT, the AGENCY will be named on all certificates of insurance as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within 14 days of the execution of this AGREEMENT to the AGENCY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million dollars, whichever is the greater unless modified by Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

XIV EXTRA WORK

- A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within 30 days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (a) and (b) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XV ENDORSEMENT OF PLANS

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

**XVI
FEDERAL AND STATE REVIEW**

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

**XVII
CERTIFICATION OF THE CONSULTANT
AND THE AGENCY**

Attached hereto as Exhibit "A-1", are the Certifications of the Consultant and the Agency, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying, and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in Agreements over \$100,000.

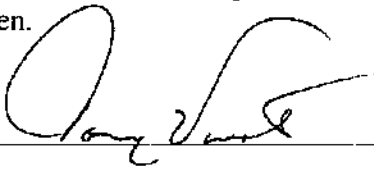
**XVIII
COMPLETE AGREEMENT**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XIX
EXECUTION AND ACCEPTANCE**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

By  _____ By _____

Consultant _____ Agency _____
Tony Vivolo, P.E. Principal
Gray & Osborne, Inc.

EXHIBIT A-1
CERTIFICATION OF CONSULTANT

Project No. _____
Local Agency 0490

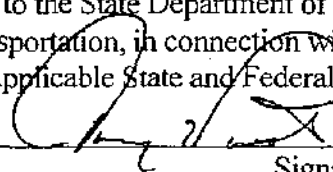
I hereby certify that I am Tony Vivolo and duly authorized representative of the firm of Gray & Osborne whose address is 701 Dexter Avenue No., #200, Seattle, WA and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract.
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract.
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with procuring or carrying out the contract; except as here expressly stated (if any):

I further certify that the firm I hereby represent is authorized to do business in the State of Washington and that the firm is in full compliance with the requirements of the Board of Professional Registration.

I acknowledge that this certificate is to be available to the State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal aid funds and is subject to applicable State and Federal laws, both criminal and civil.

7-2-97
Date


Signature

CERTIFICATION OF AGENCY OFFICIAL

I hereby certify that I am the AGENCY Official of the Local Agency of City of Gig Harbor Washington and that the above consulting firm or his representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ or retain, or agree to employ or retain, any firm or person, or
- (b) Pay or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind, except as here expressly stated (if any).

I acknowledged that this certificate is to be available to the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal aid highway funds and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

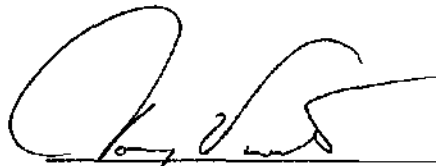
EXHIBIT A-2

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS-PRIMARY COVERED TRANSACTIONS

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): Gray & Osborne, Inc.

9 - 2 - 97
(Date)



President or Authorized Official of Consultant
(Signature)

EXHIBIT A-3

CERTIFICATION REGARDING THE RESTRICTIONS
OF THE USE OF FEDERAL FUNDS FOR LOBBYING

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Consultant (Firm): Gray & Osborne, Inc.

9-2-97
(Date)



President or Authorized Official of Consultant
(Signature)

EXHIBIT A-4
CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.801 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.804-2) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of Exhibit D-2 * are accurate, complete, and current as of December 1996 **. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm Gray & Osborne, Inc.
Name Tony Vivolo, P.E.
Title President
Date of Execution*** _____

- * Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).
- ** Insert the day, month, and year when price negotiations were concluded and price agreement was reached.
- *** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

EXHIBIT B-1

SCOPE OF WORK

CITY OF GIG HARBOR
ROSEDALE STREET
IMPROVEMENT PROJECT
PROJECT NO. _____

Project Description

The Rosedale Street improvement project provides for two travel lanes, a bicycle lane on the north side of the street, cement concrete curb, gutter and sidewalk on south side of the street between Harborview Drive and Shirley Avenue. The work will also include the replacement of a 6" asbestos concrete water main (currently jeopardized by new construction) between Harborview Drive and Shirley Avenue, storm drainage enhancements, illumination, and miscellaneous surface restoration.

Design Services

Task 1 - Preliminary Design Survey

Objective: To obtain vertical and horizontal control necessary for design which includes identifying existing utilities, topography, alignment, right-of-way and other related site topography.

- A. Establish vertical and horizontal control for survey and mapping at a size of 1" = 20'. Vertical control shall be on NGVD29, mean lower low tide datum.
- B. Acquire public "records of survey", plat maps, assessor maps, record "as built" etc. as may be available.
- C. Acquire topographical and planimetric survey of site (within right-of-way) to include establishing surface grades, pavement edges, obvious utilities, utility poles, hydrants, valves, fences, major trees and significant landscaping, sidewalks, etc., in sufficient detail to support adequate design.
- D. Acquire "off-site" survey of intersection (to approximately 100 feet beyond centerline) to facilitate incorporation of ingress/egress corridors into design.
- E. Provide Preliminary design survey as described above for Bayridge Avenue.

Task 2 - Preliminary Geotechnical Investigation

Objective: To provide field exploration and design and construction recommendation to support road improvement project.

- A. This task assumes City will provide backhoe and operator, traffic control, and street restoration to conduct "test pit" excavations - up to three locations outside existing pavement limits but within right-of-way. Work to be evaluated by our subconsultant.
 - 1. Review available geologic and geotechnical information.
 - 2. Perform site reconnaissance and evaluate general geological and environmental conditions.
 - 3. Perform limited laboratory testing to evaluate gradation, strength, and general soil characteristics.
 - 4. Notify 1-CALL and coordinate excavations with City staff.
 - 5. Provide geotechnical report (draft and final form) evaluating pavement design, infiltration galleries, illumination anchor supports, dewatering, compaction, trenching, retaining walls and erosion recommendations. The pavement section design will consist of ATB and asphalt concrete. The work does not include evaluation of the area where slag exists. Report to be stamped by a licensed geotechnical engineer. The report will include geotechnical information for Rosedale Street.

Task 3 - Preliminary Design

Objective: Develop preliminary design concepts, exhibits, and construction drawings at concept phase (35%), and preliminary phase (75%). Design drawings and specifications will be prepared in City approved format.

- A. Develop preliminary concepts and exhibits for use in staff meetings, etc. for evaluation and recommended design.
- B. Incorporate available utility as-built information, plat map (property line) information
- C. Prepare Specifications in City approved format, to include proposal, contract and bonding requirements.
- D. Prepare updated cost estimates at intervals listed above.
- E. Prepare preliminary "street plans" at intervals listed above. The plans will incorporate City of Gig Harbor's Design Manual, WSDOT Design Manual and Local Agency Guidelines, MUTCD, and AASHTO Manual.

- F. Incorporate illumination and irrigation stub in street design plans.
- G. The design of retaining walls required due to the widening of Rosedale Street.
- H. Prepare a landscaping plans and specifications.
- I. Identify and prepare legal instruments for all necessary easements. This task assumes that "property profiles" will be used for legal identification, and not title reports. The City will acquire any necessary easements.
- J. Prepare Draft SEPA Checklist and submit to City for review. Identify and apply for all necessary permits required (does not include permit fee).
- K. Using the sewage flow projections in the City's 1993 Comprehensive Sewer Plan, evaluate the capacity of the existing sanitary sewer pipe on Rosedale street between 46th Avenue N.W. and Stinson Avenue, assuming the flow from the proposed pump station Number 18 (712) (at Hunt St. N.W. and 46th Ave. N.W.) and P.S. #20(602) is routed to Rosedale Street.
- L. At the intersection of Stinson and Rosedale provide conduit for a traffic signal that will be installed in the future under a separate contract.

Task 4 - Public/Staff Meetings

Objective: To conduct public meetings in Gig Harbor at City designated location for public participation and input. To meet on-site with property owners to discuss specific problems/issues.

- A. Prepare exhibits and concepts for public meetings.
- B. Prepare Public Notice to effected property owners to identify project, meeting, and other pertinent information. The City will mail the notices.
- C. Coordinate Public Meetings/Staff Meetings/Design Review Board/Council Workshop/On-Site Meetings to acquire input and provide information to property owners. This work assumes two (2) public meetings plus 32 hours of on-site meetings (as needed and requested by the City).

Task 5 - Final Design Plans and Specifications

Objective: Provide final project plans, specifications and cost estimates (95% and submittal) in City approved format.

- A. Submit final project plans, specifications and cost estimates to City and WSDOT to include incorporation of all previous City comments. The plans will include driveway profiles and intersection details with gutter line elevations. Revise "bid documents" to incorporate final City/WSDOT comments.
- B. Submit final SEPA Checklist to include incorporating revisions as required by the City.
- C. Conduct on-site review with the City.

Task 6 - Bidding Services

Objective: Provide Bidding Services

- A. Prepare bid advertisement and distribute to newspapers (does not include publication cost).
- B. Prepare and distribute Bid Documents to Planning Agencies, Utility Companies, City, and Interested Bidders (there is no charge for this service if Gray & Osborne sells plans). Maintain Bidders List.
- C. Answer Bid Inquiries During Bid Phase.
- D. Prepare and distribute any Bid Addenda as required.
- E. Attend Bid Opening, review low bids, check references, prepare and distribute bid summary, prepare Engineer's "Letter of Recommendation".

Task 7 - Construction Support Services

Objective: Provide City's construction management and inspection staff with construction support services.

- A. Evaluate/prepare change orders. The hours budgeted for this service is shown in Exhibit D-1A. If the hours exceed the budgeted amount, the City will pay on time and material basis for this service.
- B. Provide technical support and interpretation of contract documents. The budget hours for this item are indicated in Exhibit D-1A. If the City requires additional services beyond the budgeted amount, it will be paid on a time and material basis.

- C. At the request of the City, conduct two site visits to review the project with the City construction management team. Estimated hours are as listed.

Task 8 - Additional Services

The services list below will be provided upon written request by the City.

- A. Provide plans, specifications and cost estimates for the installation of a sanitary sewer pipe between Shirley and Stinson Avenue.
- B. Provide plans, specifications and cost estimate for the installation of storm drainage facilities on Stinson Avenue, upsizing of stormwater outfall, and permit acquisition.

Documents To Be Furnished By The Consultant

- Five sets of plans, specifications and cost estimates at each submittal (35%, 75%, 95%). Three sets will be provided to the City and two sets to WSDOT.
- Design calculations.
- SEPA checklist in Wordperfect file.
- Auto-CAD disk of plans.
- One set of reproducible "full size" contract documents (plans and specifications).
- Five sets of "blue line" construction drawings.

EXHIBIT C-2
PAYMENT
(COST PLUS FIXED FEE)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for all work performed or services rendered and for all labor, materials, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform with the applicable portion of 48 CFR 31.

A. Actual Costs

Payment for all consulting services for this project shall be on the basis of the CONSULTANT's actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, and direct nonsalary cost.

1. Direct Salary Costs

The direct salary cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT.

2. Overhead Costs

Overhead costs are those costs other than direct costs which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT, under "Overhead Progress Payment Rate." Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The three options are explained as follows:

- a. **Actual Cost Not To Exceed Maximum Percent:** If this method is indicated in the heading of this AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT at the actual overhead rate verified by audit up to the maximum percentage shown in the space provided. Final overhead payment when accumulated with all other actual costs shall not exceed the total maximum amount payable shown in the heading of this AGREEMENT.
- b. **Fixed Rate:** If this method is indicated in the heading of the AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.

A summary of the CONSULTANT's cost estimate and the overhead computation are attached hereto as Exhibit D-1 and by this reference made part of this AGREEMENT. When an Actual Cost method, or the Actual Cost Not To Exceed method is used, the CONSULTANT (prime and all subconsultants) will submit to the AGENCY within three months after the end of each firm's fiscal year, an overhead schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the overhead rate for billing purposes. It shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate.

Failure to supply this information by either the prime consultant or any of the subconsultants shall cause the agency to withhold payment of the billed overhead costs until such time as the required information is received and an overhead rate for billing purposes is approved.

The STATE and/or the Federal Government may perform an audit of the CONSULTANT's books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

3. Direct Nonsalary Costs

Direct nonsalary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the AGENCY. Automobile mileage for travel will be reimbursed at the current rate approved for AGENCY employees and shall be supported by the date and time of each trip with origin and destination of such trips. Subsistence and lodging expenses will be reimbursed at the same rate as for AGENCY employees. The billing for nonsalary cost, directly identifiable with the Project, shall be an itemized listing of the charges supported by copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the CONSULTANT. Copies of the original supporting documents shall be provided to the AGENCY upon request. All of the above charges must be necessary for the services to be provided under this AGREEMENT.

4. Fixed Fee

The fixed fee, which represents the CONSULTANT's profit, is shown in the heading of this AGREEMENT under Fixed Fee. This amount does not include any additional fixed fee which could be authorized from the Management Reserve Fund. This fee is based on the scope of work defined in this AGREEMENT and the estimated man-months required to perform the stated scope of work. In the event a supplemental agreement is entered into for additional work by the CONSULTANT, the supplemental agreement may include provisions for the added costs and an appropriate additional fee. The fixed fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the monthly progress reports accompanying the invoices.

Any portion of the fixed fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX, Termination of Agreement.

5. Management Reserve Fund

The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this agreement. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work."

6. Maximum Total Amount Payable

The maximum total amount payable, by the AGENCY to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT.

The Maximum Total Amount Payable is comprised of the Total Amount Authorized, which includes the Fixed Fee and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV, "Extra Work."

B. Monthly Progress Payments

The CONSULTANT may submit invoices to the AGENCY for reimbursement of actual costs plus the calculated overhead and fee not more often than once per month during the progress of the work. Such invoices shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, General Requirements, of this AGREEMENT. The invoices will be supported by an itemized listing for each item including direct salary, direct nonsalary, and allowable overhead costs to

which will be added the prorated Fixed Fee. To provide a means of verifying the invoiced salary costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, and present duties of those employees performing work on the PROJECT at the time of the interview.

C. Final Payment

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims. The payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within ninety (90) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment.

D. Inspection of Cost Records

The CONSULTANT and the subconsultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

**EXHIBIT D-1A
ROSEDALE STREET IMPROVEMENT
CONSULTANT FEE DETERMINATION - SUMMARY SHEET
(COST PLUS FIXED FEE)**

TASK 1	PROJECT MANAGER	PROJECT ENGINEER	CIVIL/DESIGN ENGINEER	STRUCTURAL ENGINEER	ELECTRICAL SCIENTICLAN	SURVEY
A	1	2				6
B	(See Below)	4				
C&D		4				48
E	1	2			12	20
Subtotal	1	10	0	0	0	54
TASK 2 SUBCONSULTANT-GEOTECHNICAL						
A	(See Below)					
TASK 3						
A	4	12	30	8	40	--
B	--	1	8	--	12	--
C	2	12	32	8	--	--
D	2	8	20	8	--	--
E	8	40	146	16	148	--
F	1	4	8	40	16	--
G	1	4	8	40	16	--
H	(See Below)	4				
I		4	16	--	40	--
J	--	2	4	--	3	--
K	1	2	24	--	--	--
Subtotal	19	95	296	120	275	0
TASK 4						
A	1	6	16	--	20	--
B&C	4	20	68	--	20	--
Subtotal	5	26	84	0	40	0
TASK 5						
A	6	16	50	20	60	--
B	--	1	2	--	--	--
Subtotal	6	17	52	20	60	0
TASK 6						
A	4	8	8			
TASK 7						
A	1	2	14	--	--	--
B	1	4	24	--	--	--
C	--	8	--	--	--	--
	2	14	40	0	0	0
HOURS	37	170	480	140	375	0
RATE	\$34	\$28	\$21	\$25	\$16	\$55
	\$1,258	\$4,760	\$10,080	\$3,500	\$4,000	\$2,970

TOTAL, DSC \$28,568.00

OVERHEAD (OH COST -Including Salary Additives):

OH Rate x DSC 134.00% x \$28,568.00 = \$38,281.12

FIXED FEE (FF)
FF Rate x FF 35% \$28,568.00 \$9,998.80

REIMBURSABLES
Travel (1800@\$.31) \$558.00
Reproduction and Photos \$577.08
TOTAL REIMBURSABLES \$1,135.08

SUBCONSULTANTS COSTS (See Exhibit G)
Hong West & Associates \$3,000.00
David Hatlin & Associates \$700.00
Bruce Doss & Associates \$5,000.00
TOTAL SUBCONSULTANTS \$8,700.00

GRAND TOTAL \$36,643.00

**EXHIBIT D-1B
ROSEDALE STREET IMPROVEMENTS
CONSULTANT FEE DETERMINATION - SUMMARY SHEET
(COST PLUS FIXED FEE)**

TASK 8	PROJECT MANAGER	PROJECT ENGINEER	CIVIL/DESIGN ENGINEER	STRUCTURAL/ ELECTRICAL ENGINEER	TECHNICIAN	SURVEY
A	1	4	16		24	
B	<u>8</u>	<u>20</u>	<u>70</u>		<u>110</u>	<u>24</u>
Subtotal	9	24	86	0	134	24
HOURS	9	24	86	0	134	24
RATE	\$34	\$28	\$21	\$25	\$16	\$55
	\$306	\$672	\$1,806	\$0	\$2,144	\$1,320
TOTAL, DSC						\$6,248.00
OVERHEAD (OH COST -Including Salary Additives):						
OH Rate x DSC				134.00% x	\$6,248.00 =	\$8,372.32
FIXED FEE (FF)						
FF Rate x FF				35% x	\$6,248.00 =	\$2,186.80
REIMBURSABLES						
					\$310.00	
					\$382.88	
TOTAL, REIMBURSABLES						\$692.88
SUBCONSULTANTS COSTS (See Exhibit G)						
TOTAL, SUBCONSULTANTS						\$0.00
GRAND TOTAL						\$17,500.00

GRAY & OSBORNE

COMPUTATION OF OVERHEAD MULTIPLIER

THROUGH 1997

Payroll Taxes.....	14.06%
Employee Insurance.....	6.74%
Vacations & Holidays.....	11.53%
State B & O Tax.....	10.40%
Corporate Insurance.....	8.92%
Administration, (Typing, CADD, GIS, Computer).....	36.18%
Printing, Stationery & Supplies.....	8.58%
Travel Expenses.....	4.11%
Office Expense, (Telephone, Fax, Utilities, Etc.).....	5.93%
Rent.....	9.77%
Retirement/Incentive.....	9.81%
Depreciation Expense.....	3.75%
Professional Services.....	4.22%
TOTAL:	134.00%

**PROFESSIONAL ENGINEERING SERVICES CONTRACT
ENGINEER'S REPRESENTATIVE PAYROLL RATES
THROUGH JUNE 14, 1997**

(Any adjustment in rates will be reflected in
dollar value and cost not to exceed)

<u>Employee Classification</u>		<u>Payroll Rates*</u>	
Draftsman/Technician	\$13.00	to	\$19.00
Assistant Civil Engineers	15.00	to	25.00
Project Engineers/Managers	18.00	to	33.00
Principal Engineers	25.00	to	42.00
Field Inspectors/Resident Engineers	17.00	to	30.00
Field Survey Crew	43.00	to	50.00
Secretary/Typist		N/A*	

*Updated annually, together with the overhead. Overhead rate calendar year (1997) is 1.34.

All actual out-of-pocket expenses incurred directly on the project are added to the billing. The billing is based on direct out-of-pocket expenses; meals, lodging, laboratory testing and transportation. The transportation rate is \$0.31 per mile or the current maximum IRS rate without receipt IRS Section 162(a).

*Secretarial and clerical fees are not billed, but are included in the overhead multiplier listed. The same is true for accounting, bookkeeping, in-house printing, up to \$150, word processing, computer use, computer-aided drafting and telephone and fax costs.

EXHIBIT F
PAYMENT UPON TERMINATION OF AGREEMENT
BY THE AGENCY OTHER THAN FOR FAULT OF THE CONSULTANT
(Refer to Agreement, Section IX)

Lump Sum Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Cost Plus Fixed Fee Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the Project. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Specific Rates of Pay Contracts

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

Cost Per Unit of Work Contracts

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

**EXHIBIT G
SUBCONTRACTED WORK**

The AGENCY permits subcontracts for the following portions of the work of this AGREEMENT:

Hong West & Associates

Bruce Dees & Associates

**EXHIBIT G-1
ROSEDALE STREET IMPROVEMENT PROJECT
CONSULTANT FEE DETERMINATION - SUMMARY SHEET
(COST PLUS FIXED FEE)**

	PRINCIPAL	LA I	CADD	CLERICAL	
TASK 1: Program Development					
A. Background Studies/Site Analysis	3	6		1	
B. Prepare Base Maps (provided by G&O)	<u>0</u>	<u>3</u>	<u>6</u>	<u>0</u>	
Subtotal	3	9	6	1	
TASK 2: 75% Phase					
A. 50% Construction Plans		3	4		
B. Estimated Construction Cost		2	0	1	
C. Attend Public Meeting	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>	
Subtotal	0	5	4	1	
TASK 3: Final Construction Documents					
A. 90% Construction Plans		3	7		
B. Specifications	1	4		1	
C. Estimated Construction Cost		2		1	
D. 100% Contract Documents	<u>1</u>	<u>2</u>	<u>8</u>	<u>0</u>	
Subtotal	2	11	15	2	
HOURS	5	25	25	4	
DIRECT SALARY RATE	\$45	\$26	\$25	\$16	
TOTAL, DSC	\$225	\$650	\$625	\$64	\$1,564.00
OVERHEAD (OH COST -Including Salary Additives):					
OH Rate x DSC	1.7173			=	\$2,685.86
FIXED FEE (FF)					
FF Rate x FF	0.3				\$469.20
REIMBURSABLES					
Travel	150 miles @		\$0.31	\$46.50	
Reproduction and Photos				\$134.44	
Telephone				\$100.00	
TOTAL, REIMBURSABLES					\$280.94
GRAND TOTAL					\$5,000.00

Exhibit "C-2"

BRUCE DEES & ASSOCIATES			
Overhead on Direct Labor			
from June 1, 1996 through December 31, 1996			
		Amount	% of Direct Labor
DIRECT LABOR:		\$160,468.46	
GENERAL & ADMINISTRATIVE OVERHEAD			
FICA		\$11,399.34	7.10%
Unemployment		\$2,008.57	1.25%
Industrial Insurance		\$868.42	0.54%
Medical Insurance/Disability		\$13,739.96	8.56%
Bonuses/Pension Plan		\$15,799.35	9.85%
Vacation, Holiday and Sick Pay		\$19,820.00	12.35%
Lodging		\$125.40	0.08%
Meals		\$1,283.89	0.80%
Phone & Utilities		\$4,425.25	2.76%
Rent		\$10,955.00	6.83%
Insurance-Office, Car & Liability		\$7,130.89	4.44%
Dues/Professional License/Public.		\$2,576.69	1.61%
Office & Operating Supplies		\$7,889.19	4.92%
Postage/Courier		\$1,788.00	1.11%
Advertisement/Brochures		\$860.00	0.54%
Equipment		\$4,280.49	2.67%
Equipment Lease		\$6,673.65	4.16%
Equipment Maintenance		\$215.00	0.13%
Legal & Accounting		\$535.00	0.33%
Travel & Vehicle		\$4,788.10	2.98%
City B & O Tax		\$3,068.28	1.91%
State B & O Tax		\$17,559.02	10.94%
Wages-Administrative & Salary		\$136,027.35	84.77%
Professional Development		\$1,646.65	1.03%
Miscellaneous		\$108.03	0.07%
TOTAL OVERHEAD		\$275,571.52	171.73%
Does not include profit.			

Exhibit "G-3"

PROJECT COST ESTIMATE
GEOTECHNICAL SERVICES
ROSEDALE ROADWAY IMPROVEMENTS
GIG HARBOR, WASHINGTON

HWA Ref.: P-3257
 Date: July 1, 1997
 Prepared By: RNB

PROPOSED SCOPE:

This estimate includes logging test pits excavated by the City of Gig Harbor, evaluating soil and ground water conditions, and providing geotechnical recommendations for design and construction of the proposed roadway improvements. It does not include evaluation of hazardous materials or contamination.

ESTIMATED HWA LABOR:

WORK TASK DESCRIPTION	PERSONNEL AND 1997 HOURLY RATES				TOTAL HOURS	LABOR AMOUNT
	Principal	Engineer	CAD	Clerical		
Field Explorations	540.38	\$19.23	\$17.90	\$12.50	8	\$154
Logs & Profiles		3			3	\$58
Engineering Analysis	2	8			10	\$235
Report Preparation	2	5	4		13	\$274
Meetings & Consultation		2			2	\$38
DIRECT LABOR	4	26	4	2	36	\$758

DIRECT LABOR COSTS

Direct Salary Cost (DSC) \$758
 Overhead (OH) @ 173% DSC \$1,312
 Fixed Fee @ 12% (DSC & OH) \$620.88
Total Labor Costs: \$2,690

ESTIMATED OTHER COSTS

Backhoe \$100
 Mileage/Parking \$192
 Laboratory Testing \$18
 Courier & Postage
Total Other Costs: \$310

TOTAL COSTS

Labor Costs \$2,690
 Other Costs \$310
TOTAL COST: \$3,000

EXHIBIT G-4

Hong West & Associates, Inc.
Overhead Schedule
Year Ended December 31, 1994

	Amount Proposed	Adjustments	Ref.	Amount Accepted	
Direct Labor Base:					
Direct Labor	<u>5704,546</u>	<u>512,216</u>	(C)	<u>5716,762</u>	
Overhead Expenses:					
Payroll Taxes	5106,635			5106,635	14.88%
Group Insurance	43,371			43,371	6.05%
Workman's Comp.	4,692			4,692	0.65%
Bonus	136,175			136,175	19.00%
Retirement & Pension	26,912			26,912	3.75%
Vacation, Holiday & Sick	90,156			90,156	12.58%
Other Employee Benefits	4,188			4,188	0.58%
Indirect Salaries	388,206			388,206	54.16%
Office Rent	138,959	(583,665)	(A)	55,296	7.71%
Other Rentals	2,011			2,011	0.28%
Utilities	15,467			15,467	2.16%
Depreciation	39,573			39,573	5.52%
Repairs & Maintenance	31,010			31,010	4.33%
Computer Expense	12,701			12,701	1.77%
Office Supplies	27,341			27,341	3.81%
Lab/Field Supplies	17,817			17,817	2.49%
Reproduction & Printing	4,606			4,606	0.64%
Travel & Related	21,477	(3,500)	(H)	17,977	2.51%
Communication & Utilities	41,016			41,016	5.72%
Professional Dues	8,908	(254)	(D)	8,654	1.21%
Professional Meetings	1,440			1,440	0.20%
Subs., Books, & Pubs.	11,569			11,569	1.61%
Legal & Accounting	6,648	(292)	(E)	6,356	0.89%
Consultant Services	851			851	0.12%
Temporary Services	8,042			8,042	1.12%
Insurance	39,638			39,638	5.53%
Professional	4,980			4,980	0.69%
Recruiting	18,346			18,346	2.56%
Training & Education	10,652			10,652	1.49%
Taxes Not Fed. Inc.	59,671			59,671	8.33%
Staff Meetings	5,832	(3,713)	(F)	2,119	0.30%
Company Morale	3,099	(1,869)	(G)	1,230	0.17%
Recovery Credits	(44,509)	37,417	(I)	(7,092)	-0.99%
Discounts Taken	0	(187)	(B)	(187)	-0.03%
Cost of Money	9,072			9,072	1.27%
Total Overhead Expenses	<u>\$1,296,552</u>	<u>(\$56,061)</u>		<u>\$1,240,491</u>	<u>173.07%</u>
Overhead Rate	<u>184.03%</u>			<u>173.07%</u>	

Hong West & Associates, Inc.
 Overhead Schedule
 Year Ended December 31, 1994

	Amount Proposed	Adjustments	Ref.	Amount Accepted
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References:

- (A) Common control rent adjusted to actual allowable cost per 48 CFR 31.205-36(e)(3) and 31.205-10.
- (B) Discount (taken) are a reduction to overhead expenses. 48 CFR 31.201-5.
- (C) Adjusted per audit of time sheets. Add \$12,216 to direct labor.
- (D) Contribution, social club dues and legislative lobbying costs. 48 CFR 31.205-8, 31.205-14 and 31.205-22(e)(5).
- (E) Personal automobile expenses. 48 CFR 31.201-3.
- (F) Not allowed per WSDOT overhead cost policy, unallocable costs and over per diem limits. 48 CFR 31.201-4 and 31.205-46.
- (G) Costs limited per WSDOT overhead cost policy and allocability. 48 CFR 31.201-4.
- (H) Missing supporting documentation. 48 CFR 31.201-6(c).
- (I) Recovery credits are limited to actual costs. 48 CFR 31.201-5.



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: JERISICH DOCK IMPROVEMENT PROJECT - DNR LEASE
DATE: SEPTEMBER 3, 1997

INTRODUCTION/BACKGROUND

The IAC grant for the Jerisich Dock Improvement Project stipulates that reimbursement for project expenditures will be withheld pending IAC approval of a "long term lease agreement" between the City and the Department of Natural Resources (DNR). On May 12, 1997 Council authorized a Consultant Services Contract with Thornton Land Surveying, Inc., to perform survey work and prepare supporting documentation for the lease application. On August 25, 1997, Council authorized an assignment of funds in the amount of \$500 to satisfy one of the provisions in the new DNR lease.

The City has complied with the DNR lease application requirements, and DNR has issued an "Aquatic Lands Notice of and Agreement to Terminate Lease No. 20-011377 and Harbor Area Lease No. 22-002801." Following execution of the agreements, this Department will submit within 30-days to DNR the completed assignment of funds form, and Certificate of Insurance to satisfy the conditions of the new lease agreement.

The lease is for a 30-year period, and does not require payment of rent. The lease represents the current standard lease agreement with DNR for aquatic lands.

FISCAL CONSIDERATIONS

Execution of the lease will allow IAC to authorize reimbursement for their proportionate share of the Jerisich Dock Improvement Project costs.

RECOMMENDATION

Staff recommends that the Council authorize the Mayor to execute the Notice of and Agreement to Terminate Agreement (20-011377) and Aquatic Land Lease (22-002801) for Jerisich Dock.

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
JENNIFER M. BELCHER
Commissioner of Public Lands
Olympia, Washington 98504**

**NOTICE OF AND AGREEMENT TO TERMINATE LEASE
20-011377
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**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
JENNIFER M. BELCHER
Commissioner of Public Lands
Olympia, Washington 98504**

NOTICE OF AND AGREEMENT TO TERMINATE AGREEMENT

LEASE TERMINATION NO. 20-011377

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and the Town of Gig Harbor (Now City), a government agency/entity, whose address is 3105 Judson Street, Gig Harbor, WA 98335, ("Agency").

BACKGROUND

A. The Town of Gig Harbor (Now City) and State have entered into, and are bound by, the terms and conditions of Lease No. 20-011377, recorded with the Pierce County Auditor's Office under recording number 20-011377, including any amendments thereto (the "Lease").

B. Agency desires to terminate this Lease, and State agrees that such lease may be terminated.

THEREFORE, the parties agree as follows:

1. TERMINATION DATE

The termination date of the Lease shall be accelerated to September 1, 1997.

2. IMPROVEMENTS

The "Agency"-owned improvements described in Exhibit A shall be pilings.

3. WARRANTIES

Agency represents and warrants to State that (i) Agency is not in default or breach of the Lease; (ii) Agency has no causes of action, claims, offsets, or defenses associated with the Lease; (iii) rents due subsequent to this Termination have not been paid in advance by Agency or have been fully refunded by State; (iv) all subleases of the Property will terminate and all sublessees will have vacated the Property prior to the termination date of the Lease; (v) no other person or entity has any interest in this lease that would be affected by its termination; and (vi) to the best of Agency's knowledge, the property is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws. Agency shall defend, indemnify and hold State harmless from any claims, known or unknown, of the Agency, and for any breach of the foregoing

warranties. State expressly reserves all rights against Agency for any claims it may have for damage to the Property or associated natural resources.

4. APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.

5. RECORDATION

Agency shall record this Lease Termination in the county in which the Property is located, at Agency's sole expense. Agency shall provide State with recording information, including the date of recordation and file number. Agency shall have thirty (30) days from the Commencement Date to comply with the requirements of this subsection. If Agency fails to record this Lease Termination, State may record it and Agency shall pay the costs of recording upon State's demand.

6. MODIFICATION

Any modification of this Agreement must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

THIS AGREEMENT is executed on the _____ day of _____, 19_____.

STATE:

Agency:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES

TOWN OF GIG HARBOR (NOW CITY)

By: _____
CHARLES BAUM

By: _____
GRETCHEN A. WILBERT

Its: Supervisor

Its: Mayor

Dated: [_____]

Dated: [_____]

st/Marshall/20011377.trm

PROOFED



CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON)

) ss.

County of Thurston)

On this _____ day of _____, 19____, personally appeared before me CHARLES BAUM, to me known to have signature authorization delegated to him to sign for JENNIFER M. BELCHER, the Commissioner of Public Lands, and ex officio administrator of the Department of Natural Resources of the state of Washington, the department that executed the within and foregoing instrument on behalf of the state of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the state of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the state of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

S E A L

NOTARY PUBLIC in and for the state of
Washington

My commission expires _____

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON)

) ss.

County of Thurston)

On this _____ day of _____, 19____, personally appeared before me CHARLES BAUM, to me known to have signature authorization delegated to him to sign for JENNIFER M. BELCHER, the Commissioner of Public Lands, and ex officio administrator of the Department of Natural Resources of the state of Washington, the department that executed the within and foregoing instrument on behalf of the state of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the state of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the state of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

S E A L

NOTARY PUBLIC in and for the state of
Washington

My commission expires _____

STATE OF WASHINGTON)

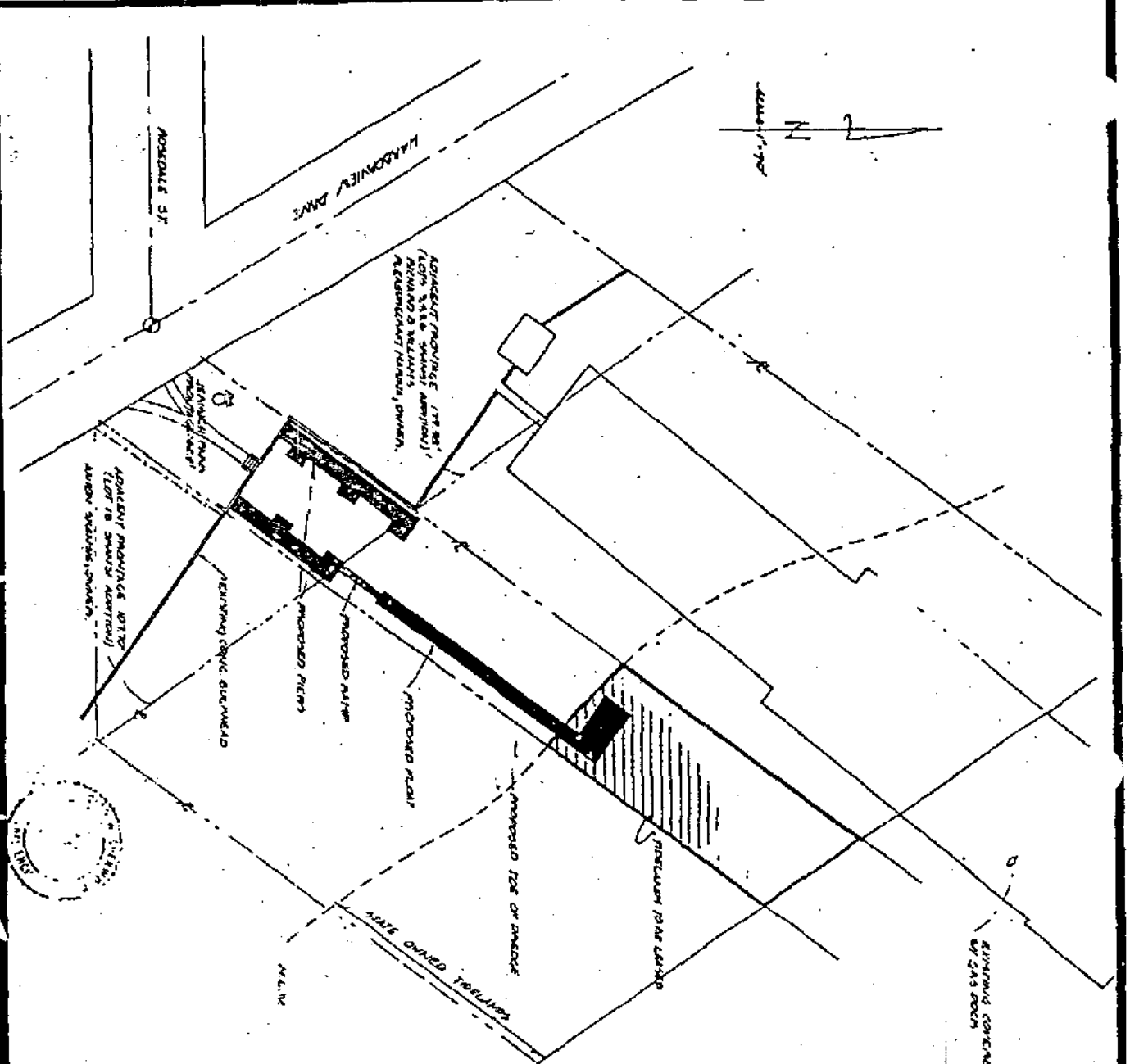
COUNTY OF () ss.

I certify that I know or have satisfactory evidence that GRETCHEN A. WILBERT is the person who appeared before me, and is the Mayor of the City of Gig Harbor "Tenant". I further certify that said person acknowledged the foregoing instrument to be the free and voluntary act of the Tenant for the uses and purposes mentioned in the instrument, and on oath state that she is duly authorized to execute and acknowledge said instrument.

DATED: []

[]

(Type/Print Name)
Notary Public in and for the State of Washington
residing at _____
My Commission Expires _____.



This portion of the "Public Place", being the line of
 near low tide and southerly of the line of high tide,
 and the product of the land of Block 1, as shown on
 the C.R. Survey of 1971, on file in the office
 of the Registrar of Public Lands at Victoria, Vancouver,
 and is enclosed in red on the attached Exhibit A, constituting
 an area of 9,000 square feet, more or less.

20-011377

EXHIBIT A
 PROPOSED PUBLIC ROAD HIGHWAY
 TOWN OF CIG HARBOR

DOUGLASS ENGINEERING
 CONSULTING ENGINEERS
 Seattle Portland Vancouver
 Spokane Eugene Tacoma

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
JENNIFER M. BELCHER
Commissioner of Public Lands

AQUATIC LANDS LEASE
(Commercial)
Lease No. 22-002801

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**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
JENNIFER M. BELCHER
Commissioner of Public Lands
Olympia, Washington 98504**

**AQUATIC LANDS LEASE
(Commercial)**

AQUATIC LANDS LEASE NO. 22-002801

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and CITY OF GIG HARBOR, a government agency/entity ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Gig Harbor, which is a harbor area located in Pierce County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease.

THEREFORE, the parties agree as follows:

1. PROPERTY

1.1 Property Defined. State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property"). This Lease is subject to all valid interests of third parties noted in the records of Pierce County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes. Not included in this Lease are any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials. State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not unreasonably interfere with Tenant's Permitted Use.

1.2 Survey, Maps, and Plans. In executing this Lease, State is relying on the surveys, plats, diagrams, and/or legal descriptions provided by Tenant. Tenant is not relying upon and State is not making any representations about any survey, plat, diagram, and/or legal description provided by State.

1.3 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the

Property or the existence of hazardous substances on the Property. Tenant has inspected the Property and accepts it "AS IS."

2. USE

2.1 Permitted Use. Tenant shall use the Property for a public dock (the "Permitted Use"), and for no other purpose. The parties agree that this is a water-dependent use. The Permitted Use is described or shown in greater detail in Exhibit B.

2.2 Restrictions on Use. Tenant shall not cause or permit any damage to natural resources on the Property. Tenant shall also not cause or permit any filling activity to occur on the Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by State. Tenant shall neither commit nor allow waste to be committed to or on the Property. If Tenant fails to comply with all or any of the restrictions on the use of the Property set out in this Subsection 2.2, State shall notify Tenant and provide Tenant a reasonable time to take all steps necessary to remedy the failure. If Tenant fails to do so in a timely manner, then State may take any steps reasonably necessary to remedy this failure. Upon demand by State, Tenant shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property. This section shall not in any way limit Tenant's liability under Section 8, below.

2.3 Conformance with Laws. Tenant shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use or occupancy of the Property.

2.4 Liens and Encumbrances. Tenant shall keep the Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Property.

3. TERM

3.1 Term Defined. The term of this Lease is thirty (30) years (the "Term"), beginning on the 1st day of September, 1997 (the "Commencement Date"), and ending on the 31st day of August, 2027, unless terminated sooner under the terms of this Lease (the "Termination Date").

3.2 Renewal of the Lease. Tenant shall have the option to renew this Lease for zero (0) additional terms of zero (0) years each. The initial Term of this Lease, and all renewal terms, shall not exceed thirty (30) years in the aggregate. Tenant shall exercise this option by providing written notice of its election to renew at least ninety (90) days prior to the Termination Date of the initial Term or any renewal term of this Lease. Tenant shall not be entitled to renew if it is in default under the terms of this Lease at the time the option to renew is exercised. The terms and conditions of any renewal term shall be the same as set forth in this Lease, except that rent shall be recalculated, and provisions dealing with hazardous waste may be changed, at the time of the renewal.

3.3 Delay in Delivery of Possession. If State, for any reason whatsoever, cannot deliver possession of the Property to Tenant on the Commencement Date, this Lease shall not be void or voidable, nor shall State be liable to Tenant for any loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession shall be the

Commencement Date for all purposes, including the payment of rent. In the event Tenant takes possession before the Commencement Date, the date of possession shall be the Commencement Date for all purposes, including the payment of rent. If the Lease Term commences earlier or later than the scheduled Commencement Date, the Termination Date shall be adjusted accordingly.

3.4 End of Term. Upon the expiration or termination of the Term or extended term, as applicable, Tenant shall surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

3.5 Hold Over. If Tenant remains in possession of the Property after the Termination Date, the occupancy shall not be an extension or renewal of the Term. The occupancy shall be a month-to-month tenancy, on terms identical to the terms of this Lease, which may be terminated by either party on thirty (30) days written notice. The monthly rent during the holdover shall be the same rent which would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms. If State provides a notice to vacate the Property in anticipation of the termination of this Lease or at any time after the Termination Date and Tenant fails to do so within the time set forth in the notice, then Tenant shall be a trespasser and shall owe the State all amounts due under RCW 79.01.760 or other applicable law.

4. RENT

4.1 Annual Rent. Until adjusted as set forth below, Tenant shall pay to State an annual rent of Zero Dollars (\$0). The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), shall be due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter.

4.2 Payment Place. Payment is to be made to State Financial Management Division, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Use. Annual Rent is based on Tenant's Permitted Use of the Property, as described in Section 2 above. If Tenant's Permitted Use changes, the Annual Rent shall be adjusted as appropriate for the changed use.

4.4 Rent Adjustments for Water-Dependent Uses.

(a) Inflation Adjustment. State shall adjust water-dependent rent annually pursuant to RCW 79.90.450 - .902, except in those years in which the rent is revalued under Subsection 4.4(b) below. This adjustment shall be effective on the anniversary of the Commencement Date.

(b) Revaluation of Rent. State shall, at the end of the first four-year period of the Term, and at the end of each subsequent four-year period, revalue the water-dependent Annual Rent in accordance with RCW 79.90.450 - .902.

(c) Rent Cap. After the initial year's rent is determined under Subsection 4.1, rent may increase by operation of Subsection 4.4(a) or 4.4(b). If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, the actual increase implemented in such year shall be limited to fifty percent (50%) of the then-existing rent, in accordance with RCW 79.90.490. The balance of the increase determined by the formula shall be deferred to

subsequent years and added to the next and subsequent years' rental increases until the full amount of the increase is lawfully implemented.

4.5 Rent Adjustment Procedures.

(a) Notice of Rent Adjustment.

Notice of any adjustments to the Annual Rent that are allowed by Subsection 4.4 shall be provided to Tenant in writing no later than ninety (90) days after the anniversary date of the Lease.

(b) Procedures on Failure to make Timely Adjustment.

In the event the State fails to provide the notice required in Subsection 4.5(a), it shall be prohibited from collecting any adjustments to rent only for the year in which it failed to provide notice. No failure by State to adjust Annual Rent pursuant to Subsection 4.5(a) shall affect the State's right to establish Annual Rent for a subsequent lease year as if the missed or waived adjustment had been implemented. The State may adjust, bill, and collect Annual Rent prospectively as if any missed or waived adjustments had actually been implemented. This includes the implementation of any inflation adjustment and any rent revaluations that would have been authorized for previous lease years.

5. **OTHER EXPENSES**

During the Term, Tenant shall pay the following additional expenses:

5.1 Utilities. Tenant shall pay all fees charged for utilities in connection with the use and occupancy of the Property, including but not limited to electricity, water, gas, and telephone service.

5.2 Taxes and Assessments. Tenant shall pay all taxes, assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

5.3 Right to Contest. Tenant may, in good faith, contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against any loss or liability by reason of such contest.

5.4 Proof of Payment. Tenant shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of any amounts required to be paid under the terms of this Lease.

5.5 Failure to Pay. If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due.

6. **LATE PAYMENTS AND OTHER CHARGES**

6.1 Late Charge. If any rental payment is not received by State within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.2 Interest Penalty for Past Due Rent and Other Sums Owed. If rent is not paid within thirty (30) days of the date due, then Tenant shall, in addition to paying the late charges determined under Subsection 6.1, above, pay interest on the amount outstanding at the rate of one

percent (1%) per month until paid. If State pays or advances any amounts for or on behalf of Tenant, including but not limited to leasehold taxes, taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Section 2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance.

6.3 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. In the absence of an election, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to other amounts advanced by State, then to late charges and accrued interest, and then to the earliest rent due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

6.4 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, rent and all other sums payable by Tenant pursuant to this Lease shall be paid without the requirement that State provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

7. IMPROVEMENTS

7.1 Existing Improvements. On the Commencement Date, the following improvements are located on the Property: Fourteen (14) pilings. The improvements are not owned by State ("Existing Improvements").

7.2 Tenant-Owned Improvements. So long as this Lease remains in effect, Tenant shall retain ownership of all Existing Improvements, and all authorized improvements and trade fixtures it may place on the Property (collectively "Tenant-Owned Improvements"). Tenant-Owned Improvements shall not include any construction, reconstruction, alteration, or addition to any Unauthorized Improvements as defined in Subsection 7.5 below. No Tenant-Owned Improvements shall be placed on the Property without State's prior written consent.

7.3 Construction. Prior to any construction, alteration, replacement, removal or major repair of any improvements (whether State-Owned or Tenant-Owned), Tenant shall submit to State plans and specifications which describe the proposed activity. Construction shall not commence until State has approved those plans and specifications in writing and Tenant has obtained a performance and payment bond in an amount equal to 125% of the estimated cost of construction. The performance and payment bond shall be maintained until the costs of construction, including all laborers and material persons, have been paid in full. State shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved and the requirement for State's written consent shall be treated as waived, unless State notifies Tenant otherwise within the sixty (60) days. Upon completion of construction, Tenant shall promptly provide State with as-built plans and specifications. State's consent and approval shall not be required for any routine maintenance or repair of improvements made by the Tenant pursuant to its obligation to maintain the Property in

good order and repair that does not result in the construction, alteration, replacement, removal, or major repair of any improvements on the Property.

7.4 Removal. Tenant-Owned Improvements shall be removed by Tenant by the Termination Date unless State notifies Tenant that the Tenant-Owned Improvements may remain. If the State elects for the Tenant-Owned Improvements to remain on the Property after the Termination Date, they shall become the property of State without payment by State (if the provisions of RCW 79.94.320 or RCW 79.95.040 apply, Tenant shall be entitled to the rights provided in the statute). To the extent that Tenant-Owned Improvements include items of personal property which may be removed from the leasehold premises without harming the Property, or diminishing the value of the Property or the improvements, the State asserts no ownership interest in these improvements unless the parties agree otherwise in writing upon termination of this Lease. Any Tenant-Owned Improvements specifically identified as personal property in Exhibit A or B shall be treated in accordance with this provision. Tenant shall notify State at least one hundred eighty (180) days before the Termination Date if it intends to leave the Tenant-Owned Improvements on the Property. State shall then have ninety (90) days in which to notify Tenant that it wishes to have the Tenant-Owned Improvements removed or elects to have them remain. Failure to notify Tenant shall be deemed an election by State that the Tenant-Owned Improvements will remain on the Property. If the Tenant-Owned Improvements remain on the Property after the Termination Date without State's actual or deemed consent, they still will become the property of the State but the State may remove them and Tenant shall pay the costs of removal and disposal upon State's demand.

7.5 Unauthorized Improvements. Improvements made on the Property without State's prior consent pursuant to Subsection 7.3 or which are not in conformance with the plans submitted to and approved by State ("Unauthorized Improvements") shall immediately become the property of State, unless State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Tenant to sever, remove, and dispose of them, charge Tenant rent for the use of them, or both. If Tenant fails to remove an Unauthorized Improvement upon request, State may remove it and charge Tenant for the cost of removal and disposal.

8. ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definition. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*

8.2 Use of Hazardous Substances. Tenant covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under, or above the Property, except in accordance with all applicable laws.

8.3 Current Conditions and Duty of Utmost Care. State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property. If there are any Hazardous Substances in, on, under, or above the Property as of the

Commencement Date, Tenant shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions. The standard of care required of Tenant by this Subsection 8.3 shall be that required of a person with actual knowledge of the presence of Hazardous Substances, whether or not Tenant had such actual knowledge.

8.4 Notification and Reporting.

(a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:

(1) A release or threatened release of Hazardous Substances in, on, under or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;

(2) Any problem or liability related to or derived from the presence of any Hazardous Substance in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;

(3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property; or,

(4) Any lien or action with respect to any of the foregoing.

(b) Tenant shall, at State's request, provide State with copies of any and all reports, studies or audits which pertain to environmental issues or concerns and to the Property, and which are or were prepared by or for Tenant and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

8.5 Indemnification and Burden of Proof.

(a) Tenant shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of or are in any way related to:

(1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, during the term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property;

(2) The release or threatened release of any Hazardous Substance in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, which release or threatened release occurs or occurred during the term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property and as a result of:

(i) Any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates; or,

(ii) Any act or omission of a third party unless Tenant exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.

(3) A breach of the obligations of Subsection 8.3, above, by Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates.

(b) Tenant will have occupancy and control of the Property. Accordingly, if State seeks to impose liability under Subsection 8.5(a), State will have the initial burden of proving by a preponderance of the evidence the existence, release, or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property. Tenant shall then have the burden of proving by a preponderance of the evidence that none of the indemnification provisions apply.

8.6 Cleanup. If a release of Hazardous Substances occurs in, on, under, or above the Property or other State-owned property arising out of any action or inaction described or referred to in Subsection 8.5(a)(1), 8.5(a)(2) or 8.5(a)(3), above, Tenant shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. Tenant shall also be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims. Any cleanup shall be performed in a manner approved in advance in writing by State, except that in emergency situations Tenant may take reasonable and appropriate actions without advance approval.

8.7 Sampling. State may conduct sampling, tests, audits, surveys or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Property, any adjoining property, any other property subject to use by Tenant in conjunction with its use of the Property, or any natural resources. If such Tests establish the existence, release or threatened release of Hazardous Substances which subjects Tenant to actual or potential liability under Subsection 8.5(a), above, Tenant shall promptly reimburse State for all costs associated with such Tests.

8.8 Reservation of Rights. No right, claim, or defense either party may have against third parties is affected by this Lease and the parties expressly reserve all such rights, claims, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release Tenant from or affect Tenant's liability for claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

9. ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not sell, convey, mortgage, assign, pledge, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall not be unreasonably conditioned or withheld.

(a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.

(b) State reserves the right to condition its consent upon (1) changes in the terms and conditions of this Lease, including the Annual Rent and other terms; and/or (2) the agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.

(c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

9.2 Event of Assignment. If Tenant is a corporation, a dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant shall be deemed to be an assignment of this Lease. If Tenant is a partnership, a dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant shall be deemed an assignment of this Lease.

9.3 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer shall not constitute consent to any assignment or transfer.

9.4 Terms of Subleases. All subleases shall be submitted to State for approval and shall meet the following requirements:

(a) The sublease shall be consistent with and subject to all the terms and conditions of this Lease;

(b) The sublease shall confirm that if the terms of the sublease conflict with the terms of this Lease, this Lease shall control;

(c) The term of the sublease (including any period of time covered by a renewal option) shall end before the Termination Date of the initial Term or any renewal term;

(d) The sublease shall terminate if this Lease terminates, whether upon expiration of the Term, failure to exercise an option to renew, cancellation by State, surrender or for any other reason;

(e) The subtenant shall receive and acknowledge receipt of a copy of this Lease;

(f) The sublease shall prohibit the prepayment to Tenant by the subtenant of more than one month's rent;

(g) The sublease shall identify the rental amount to be paid to Tenant by the subtenant;

(h) The sublease shall confirm that there is no privity of contract between the subtenant and State;

(i) The sublease shall require removal of the subtenant's improvements and trade fixtures upon termination of the sublease; and,

(j) The subtenant's permitted use shall be within the Permitted Use authorized by this Lease.

9.5 Routine Subleasing of Moorage Slips. In the case of routine subleasing of moorage slips to recreational and commercial vessel owners for a term of one year or less, Tenant shall not be required to obtain State's written consent or approval pursuant to Subsection 9.1 or Subsection 9.4. Tenant shall be obligated to ensure that these moorage agreements conform to the sublease requirements in Subsection 9.4.

10. INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity. Tenant shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Property by Tenant, its subtenants, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Tenant shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. Tenant's liability to State for hazardous substances, and its obligation to indemnify, defend, and holds the State harmless for hazardous substances, shall be governed exclusively by Section 8.

10.2 Financial Security.

(a) At its own expense, Tenant shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Five Hundred (\$500.00) Dollars, which shall secure Tenant's full performance of its obligations under this Lease, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond:

- (1) At the same time as revaluation of the Annual Rent;
- (2) As a condition of approval of assignment or sublease of this Lease;
- (3) Upon a material change in the condition of any improvements; or,
- (4) Upon a change in the Permitted Use.

A new or modified Bond shall be delivered to State within thirty (30) days after adjustment of the amount of the Bond has been required by State.

(b) Upon any default by Tenant in its obligations under this Lease, State may collect on the Bond to offset the liability of Tenant to State. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

10.3 Insurance. At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in Subsections 10.3(a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating

company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) Types of Required Insurance.

(1) Commercial General Liability Insurance. Tenant shall procure and maintain Commercial General Liability insurance and, if applicable, Marina Operators Legal Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000

State may impose changes in the limits of liability:

- (i) As a condition of approval of assignment or sublease of this Lease;
- (ii) Upon any breach of Section 8, above;
- (iii) Upon a material change in the condition of the Property or any improvements; or,
- (iv) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by State.

(2) Property Insurance. Tenant shall procure and maintain property insurance covering all real property located on or constituting a part of the Property in an amount equal to the replacement value of all improvements on the Property. Such insurance may have commercially reasonable deductibles.

(3) Worker's Compensation/Employer's Liability Insurance. Tenant shall procure and maintain:

- (i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements;
- (ii) Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

	Each Employee	Policy Limit
<u>By Accident</u>	<u>By Disease</u>	<u>By Disease</u>
\$1,000,000	\$2,000,000	\$2,000,000

(iii) Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements.

(4) Builder's Risk Insurance. As applicable, Tenant shall procure and maintain builder's risk insurance in an amount reasonably satisfactory to State during construction, replacement, or material alteration of the Property or improvements on the

Property. Coverage shall be in place until such work is completed and evidence of completion is provided to State.

(5) Business Auto Policy Insurance. As applicable, Tenant shall procure and maintain a business auto policy. The insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

(6) Aviation Liability Insurance. Tenant shall procure and maintain insurance covering liability arising from ownership, maintenance or use of aircraft, including liability assumed under an insurance contract. The insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>General</u> <u>Per Seat</u>	<u>Aggregate</u>
Bodily Injury and Property Damage	\$1,000,000	\$5,000,000

(b) Terms of Insurance. The policies required under Subsection 10.3 shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all policies of insurance described in Subsection 10.3 shall meet the following requirements:

(1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;

(2) Policies shall expressly provide that such insurance may not be canceled or non-renewed with respect to State except upon forty-five (45) days prior written notice from the insurance company to State;

(3) To the extent of State's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to State and Tenant;

(4) All liability policies must provide coverage on an occurrence basis.

(5) Liability policies shall not include exclusions for cross liability.

(c) Proof of Insurance. Tenant shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in section 10, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the lease number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Tenant acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Tenant must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Tenant from liability for losses and settlement expenses greater than these amounts.

10.4 State's Acquisition of Insurance. If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State shall have the right to procure and maintain comparable substitute insurance and to

pay the premiums. Tenant shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

11. MAINTENANCE AND REPAIR

11.1 State's Repairs. State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.

(a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.

(b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any improvements on the Property which may be required by any public authority.

(c) All additions, repairs, alterations, replacements or changes to the Property and to any improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.

12. DAMAGE OR DESTRUCTION

(a) In the event of any damage to or destruction of the Property or any improvements, Tenant shall promptly give written notice to State. Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and any improvements as nearly as possible to its condition immediately prior to the damage or destruction.

(b) Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any improvements on the Property shall not be conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid.

(c) Unless this Lease is terminated by mutual agreement, there shall be no abatement or reduction in rent during such reconstruction, repair, and replacement.

(d) Any insurance proceeds payable by reason of damage or destruction shall be first used to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.

(e) In the event Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State shall then have the right to retain any and all insurance proceeds payable as a result of the damage or destruction.

13. CONDEMNATION

13.1 Definitions.

(a) Taking. The term "taking," as used in this Lease, means the taking of all or any portion of the Property and any improvements thereon under the power of eminent domain, either by judgment or settlement in lieu of judgment. Taking also means the taking of all or a portion of the Property and any improvements thereon to the extent that the Permitted Use is prevented or, in the judgment of State, the Property is rendered impractical for the

Permitted Use. A total taking occurs when the entire Property is taken. A partial taking occurs when the taking does not constitute a total taking as defined above.

(b) Voluntary Conveyance. The terms "total taking" and "partial taking" shall include a voluntary conveyance, in lieu of formal court proceedings, to any agency, authority, public utility, person, or corporate entity empowered to condemn property.

(c) Date of Taking. The term "date of taking" shall mean the date upon which title to the Property or a portion of the Property passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

13.2 Effect of Taking. If during the Term there shall be a total taking, the leasehold estate of Tenant in the Property shall terminate as of the date of taking. If this Lease is terminated, in whole or in part, all rentals and other charges payable by Tenant to State and attributable to the Property taken shall be paid by Tenant up to the date of taking. If Tenant has pre-paid rent, Tenant will be entitled to a refund of the pro rata share of the pre-paid rent attributable to the period after the date of taking. In the event of a partial taking, there shall be a partial abatement of rent from the date of taking in a percentage equal to the percentage of Property taken.

13.3 Allocation of Award. State and Tenant agree that in the event of any condemnation, the award shall be allocated between State and Tenant based upon the ratio of the fair market value of Tenant's leasehold estate and Tenant-Owned Improvements on the Property and State's interest (a) in the Property, (b) in the reversionary interest in Tenant-Owned Improvements, and (c) in State-Owned Improvements. In the event of a partial taking, this ratio will be computed on the basis of the portion of Property or improvements taken. If Tenant and State are unable to agree on the allocation, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

14. DEFAULT AND REMEDIES

(a) Tenant shall be in default of this Lease on the occurrence of any of the following:

- (1) Failure to pay Annual Rent or other expenses when due;
- (2) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (3) Failure to comply with any other provision of this Lease; or,
- (4) Proceedings are commenced by or against Tenant under any bankruptcy act or for the appointment of a trustee or receiver of Tenants' property.

(b) A default shall become an event of default ("Event of Default") if Tenant fails to cure the default within sixty (60) days after State provides Tenant with written notice of default, which specifies the nature of the default.

(c) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise. State may also, without terminating this Lease, relet the Property on any terms and conditions as State in its sole discretion may decide are appropriate. If State elects to relet, rent received by it shall be applied: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and, (4) to

the payment of rent and leasehold excise tax due and unpaid under this Lease. Any balance shall be held by State and applied to Tenant's future rent as it becomes due. Tenant shall be responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly. State's reentry or repossession of the Property under this subsection shall not be construed as an election to terminate this Lease or cause a forfeiture of rents or other charges to be paid during the balance of the Term, unless State gives a written notice of termination to Tenant or termination is decreed by legal proceedings. State may at any time after reletting elect to terminate this Lease for the previous Event of Default.

15. ENTRY BY STATE

State shall have the right to enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease.

16. DISCLAIMER OF QUIET ENJOYMENT

As indicated in Section 1.1, this Lease is subject to all valid recorded interests of third parties, as well as rights of the public under the Public Trust Doctrine or federal navigation servitude, and treaty rights of Indian Tribes. State believes that its grant of the Lease is consistent with the Public Trust Doctrine and that none of the identified interests of third parties will materially and adversely affect Tenant's right of possession and use of the Property as set forth herein, but makes no guaranty or warranty to that effect. Tenant and State expressly agree that Tenant shall be responsible for determining the extent of its right to possession and for defending its leasehold interest. Consequently, State expressly disclaims and Tenant expressly releases State from any claim for breach of any implied covenant of quiet enjoyment with respect to the possession of the Property. This disclaimer includes, but is not limited to, interference arising from or in connection with access or other use rights of adjacent property owners or the public over the water surface or in or under the water column, including rights under the Public Trust Doctrine; rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands, navigable waters, bedlands, tidelands, and shorelands. In the event Tenant is evicted from the Property by reason of successful assertion of any of these rights, this Lease shall terminate as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations shall abate as of the date of the partial eviction, in direct proportion to the extent of the eviction, but in all other respects, this Lease shall remain in full force and effect.

17. NOTICE

Any notices required or permitted under this Lease may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time to time:

To State: DEPARTMENT OF NATURAL RESOURCES
South Puget Sound Regional Office
PO Box 68
Enumclaw, WA 98022-0068

To Tenant: CITY OF GIG HARBOR
3105 Judson Street
Gig Harbor, 98335

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

18. MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant will provide evidence satisfactory to State confirming these representations. This Lease is entered into by State pursuant to the authority granted it in Chapters 79.90 to 79.96 RCW and the Constitution of the State of Washington.

18.2 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

18.4 Entire Agreement. This Lease, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property, if any, are merged into this Lease.

18.5 Waiver. The waiver by State of any breach or default of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment shall not be construed to be a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.

18.6 Cumulative Remedies. The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded to State by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease shall be applicable to one or more persons, as the case may be. The singular shall include the plural, and the neuter shall include the masculine and feminine. If there is more than one Tenant, their obligations shall be

joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations.

18.9 Invalidity. If any provision of this Lease shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease shall be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute shall mean that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.

18.11 Recordation. Tenant shall record this Lease or a memorandum documenting the existence of this Lease in the county in which the Property is located, at Tenant's sole expense. The memorandum shall, at a minimum, contain the Property description, the names of the parties to the Lease, the State's lease number, and the duration of the Lease. Tenant shall provide State with recording information, including the date of recordation and file number. Tenant shall have thirty (30) days from the date of delivery of the final executed agreement to comply with the requirements of this subsection. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

18.12 Modification. Any modification of this Lease must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

STATE:

TENANT:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES

CITY OF GIG HARBOR

By: _____
CHARLES BAUM

By: _____
GRETCHEN A. WILBERT

Its: Supervisor

Its: Mayor

Dated: [_____]

Dated: [_____]

st/Marshall/22-002801.lse

PROOFED

RB

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON)

) ss.

County of Thurston)

On this _____ day of _____, 19____, personally appeared before me CHARLES BAUM, to me known to have signature authorization delegated to him to sign for JENNIFER M. BELCHER, the Commissioner of Public Lands, and ex officio administrator of the Department of Natural Resources of the state of Washington, the department that executed the within and foregoing instrument on behalf of the state of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the state of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the state of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

SEAL

NOTARY PUBLIC in and for the state of
Washington

My commission expires _____

STATE OF WASHINGTON)

) ss.

COUNTY OF (_____)

I certify that I know or have satisfactory evidence that GRETCHEN A. WILBERT is the person who appeared before me, and is the Mayor of the City of Gig Harbor ("Tenant"). I further certify that said person acknowledged the foregoing instrument to be the free and voluntary act of the Tenant for the uses and purposes mentioned in the instrument, and on oath state that she is duly authorized to execute and acknowledge said instrument.

DATED: [_____]

[_____]

(Type/Print Name)

Notary Public in and for the State of Washington
residing at _____

My Commission Expires _____

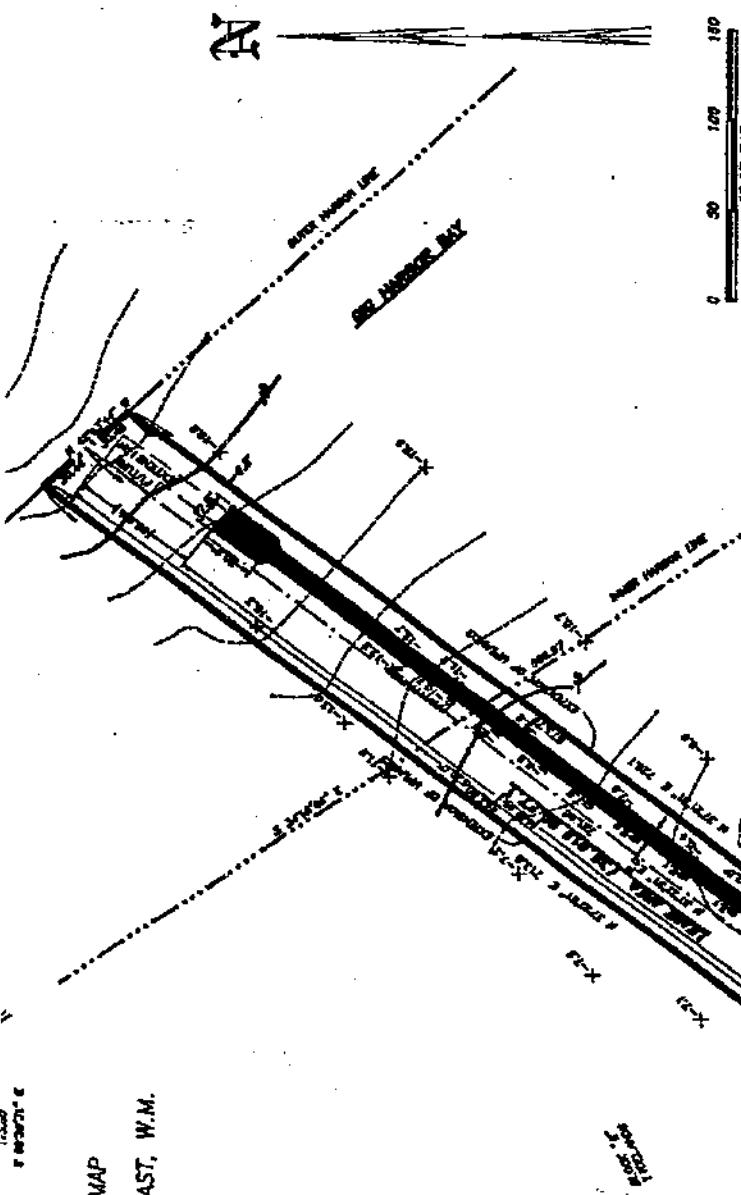
RECORD OF SURVEY

STATE OF WASHINGTON AQUATIC LANDS LEASE MAP
EXHIBIT "A"
SECTIONS 5 & 8, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M.
COUNTY OF PIERCE, STATE OF WASHINGTON

LEASE DESCRIPTION:

A PORTION OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST, P.M., DESCRIBED AS FOLLOWS:

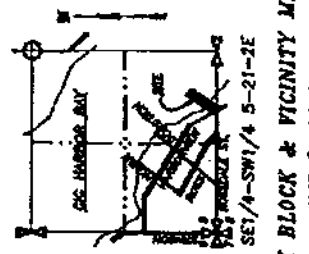
COMMENCING AT THE MEASOR CORNER COMMON TO SECTIONS 8 AND 9, TOWNSHIP 21 NORTH, RANGE 2 EAST, P.M.; THENCE, ALONG THE CHERRY LINE BETWEEN SAID SECTIONS 8 AND 9, NORTH 91 DEGREES 51 MINUTES 30 SECONDS WEST FOR A DISTANCE OF 197.87 FEET TO A POINT OF BEGINNING; THENCE, ALONG THE CHERRY LINE, SOUTH 89 DEGREES 51 MINUTES 30 SECONDS EAST FOR A DISTANCE OF 34.23 FEET TO THE CENTER LINE OF A 90 FOOT STRIP OF LAND AS DESCRIBED IN A.P.M. 8-04879 AS RETURNED ON JANUARY 2, 1971; THENCE, ALONG SAID CENTER LINE, NORTH 89 DEGREES 51 MINUTES 30 SECONDS EAST FOR A DISTANCE OF 11.24 FEET TO THE CENTER LINE OF THE STRIP OF LAND OF 18 HUNTERS BAY AS DESCRIBED IN A.P.M. 8-15140118 AND BEING THE TRUE POINT OF BEGINNING OF THIS TIDAL LEASE DESCRIPTION; THENCE, ALONG SAID CENTER LINE, SOUTH 89 DEGREES 51 MINUTES 30 SECONDS EAST FOR A DISTANCE OF 30.48 FEET TO THE EXTENDED SOUTHWESTERLY LINE OF SECTION 8 EAST FOR A DISTANCE OF 30.48 FEET TO THE MEASOR CORNER COMMON TO SECTIONS 8 AND 9, TOWNSHIP 21 NORTH, RANGE 2 EAST, P.M.; THENCE, ALONG SAID CENTER LINE, SOUTH 89 DEGREES 51 MINUTES 30 SECONDS WEST FOR A DISTANCE OF 11.24 FEET; THENCE, NORTH 89 DEGREES 51 MINUTES 30 SECONDS WEST FOR A DISTANCE OF 11.24 FEET; THENCE, NORTH 89 DEGREES 51 MINUTES 30 SECONDS WEST FOR A DISTANCE OF 11.24 FEET TO A POINT ON THE INTERSECTIONAL LINE OF SAID 90 FOOT STRIP OF LAND; THENCE, ALONG SAID INTERSECTIONAL LINE, NORTH 89 DEGREES 51 MINUTES 30 SECONDS EAST FOR A DISTANCE OF 11.24 FEET TO THE CENTER LINE OF THE STRIP OF LAND OF 18 HUNTERS BAY AS DESCRIBED IN A.P.M. 8-15140118; THENCE, ALONG SAID CENTER LINE, SOUTH 89 DEGREES 51 MINUTES 30 SECONDS EAST FOR A DISTANCE OF 30.48 FEET TO THE TRUE POINT OF BEGINNING AND THE TERMINAL POINT OF THIS DESCRIBED TIDAL LEASE DESCRIPTION.



BASIS OF BEARINGS
AS PER RECORD OF SURVEY RETURNED UNDER A.P.M. 8-15140118, WASHINGTON COUNTY (PIERCE), SOUTH ZONE, AND 8/2/91.

SURVEY STANDARDS
THIS SURVEY CONFORMS TO THE SURVEYING STANDARDS OF THE P.L.S. 808-100-000.

EQUIPMENT / PROCEDURE
TOPOGRAPHY / PROCEPURE
TOPOGRAPHY / PROCEPURE
FIELD THEODOLITE AND 207 STATIONING.



- LEGEND**
- MOVEMENT FOUND AS NOTED
 - SET 6" IRON BAR 1/2" DIA L.S. 10238
 - ANCHOR PILING
 - 5/8" IRON BAR PER R.O.S./A.P.M. 8009060121
 - TIDAL SPOT ELEVATION
 - R.O.S. RECORD OF SURVEY
 - A.P.M. AUDITOR'S FILE NO.
 - Y.L.V. YEAR LAST VISIT
- HORIZONTAL DATUM:**
STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES
R.O.S./A.P.M. 801140118.
- VERTICAL DATUM:**
B.M. NO. 8 (1944) U.S.C. & G.S. CORNER IN THE TOP OF A CONCRETE CEMENTALIN IN NORTHWEST CORNER OF ELEVATION = 14.10 MLL.W. DATUM (LOCAL TIDE GAUGE)

GENERAL NOTES

1. ALL L.S. - MEAN LOWER LOW WATER = 0.0'

2. ALL H. - MEAN HIGH WATER = 2.0'

3. ALL T.S. - MEAN TIDE SURFACE = 11.0'

4. ALL H.H. - MEAN HIGHER HIGH WATER = 11.5'

LINE TABLE

NO.	BEARING	DISTANCE
1	N 89° 51' 30" E	11.24
2	S 89° 51' 30" W	30.48
3	N 89° 51' 30" W	11.24
4	S 89° 51' 30" E	11.24

RECORD OF SURVEY FOR THE CITY OF OLYMPIA IN A PORTION OF SECTIONS 5 & 8, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON

DATE: JULY 1997

SCALE: AS SHOWN

Thornton Land Surveying, Inc.

P.A. NO. 248

610 HARBOR TOWERWAY SEASIDE

TELEPHONE (206) 866-8108 / FAX 866-7466



SURVEYOR'S CERTIFICATE

I, THE UNDERSIGNED, BEING A SURVEYOR IN THE STATE OF WASHINGTON, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE SURVEY RECORDS ON FILE IN THE OFFICE OF THE SURVEYOR GENERAL AT THE OFFICE OF THE SURVEYOR GENERAL.

AUDITOR'S CERTIFICATE

I, THE UNDERSIGNED, BEING THE AUDITOR OF THE STATE OF WASHINGTON, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE RECORDS ON FILE IN THE OFFICE OF THE AUDITOR OF THE STATE OF WASHINGTON.

EXHIBIT "A" 22-002801

CITY OF GIG HARBOR-JERISICH DOCK LEASE AGREEMENT

EXHIBIT B

22-002801

PLAN OF DEVELOPMENT, OPERATION, AND MAINTENANCE

Phase 1 construction of the Jerisich Dock Improvements is anticipated to commence in October 1997, and be completed in November 1997. Phase 1 improvements include removal of the existing concrete floats, creosote timber piling, gangway ramp and related improvements associated with the existing float system. These will be replaced by new floats, and a longer and wider gangway ramp system which will extend the length of the floating dock by approximately 100-ft. (float length = 453-LF), and the total dock length to 500-ft. (from the current 381-ft.). The new floats will feature internal pile blockouts with pedestrian grates, treated timber walers, fenders, and bullrails, tie-off cleats, and internal conduit runs for power and communication lines. In addition, the new floats will include treated timber bottom rails to limit the amount of area covered by the floats at extreme low tide to less than 20-percent of the total dock.

The new dock improvements will include concrete piling with conical caps, pedestrian lighting, pay-per-use vessel pump out and portable toilet dump station, new fire control system, finger piers utilizing existing floats for smaller boats and the vacuum pump, and a bump-out for pedestrians (and pump out/dump station) at the end of the dock. Salvaged piling from the existing dock will be used to anchor the side piers and provide additional support for the larger gangway ramp.

Phase 2 of the planned improvements, if developed, will extend the dock approximately 70-ft. to the outer harbor line. Nominal improvements will include addition of pedestrian seating. Potential improvements include addition of power, potable water, telecommunications pedestals at discrete locations along the dock.

Jerisich dock is open to the public 24-hours per day, 365-days per year. Alcoholic beverages, fueling and repairing vessels, and commercial activity on the dock are prohibited under the Gig Harbor Municipal Code (GHMC). The GHMC presently limits vessels to 24-hours of continuous moorage within a seven-day period. A nominal fee is charged for overnight transient moorage. In addition, the GHMC provides for a dedicated area for loading and unloading of passengers. Signage will be added to the completed facility to communicate this information to the public.

Upland facilities include a creosote timber piling supported treated timber pier which serves as a viewing platform, access to the dock, picnic area, and staging area for special events such as the annual blessing of the fleet. A small landscaped park abuts the pier on the south (north side of Harborview Drive), and includes restroom facilities and potable water. The dock and upland area are available for use by both boaters and pedestrians in the downtown Gig Harbor area. The restroom facilities are locked at night.

The restroom facilities are maintained by the Public Works Department on a daily, year-around basis, with aperiodic monitoring of the park and dock by both Public Works and City Police Department personnel, including a marine patrol; in the summer months. Maintenance plans calls for weekly maintenance (and monitoring) of the vessel pump-out/dump station by Public Works Department staff.



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: COPIER MAINTENANCE CONTRACT RENEWAL
DATE: SEPTEMBER 3, 1997

INFORMATION/BACKGROUND

Attached is a renewal to the maintenance contract for the Minolta copier at the Planning Department. The increase to 150,000 copies for a one-year period seems sufficient to cover the amount of copies made by that department. We remain satisfied with the service Minolta has provided the city.

FISCAL IMPACTS

There is an increase of \$145.00 over last year's agreement due to inflation and cost of supplies.

RECOMMENDATION

Move to authorize the Mayor to sign the attached copier service contract in the amount of \$2,080.00.

MINOLTA BUSINESS SYSTEMS
6300 SOUTHCENTER BLVD.
TUKWILA, WA 98188



S/O # _____

Customer P.O. # _____

TERR #

MAINTENANCE AGREEMENT

ACCOUNT # 7201421

Service Location: MBS-SEATTLE

BILL TO:
GIG HARBOR CITY OF

3105 JUDSON ST

GIG HARBOR WA 98335

SERVICED AT:
GIG HARBOR CITY OF

3105 JUDSON ST

GIG HARBOR WA 98335

COMMENCEMENT METER: *296,876*

M/A METER EXPIRATION: *446,876*

MODEL: 10758100 EP6000

SERIAL NUMBER: 3113093

TERMS AND CONDITIONS

THE SUPPLY/SERVICE FEE OF \$2,080.00 PLUS APPLICABLE TAXES, SHIPPING AND HANDLING IS FOR THE BASE PERIOD OF 09/13/97 TO 09/12/98 FOR 150,000 COPIES.

NOTE : ONE COPY IS COUNTED FOR EACH 8.5 x 11 INCH IMAGE.

UNDER THE ITEMS OF THIS PROGRAM, CUSTOMERS PUCHASING THIS AGREEMENT WILL BE ENTITLED TO LABOR, TRANSPORTATION, ALL REPLACEMENT PARTS, BLACK STARTER, IMAGING UNITS AS REQUIRED, AND BLACK TONER BASED ON 6% TONER USAGE RATIO AND NUMBER OF COPIES PURCHASED, EXCLUDING PAPER AND STAPLES. CUSTOMER MAY RENEW AGREEMENT WHEN THE COPIES PURCHASED ARE USED WITHIN THE AGREEMENT PERIOD. CUSTOMER ALSO MAY NEED TO PURCHASE ADDITIONAL TONER BASED ON APPLICATION.

When this Agreement is signed by the Customer and the Branch Service Manager, it shall constitute a Binding Agreement.

PLEASE READ REVERSE SIDE OF AGREEMENT FOR ADDITIONAL TERMS AND CONDITIONS.

Minolta Business Systems, Inc.

by _____
CUSTOMER SIGNATURE DATE

by _____
MBS SERVICE REP DATE

Title _____


by _____
MBS SERVICE MANAGER DATE

This AGREEMENT MUST BE RETURNED ALONG WITH PAYMENT to the Minolta Service Location listed above. Please be sure to enter the COMMENCEMENT METER READING and add STATE and LOCAL TAXES to payment. AUTHORIZED SIGNATURE is required to process this Agreement.



City of Gig Harbor. The "Maritime City."

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

TO: CITY COUNCILMEMBERS
FROM: MAYOR GRETCHEN WILBERT 
SUBJECT: PUBLIC COMMENT / NON-AGENDA / PRESENTATIONS
BEFORE COUNCIL
DATE: SEPTEMBER 4, 1997

POLICY:

For the past 7-1/2 years, while presiding over the City Council meetings, I have endeavored to honor one of my promises made to the voters...*encourage citizen input and public forum*. The non-agenda comments citizens brought to council's attention very often found their way into the formation of policy to address those issues. This process has always been my understanding of democracy. It has been my intent as Mayor to encourage public comments and as a courtesy to the citizens I placed it first on the agenda.

I was surprised when, at the City Council Retreat, Councilmembers suggested public comments be placed after new business on the agenda. I agreed to try it. Public reaction indicates that we should return to our original format, with a time limit indicated for each speaker.

RECOMMENDATION:

Move to return the public comment on non-agenda items to the beginning of the council meeting with a limit of five minutes for each speaker.

C090080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 8/04/97

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
FOR EXPIRATION DATE OF 10/31/97

	LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	CLASSES
1	THE BARTELL DRUG COMPANY	BARTELL DRUG COMPANY #39 5500 OLYMPIC DR GIG HARBOR WA 98335 0000	077055	E F
2	THE GIG HARBOR YACHT CLUB	THE GIG HARBOR YACHT CLUB 8209 STINSON AVE GIG HARBOR WA 98335 0000	077100	H

RECEIVED
AUG 8 1997
CITY OF GIG HARBOR

Attention:

Enclosed is a listing of liquor licensees presently operating establishments in your jurisdiction whose licenses expire on OCTOBER 31, 1997. Applications for renewal of these licenses for the upcoming year are at this time being forwarded to the current operators.

As provided in law, before the Washington State Liquor Control Board shall issue a license, notice regarding the application must be provided the chief executive officer of the incorporated city or town or the board of county commissioners if the location is outside the boundaries of an incorporated city or town.

Your comments and recommendations regarding the approval or disapproval for the enclosed listed licensees would be appreciated. If no response is received, it will be assumed that you have no objection to the reissuance of the license to the applicants and locations listed. In the event of disapproval of the applicant or the location or both, please identify by location and file number and submit a statement of all facts upon which such objections are based (please see RCW 66.24.010{8}). If you disapprove then the Board shall contemplate issuing said license, let us know if you desire a hearing before final action is taken.

In the event of an administrative hearing, you or your representative will be expected to present evidence in support of your objections to the renewal of the liquor license. The applicant would presumably want to present evidence in opposition to the objections and in support of the application. The final determination whether to grant or deny the license would be made by the Board after reviewing the record of the administrative hearing.

If applications for new licenses are received for persons other than those specified on the enclosed notices, or applications for transfer of licenses are received by the Board between now and OCTOBER 31, 1997, your office will be notified on an individual case basis.

Your continued assistance and cooperation in these licensing matters is greatly appreciated by the Liquor Control Board.

LESTER C. DALRYMPLE, Supervisor
License Division
Enclosures

MAYOR OF GIG HARBOR
3105 JUDSON ST
GIG HARBOR

RECEIVED

AUG 8 1997

CITY OF GIG HARBOR

WA 983350000

C090080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 9/03/97

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
FOR EXPIRATION DATE OF 11/30/97

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	CLASSES
1 ISEMAN, INC.	HY-IU-HEE-HEE 4309 BURHAM DR GIG HARBOR WA 98335 0000	367497	B C E F

RECEIVED
SEP - 4 1997
CITY OF GIG HARBOR

WASHINGTON STATE LIQUOR CONTROL BOARD-License Services
1025 E Union - P O Box 43075
Olympia WA 98504-3075

TO: MAYOR OF GIG HARBOR

September 3, 1997

SPECIAL OCCASION # 360342

CLASS: G

ST. NICHOLAS CHURCH
3510 ROSEDALE ST
GIG HARBOR, WA 98335

RECEIVED
SEP - 4 1997
CITY OF GIG HARBOR

DATE: SEPTEMBER 28, 1997

TIME: 12:30PM TO 5PM

PLACE: ST. NICHOLAS SOCIAL HALL - 3510 ROSEDALE, GIG HARBOR

CONTACT: MARK MCLEOD - 253-537-2610

SPECIAL OCCASION LICENSES

- * G __License to sell beer on a specified date for consumption at specific place.
- * J __License to sell wine on a specific date for consumption at a specific place.
__Wine in unopened bottle or package in limited quantity for off premises consumption.
- * K __Spirituuous liquor by the individual glass for consumption at a specific place.

If return of this notice is not received in this office within 20 days (10 days notice given for Class I) from the date above, we will assume you have no objection to the issuance of the license. If additional time is required please advise.

1. Do you approve of applicant? YES__ NO__
2. Do you approve of location? YES__ NO__
3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? YES__ NO__

<u>OPTIONAL CHECK LIST</u>	<u>EXPLANATION</u>		
LAW ENFORCEMENT	_____	YES__	NO__
HEALTH & SANITATION	_____	YES__	NO__
FIRE, BUILDING, ZONING	_____	YES__	NO__
OTHER:	_____	YES__	NO__

If you have indicated disapproval of the applicant, location or both, please submit a statement of all facts upon which such objections are based.

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



City of Gig Harbor. The "Maritime City."

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

MAYOR'S REPORT

September, 1997

TRANSPORTATION

Taking a Serious Look at Choices

Transportation issues are a serious problem nationwide, as it is here in Puget Sound. In 1991, the Puget Sound Regional Council recognized their main mission was transportation. The Regional Transportation Authority (RTA) was created and put forth a voter approved plan. Unfortunately, the Gig Harbor Peninsula was never part of the plan, and we are on our own to create transportation choices.

Pierce county has a trails plan which extends throughout the Peninsula for non-motorized modes of travel. The City of Gig Harbor included a trails plan in the Parks & Recreation plan required by the Growth Management Act. As the city's trails develop, they should connect well with Pierce County's trail plan.

Pierce Transit has just released their Six-year Transportation Plan which outlines a goal to increase ridership by 25% by the end of the year 2003. This includes the addition of parking stalls at the Park & Ride facility here in Gig Harbor. In addition, Don Monroe, Pierce Transit Executive Director, indicated the "door is open" for the City of Gig Harbor to begin discussions to consider providing a "Town-Around", i.e., a small bus offering frequent service to residents of the city, including the handicapped, to go from one end of town to the other with frequent stops within the shopping centers, medical centers, and residential areas.

If all the above projects begin to fall into place, another opportunity may arise to utilize the local waterways, with the revival of the small passenger ferries called the Mosquito Fleet.

The time has come to do something to alleviate traffic congestion. A committee already is forming to work with Pierce Transit on the "Town-Around." Catherine Ridley has agreed to be the chairperson. If you are interested in helping with this project you can contact her at 858-7991 or email her at ridley@narrows.com. If you know of someone who is interested in working on other travel choices, please have them call me.

Tom Enlow

*FYE
gw*

From: Catherine Ridley <ridley@narrows.com>
To: harbor@harbornet.com
Subject: Accessibility to Disabled & Walkers in Gig Harbor
Date: Tuesday, August 19, 1997 6:44 PM

TO: Mayor Gretchen Wilbert

FROM: Catherine M. Ridley
4407 Harbor Country Dr. Apt. 1-6
Gig Harbor, WA 98335
858-7991
EMail- ridley@narrows.com

I am writing regarding the lack of sidewalks along Point Fosdick from the Seafirst Bank down to 4425 Pt. Fosdick which is the entrance to the Harbor Country Estates apartment complex. The other side of the street encompasses the library. My adult disabled son and I share an apartment and not having sidewalks along that stretch of Pt. Fosdick causes great difficulty for those of us who are walkers and anyone in a wheelchair. For economic and environmental reasons I stopped driving one year ago and began riding the bus. Without sidewalks I am not able to take a shopping cart along with me to do my shopping. As to my son in a wheelchair, he is prohibited access to all the joys of living in the Harbor. He cannot go to Starbucks, the harbor, the library, etc.. without calling for Shuttle the day before and at a great cost to taxpayers.

With just a short stretch of sidewalk, not only would it be a Godsend to we residents of Harbor Country but perhaps it would encourage workers at the Library and other places to walk instead of drive during lunch and breaks. I would very much appreciate anything you can do in this matter.

I do have a suggestion with regard to the disabled in Gig Harbor. As my son and I make our way around this beautiful place and have to move merchandise in front of stores or signs in order for his wheelchair to get through it is obvious that people are simply not conscious of these inconveniences. How about a "Disability Awareness Day", wherein people could be reminded that the disabled need to always be accomodated.

Thank you very much for your time. I do feel like one of the luckiest people on Earth to live in such a beautiful place.

*- Shuttle costs \$256.
per passenger trip
versus \$2.84 for
fixed route. \$pgl -
in 6 year Plan*

*- Had to call Shuttle
to go to Safeway -
- Wants a pedestrian
access to the shopping
area*

*- many people in Harbor
Country ride the bus
- Plan for bus stops, bench
litter can should be
a part of a bus stop pl.*

*- Skuff on sidewalk
in front of stores
mentioned
- Ray Pass
- Jakesia
- Biz 5
- Ben Franklin
etc.*

*blocks passage of
people & wheelchair*